

## **ILPA RESPONSE TO TACKLING HUMAN TRAFFICKING – CONSULTATION ON PROPOSALS FOR A UK ACTION PLAN**

### **Introduction**

ILPA is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups.

ILPA members have experience in advising people who have been trafficked and in representing them before the Home Office and on appeal. The organisation provides training for practitioners and others on trafficking. ILPA has followed closely the development of both national and European law on trafficking. Recent work includes evidence to the Joint Committee on Human Rights enquiry into human trafficking (January 2006) and a response to the *European Commission Communication: Fighting trafficking in human beings – an integrated approach and proposals for an action plan* COM (2005) 514 final. We examined child trafficking in our policy paper *Child First, Migrant Second: Ensuring That Every Child Matters<sup>1</sup>* and a conference with Garden Court Chambers on trafficking (March 2006). Where relevant, information from that work has been included herein.

### **Q.1 Have we got the scope of the plan right?**

#### ***A human rights approach is needed***

The plan needs to put people who have been or are at risk of being trafficked at its heart. It is one thing to treat protection and assistance as tactics in trying to prevent trafficking and another to recognise that trafficking is a breach of fundamental human rights and that protection and assistance are duties owed to individuals. Protection and assistance are made the final category of the paper, and in the case study, on Reflex, we are told what happened to the traffickers, but nothing about what happened to the 15 year old who had been trafficked.

#### ***International standards must inform an action plan***

Effective international action requires common standards. This is an important reason why the UK should be doing all in its power to ensure that it is able to **ratify the Council of Europe Convention on Action Against Trafficking in Human Beings<sup>2</sup>**, which has twenty-four signatories. The Convention should form the cornerstone of any action plan. Annexe A to the consultation document: *Relevant International Instruments* omits any mention of the Convention. Specific points relating to the provisions of the Convention are addressed response to the relevant questions.

Annexe A also omits any mention of relevant OSCE documents, including the Ministerial Council Decision No. 2/03, No. 13/04; Permanent Council Decision No. 557 and the OSCE

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<sup>1</sup>,Crawley, H., for ILPA, February 2006, extract appended hereto.

<sup>2</sup> Council of Europe CM(2005)32 Addendum 1 final (May 2005)

*Action Plan to Combat Trafficking in Human Beings* all of which are very relevant to the drawing up on an action plan, as is the detailed OSCE work on national referral mechanisms.

Relevant international instruments also include EU Directive 2004/81 on residence permits for people who have been trafficked and more general measures with potential to safeguard migrants, for example, the Long Term Residents Directive, which concerns the rights of people residing in the European Union. The House of Lords European Union Committee Report *Economic Migration to the EU*<sup>3</sup> is worthy of special study in this regard.

It would also be helpful to include reference to key international jurisprudence, e.g. *Siliadin v France* Application 73316/01 26-07-2005, European Court of Human Rights.

***Organised immigration crime is too narrow a focus***

The consultation paper looks at trafficking through the prism of organised immigration crime. This is an inadequate framework. Many people who are trafficked commit no immigration crime; they travel on their own passports, for example as European nationals; or they come in to be domestic workers, and are indeed domestic workers, but are exploited to the point where they are used for domestic slavery; similarly for example, workers in the agriculture sector. The approach means taken means that a wider context is lost. For example trafficking for forced labour is not looked at within the wider context of labour exploitation, and in particular the exploitation of the migrant labour force. There is also a risk of too much focus on large-scale crime, without tackling smaller scale operations, for example children sent to work in the home, or overseas domestic workers more generally.

**Q .1 (bis) Have we adequately covered the various forms of exploitation which can arise in the trafficking context?**

Trafficking is a criminal and clandestine activity with the potential to generate significant profits for the traffickers. Successful attempts at disrupting trafficking are likely to result in new strategies being used by traffickers. Those working to implement the plan must be able to respond to a changing, and sometimes rapidly changing, threat from traffickers and be able to seek, identify and disrupt these new methods.

Given the clandestine nature of the activity and the relatively low levels of existing knowledge, the plan must not force those working to implement it to assume that, for example, because there is little evidence of the UK as a transit country that this is not happening. Those transiting the UK may be here for a short time and the UK does not operate embarkation controls. In such circumstances, the lack of evidence of the UK as a transit country may be simply that: a lack of evidence. We are surprised at the statement on page 5 that “Available evidence has indicated that there is little, if any, demand for trafficked minors for the purposes of sexual exploitation” when, in a number of the (very small number of) cases that have come to trial in the UK, the people trafficked have included minors.

Although the consultation paper indicates that the plan is to cover all forms of trafficking, insufficient attention is given to how it will address migrant workers trafficked for labour exploitation, including migrant workers from EU States including the Accession states. Little attention is paid to trafficking in sectors such as the construction industry, agricultural, and the food and catering and hotel industries.

The consultation paper does not address how the plan will cover the extent to which those with a legal right to be here and to work can nonetheless be exploited: because they do not know their rights, through threats of violence, by employers retaining their documents (gained

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<sup>3</sup> HL Paper 58 of session 2005-6

for example, on the pretext of registering them for the workers registration scheme) or through debt bondage.

It would be useful to consider the extent to which cases where a person is brought to the UK for marriage and exploited within that relationship can be understood within the framework of trafficking, and the nexus between domestic violence and trafficking.

Finally, trafficking for human organs is made a crime in the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 and should be considered in an action plan.

## **Q.2. Are there areas for action or specific actions missing from these proposals?**

Specific omissions are also noted in our responses to specific questions.

### ***Overall***

Despite the clear distinction made between trafficking and smuggling at the beginning of the document, the focus throughout is on techniques aimed at tackling a crime against the state, such as smuggling, rather than a crime against the person: exploitation through trafficking. A focus on document fraud, improving sharing of passenger data and the use of biometric identifiers in passports may prevent people moving along certain routes, but will not tackle human trafficking if it is not combined with efforts to break the controlling and coercive relationship existing between trafficker and trafficked person, which will in many cases persist even if they are prevented from travelling. Tackling exploitation, not tackling mere crossing of borders, lies at the heart of tackling trafficking.

It would be useful if the project recognised an overarching objective “Reduction of the abuse of human rights through exploitation” and if the specific objectives set out in Annexe C were nested below this.

The key omission is ratification of the Council of Europe Convention on Action against trafficking in human beings (Council of Europe Treaty Series/197) and action to fulfil the obligations ratification would entail. Where specific actions suggested below would help to meet such obligations, the relevant articles are identified. Ratification would require the UK to address the failure to make provision for reflection periods and, where appropriate, residence permits for people who have been trafficked.

The actions identified appear to treat trafficking primarily as a problem of the trafficking of women and children for sexual exploitation. All forms of trafficking need to be covered, a does the trafficking of men and boys, whether for sexual exploitation or for other purposes.

Our comments on the dangers of viewing trafficking only through the prism of organised immigration crime are applicable here and may be a reason why a number of matters have, erroneously, been identified as actions for the Home Office, when a much wider range of government departments need to be involved. Work with NGOs will be important across a range of actions, not only, as identified, policy on child trafficking. Other bodies, as detailed below, have their role to play.

We should also like to see timescales on the proposed actions.

*Specific actions omitted: research*

The research programme appears extremely limited. We do not consider that seeking to determine the scale of trafficking and the harm it is causing, is an action for the Home Office alone. The DFES, DCA, Revenue and Customs, DOH, FCO, DFID, employment tribunals, Health and Safety, and Environmental Health Officers, can all assist in collecting data, and specialised NGOs may have a role (CE trafficking Convention Article 5(1) &(2))

A specific action omitted is research on trafficking of children for forced labour, recognised (see question 4) in the document as a gap in existing knowledge. This is an action for Home Office, DFES, DTI, and others.

An audit of existing and proposed legislation and practices is needed to identify where these are militating against attempts to prevent trafficking and to identify and assist those at risk. Laws and procedures that apply generally, and are not specific to traffickers or those trafficked may nonetheless affect the efficacy of specific measures designed to tackle human trafficking. We identify examples in this response. Shortcomings in our immigration and asylum systems increase the risk that survivors of trafficking are not identified nor assisted, and of being unable to prosecute traffickers. The risks are exacerbated now that immigration and asylum law reaches far into the fields of employment, social welfare and access to health care.

The implementation of the new points system<sup>4</sup> for managed migration should be accompanied by research to look at the effects on labour exploitation and trafficking. An initial perusal of the command paper (Cm 6741) leads us to identify low-skilled workers, those from countries with whom we do not have effective return arrangements and overseas domestic workers as put at particular risk by the proposals. Tier 3 operators seem to bear a resemblance to gangmasters and there is therefore a need to look at safeguards against exploitation in that context. Similarly, the government has proposed that under the points system overseas domestic workers who do not fall within Tier 2, or international instruments governing staff in diplomatic households, should be given six-month non-renewable visas. This approach learns no lessons from the work done in recognition of the vulnerability of overseas domestic workers to exploitation, culminating in provision being made in the immigration rules for them to change employers and have a route to settlement (see CE trafficking Convention Article 5(4)). Similarly with implementing employer sanctions and the Gangmasters legislation. All these new schemes are going to require the collation of extensive management information that could inform research on trafficking and the protection of migrant workers from exploitation.

*Specific action omitted: prevention*

Airline Liaison Officers assist carriers to identify people who do not have the correct documents to travel. This is not an adequate response where potential trafficking is detected. Specific omissions are work on what will be done to assist the trafficked person, and work with the police of the country concerned to see what action might appropriately be taken against the alleged trafficker. Similarly with posts overseas. In this case, specific omissions are work on what posts are going to do when faced with those at risk, and those who may be guilty of crimes because they are trafficking people (CE trafficking Convention Articles 5(4), 7(2))

We identify a range of actions needed to assist in preventing trafficking of children – see Annexe. Political will and resources should be devoted to delivering the National Plan for Safeguarding Children from Commercial Sexual Abuse (DoH 2001). Identification of, and support for, minors from abroad, including in age dispute cases, needs to be improved to mitigate the risks that tightened entry clearance procedures will lead to minors travelling on

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<sup>4</sup> *A points based system: making migration work for Britain*, Home Office Cm 6741 March 2006

documents giving an incorrect age and going undetected. Guardians are needed for unaccompanied children from abroad making immigration applications.

Requiring people looking after a visa national minor to register with their local authority entails actions that go beyond the Home Office. For this to be meaningful, local authorities will need to conduct checks on those registered, local Safeguarding Boards and all those with a role in child protection, as well as all those with safeguarding duties under s.11 of the Children Act 2004, will need to be involved. They should be mentioned specifically. We doubt that this measure will be sufficient without action to strengthen provision for registration of private fostering arrangements.

Information about trafficking, of all groups, not only women and children, should be included in the training of all British government staff overseas, not only the military. It should cover all ages and both sexes, as well as all forms of trafficking.

For provision of information to be useful, consideration needs to be given to the extent to which IND and UKvisas make material available in a range of languages (CE trafficking Convention (Article 12(1)(c))).

There is also a need to look at the effect of gender inequality, both in the labour market and in society, in increasing the vulnerability of women to exploitation through trafficking.

*Specific actions omitted: demand reduction*

Most of the proposed coordination seems to be targeted at trafficking for sexual exploitation. A specific omission is coordination of work on the exploitation of migrant workers, including those trafficked, whether they come from the EU or beyond. (CE Trafficking Convention (Article 5(1); Article 29))

An omission is the failure to explain how the new employment offence will help to tackle trafficking or to identify the work necessary to ensure that it has such an effect. Provision of lawful methods of migration provides an opportunity to satisfy demands for workers, for example overseas domestic workers, within a framework that protects the rights of those workers.

*Specific action omitted: investigation and prosecution*

Wider dissemination and regular updating of the Home Office Toolkit should be included here (CE trafficking Convention Article 5(2)).

Consideration should be given to the role of embarkation controls in detecting trafficking and traffickers and carrier sanctions should be reviewed and provision made to remove disincentives to carriers to offer protection and assistance to those discovered on their vehicles and bring people to the attention of the authorities. Child protection police officers should be stationed at ports (CE trafficking Convention Article 7)

Amendment of s. 4(4)(d) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 is needed to ensure that UK law addresses adequately and unambiguously the question of abuse of power or of a position of vulnerability (see the Council of Europe Convention Article 4(a)). This is necessary fully to give effect to the provisions making consent irrelevant in Article 4(b) and fully to cover the special protection of children required by Article 4(c). (See also Article 18.)

**Specific omissions: Help assistance and support for trafficked people**

We highlight the following, referring to the relevant provisions of the Council of Europe Convention

- Legal assistance is vital. This requires better resourcing of LSC funding, tackling of legal aid deserts and retention of 2<sup>nd</sup> tier advice services for those in receipt of LSC funding for immigration to ensure that practitioners faced with a potential trafficking case can access expert advice. There is a need to ensure provision of immigration advice for people under immigration control in police stations and procedures that give sufficient time for them to obtain advice and take decisions. More generally, timescales in immigration cases must allow for the obtaining of advice and for reflection, including an end to fast-track asylum procedures. There needs to be provision in law for people to have access to legal advice prior to and during interviews with the immigration service and in subsequent proceedings and a bar on proceeding until a person who wants legal advice and representation has been able to obtain it. (CE Convention Articles 12 and 13).(Article 10(1)&(2); Article 12, especially 12(1)(e), Article 13, Article 15);
- Wider dissemination of information about rights of people who have been trafficked, in languages they understand (CE Convention Article 12)
- Provision in law for support for people who have been trafficked for any purpose, not only children, and adult women trafficked for sexual exploitation. There is no equivalent of the Poppy Project for people who have been trafficked for labour exploitation, who may be unable to access any support unless they make asylum and human rights claims (CE Convention Article 12).
- Establishment of a fund for the compensation of people who have been trafficked. There is a need to review of the ability of people who have been trafficked to access the Criminal Injuries Compensation Commission: we are aware of cases where access to criminal injuries compensation has been denied women trafficked for prostitution (CE Convention Article 15(4)).
- Repeal of s.2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 to ensure that people who have been trafficked do not disappear into the prison system without having been detected (Article 10(1). Provision in law for residence permits in appropriate cases for people who have been trafficked (CE Convention Article 10(2), Article 13)
- Powers to segregate people under immigration control, including in detention and in accommodation centres, under Part 2 of the Nationality, Immigration and Asylum Act 2002 exacerbate the risks that people find it difficult to make contact with others and thus to disclose their situation. So does current *de facto* segregation, for example when children cannot obtain places in mainstream schools, where access to health and social services is restricted. A bar on holding children in immigration detention is needed, as are automatic bail hearings to provide judicial oversight of detention at the earliest possible stage (CE Convention Article 12).
- Rights to work for people seeking asylum or humanitarian protection (CE Convention Article 12(4))
- Decisions on return in children's cases should be made on the basis of their best interests (CE Convention Article 16).
- Adequate systems of witness protection (CE Convention Article 28)
- Increased training and information for those, including hospital staff and GPs, and social workers, who may have contact with people who have been trafficked (CE Convention Article 5(2)).
- A protective approach to all children under immigration control to protect them from trafficking, including in cases where the UK is used as a transit country. This should include use of schemes to oversee private fostering; a change in policy in age dispute cases so that a child is accepted as a child where age is uncertain and special measures are taken pending resolution of the dispute on age; provision for legal or other guardians for unaccompanied children, acting in the best interests of the child and residence permits issued to children where this is in their best interests (CE

Convention Article 14(2)) would require amendment to the current policy of giving unaccompanied children held not to qualify for recognition as a refugee or for humanitarian protection, leave to 18. See ILPA's *Child First Migrant Second*<sup>5</sup>. (CE Convention, Article s 5(5) and 10 and 14(2)).

## PREVENTION

### Q. 3. How can we measure the extent to which trafficking is taking place into and within the UK?

See our response under *Research* above. It is difficult to obtain accurate measurements of the full extent of trafficking. It is possible to collate the data, and analyse and extrapolate from it in a sophisticated fashion. Clear definitions of what is meant by trafficking, and standard tools for the collection of information, would assist in aggregating the information from these sources. Some examples of matters analysis must be able to address:

- It is our experience, gleaned from taking on these cases and observing reactions during training sessions that people can be in possession of all or most of the salient facts necessary to identify a case as a case of trafficking but not realise that they are dealing with such a case until this is pointed out to them.
- The publicity around trafficking for sexual exploitation means that there is probably a greater chance of a case being identified by those involved with the person as a trafficking case when it involves sexual exploitation than when it involves trafficking for, for example, labour exploitation. Much of the publicity around trafficking for sexual exploitation has focused on women, and there is at least a risk that cases involving boys and men are more likely not to be identified.
- The “asylum route” has frequently been identified as one route by which people who are trafficked enter the UK: an asylum claim is the means by which they enter the country and they then disappear. Because those who claim asylum thereby bring themselves to the attention of the authorities (including in, the case of children, to social services) we would expect cases where asylum has been used as the route to be over-represented among detected cases. Those who enter on their own passports, or who have no contact with the authorities post arrival, are less likely to be detected, but this does not mean that they do not form the bulk of cases.
- Insufficient attention has been paid to the trafficking of people travelling on their own, European Union, passports.

As to central and local government departments, information comes not only from immigration and the police, but also from sources such as Revenue and Customs, the DTI, Environmental Health Officers, Food Safety Officers, sauna license records, schools, churches, medical establishments etc. who may visit the sites of exploitation by traffickers, not only at ports but in country. .

It is also necessary to enlist the cooperation of those who are using the services trafficked people provide. A person may be paying for sex with a prostitute, but willing to report the presence of a minor held captive for sexual exploitation. Italy has experience of setting up phone lines where such information can be given anonymously, and the potential for collecting this sort of information is not limited to cases of sexual exploitation. We are pleased to see that, as part of Operation Pentameter, this is being explored<sup>6</sup>.

We question the relevance of the FCO awareness-raising projects cited in the paper. These are in countries not identified as source countries for trafficking. Is this a confusion between

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<sup>5</sup> *Op. cit.*

<sup>6</sup> See Dr Tim Brain, ACPO spokesperson on prostitution, cited in *Men urged to report brothels using trafficked women* The Guardian (Rosie Cowan) 22 02 06

immigration control and trafficking, or the presentation of immigration control measures as anti-trafficking measures?

**Q.3 (bis) In particular, how can we improve our knowledge on the scale of child trafficking for labour exploitation in the UK?**

The work by ECPAT UK<sup>7</sup> is the most extensive attempt to look at child trafficking to date. Most of the children described in these studies were trafficked for domestic work or for the purpose of sexual exploitation (ECPAT's focus), but there were also cases of trafficking for benefit fraud, restaurant work and involvement in illegal activities. Operation Paladin Child also provided information.

The following information may be relevant to drawing up a plan to improve knowledge.

Children and young people who are trafficked enter the UK in different ways. These include:

- The "asylum route" as described above. Children and young people are told to ask for asylum on arrival in the country. They are placed with social services and at a later date are removed or abducted by their traffickers. The children may make contact with the traffickers as they have been instructed to do;
- Children and young people who enter the country with adults who are, or purport to be, parents or family members, or are brought into the country on some other basis. They therefore do not come into contact with social services or any other agencies and
- Children and young people who are unaccompanied when they arrive in the UK and are collected by an adult (sometimes loosely referred to as a 'sponsor') who claims responsibility for them.

Information from practitioners, social services<sup>8</sup> and NGOs indicates that a significant number of children are being trafficked to UK for domestic slavery and that many come from West Africa and Vietnam. Families may be involved in trafficking so return to the country of origin is unlikely to be safe and private fostering arrangements may mask domestic slavery.

Factors that have been of assistance in identifying children who have been trafficked include the use of profiles of those being trafficked. Knowledge is scanty, but some trafficking source countries (and towns); traffickers; trafficking routes, contacts in the UK and destinations are known. However, these are only a partial guide and in terms of gaining a knowledge of the scale of child trafficking may result in increased knowledge about a particular group rather than a more detailed picture of the whole.

A concern that a child may have been trafficked is most likely to be confirmed by the child's disclosure. In other cases, disclosure will be the first hint that a child has been trafficked. Actions taken to facilitate disclosure will help to address the identification of child victims of trafficking. Thus protection and support for victims are important not only in their own right, but also to improve knowledge. Therefore our response to question 14 is also a response to this question.

**Q.4 Does your organisation have information on cases of trafficking in the UK, in particular trafficking for forced labour, including domestic service?**

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<sup>7</sup> *What the professionals know: the trafficking of children into and through the UK for sexual purposes*, C. Somerset for ECPAT UK., 2001; *Cause for Concern? London Social Services and Child Trafficking*, C. Somerset for ECPAT UK, March 2004.

<sup>8</sup> Information from *Seeking Asylum Alone* research, forthcoming.

Yes, because members represent individuals who have been trafficked, either as solicitors or caseworkers, or as barristers. Members are also involved in research, and in delivering training sessions to people who have, and may pass on information, they have obtained.

**Example of a case study**

The client is a young child who denies having been trafficked and maintains that a wish to leave local authority care to live with “father”. The Immigration Service do not accept the relationship, nor that the document evidencing it is genuine. The client has an appeal against refusal of leave to enter as a returning resident (note that if s.4 of the Immigration, Asylum and Nationality Act 2006 is brought into force this right of appeal will no longer exist). The child maintains that he wants leave to enter to be with his father. In the absence of litigation friends or guardians *ad litem* in the immigration jurisdiction, the representative has no one else to whom to turn for instructions. See also answer to Q.14

**Example of a case study**

There have been a number of cases in which children from Vietnam have been held in private properties to tend cannabis plants, working in unsafe and insalubrious conditions. Despite raids on the properties, this cycle of exploitation does not appear to have been broken.

**Example of a case study**

A young girl aged about 8 from West Africa had been sent unaccompanied and handed over to an "aunt". She came to the attention of the authorities when there was a fire in the property and she was found to be alone in charge of 2 or 3 younger children belonging to the "aunt". It emerged that her parents had been influenced by a supposed religious advisor to consent to her being brought here supposedly for education but in reality for exploitation as free domestic labour. The child was manifestly unhappy in care but terrified of speaking out against what she understood to have been her father's wishes that she be educated in the UK. Luckily the local authority brought care proceedings and were ordered by the family court to serve the natural parents (who instructed London solicitors) and to make their own enquiries (i.e. send a social worker to do it) in the home country. The happy result was that the child was able to be returned home to her parents' care

**Q.5. How can we raise awareness amongst potential trafficking victims about the risks and realities of the exploitation they are likely to suffer through being trafficked?**

The question could be read as suggesting that people just need to be told how exploitative trafficking is and they will respond by refusing to be trafficked. This would be to imply that individuals voluntarily and knowingly put themselves forward to be trafficked; to ignore the power relations between trafficker and trafficked person; and to over-simplify the complexities of exploitation.

People being trafficked may recognise a risk; however the lack of alternatives open to them means that they take it. This is demonstrated by the scale of re-trafficking, as documented by, for example, the Poppy Project in the cases of the women that they see and by those working abroad with survivors of trafficking. Vera Lesko who runs the shelter *The Hearth* in Vlora, Albania, estimates that 80% of the women they see end up re-trafficked – the question is not whether re-trafficking takes place but how fast? Sometimes individuals see no alternative, sometimes they believe that this time they will remain in control of the situation. Debt bondage, lack of alternatives and being known to traffickers all contribute to the risks of re-trafficking.

If we attempt to answer the questions of whether it is possible to give people information that helps them identify that they are at risk of trafficking *and* use this information to protect themselves, then we must reply that in our view this is very difficult. As noted in the next question, some will not recognise that they have placed themselves or been placed in a situation where they are trafficked until they have actually been exploited. We support the efforts being made through Operation Pentameter to improve the information provided to those identified as being at risk. We note that it may be difficult to assess how effective these measures have been at raising awareness: if the risks of coming forward are assessed by the trafficked person as too great, awareness may well have been raised, but still the person will not come forward.

**Q.6. How do we ensure that victims are identified at the earliest opportunity, particularly in source countries (prior to departure) and at our borders where the victims themselves may not be aware that they are being trafficked?**

There must be the possibility of protection from exploitation as an incentive for victims to come forward. Some will not know that they are being trafficked but will already be aware that they are being exploited. It is important to consider also the questions of protection from re-trafficking and/or reprisals from traffickers against those who escape them and/or provide information about their operations. There is a need not merely for *information* on rights and where to go, but for their to be real protection for people's rights, and somewhere where they can indeed go.

There must also be more opportunities for legal and safe migration. As discussed above, the government is at risk of taking a retrograde step in here in the case of overseas domestic workers if it gives them a maximum of six months leave, which cannot be renewed.

Reference is made in the Executive summary and in the section *Prevention of Trafficking*, to raising awareness among airlines and visa-issuing staff so that they are able to identify traffickers and their potential victims before they are trafficked here (q.v. Annex C, para. 13). However, the plan is silent on what, if anything, will be done to assist potential victims in these circumstances. Mere refusal to allow them to board a plane will not be sufficient to break the exploitative relationship in which they find themselves, nor to protect them from their traffickers.

Tightening entry clearance procedures (Annex C, para 13) is a partial response. But it will not break the exploitative relationship. Increased difficulties in entering the UK and European union legally, and harsh border controls, make organising the evasion of those controls a more complex and profitable business and increase the chance that that illegal trade is operated not merely by smugglers, but traffickers. Carrier sanctions privilege the desire to keep people out of the UK over the need to know who is in the country and for what purpose, reducing the chances of identifying survivors of trafficking.

Other opportunities to identify those who have been trafficked are being lost. Some of these are discussed below in response to question 14. We would also highlight:

- Prosecutions under s.2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and the resurgence of prosecutions under forgery and other legislation increase the risks of people arriving being prosecuted in a system that is unaware that they have been trafficked and unaware of their rights under the 1951 Refugee Convention, in particular the protection afforded by Article 31 of the Convention. These people may end up in the criminal justice system without getting specialist advice and help<sup>9</sup>.

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<sup>9</sup> See the work undertaken by HMIP into foreign nationals in UK prisons.

- Visits to doctors and hospitals are one opportunity for detection of people who have been trafficked. Limiting migrants' access to health care reduces the likelihood that those exploiting them will allow them to visit health care professionals, fearing detection of the person's status and increases the likelihood that they will be turned away. In contrast, were it easier to access health care and were doctors, nurses and other health care professionals giving training on trafficking this would increase the likelihood of the trafficked person confiding in them. In this context it is worth noting that those working in unsafe conditions or beaten and sexually exploited by those with whom they are in domestic service, may bear injuries providing a clue to the exploitation that they are suffering.
- Accelerated procedures for decision-making decrease the likelihood of trafficked people, with all the pressures upon them, disclosing the truth of their situation. Out of country appeals for those whose case is certified as "clearly unfounded", and the presumption of certification in cases from countries where trafficking is a recognised problem<sup>10</sup>. The increasing use of detention increases the pressures on those who have been subject to torture or other cruel inhuman or degrading treatment, or to deprivation of liberty.
- Difficulties in accessing competent, free legal advice because of shortage of supply, including shortage in particular areas, make it less likely that the person will have the opportunity to disclose their situation to a legal representative. Accelerated timescales make it more difficult for legal representatives to build the relationship of trust and confidence. Note that if a legal representative's instructions from the client are that s/he has not been trafficked, the legal representative cannot, as a matter of professional ethics, make the submission that the client has been trafficked, whatever the evidence suggests. . We note that the Legal Services Commission's proposed termination of contracts to provide specialist second-tier legal advice would reduce the likelihood of specialist legal advice reaching those new to advising people who have been trafficked in a timely fashion<sup>11</sup>
- The threat of deportation or imprisonment if the person approaches the authorities is not merely a threat voiced by trafficker, it is a real one and it is an incentive to the trafficked person to collude, however unwillingly with the trafficker.
- The isolation and poverty created by the asylum support system do not create circumstances in which the person trafficked through the asylum route will find it easy to make contact with others and disclose their situation. Powers further to segregate people, including in accommodation centres, under Part 2 of the Nationality, Immigration and Asylum Act 2002 and current *de facto* segregation, for example when children cannot obtain places in mainstream schools, exacerbate these risks.
- The hostility toward asylum seekers, and more broadly toward migrants, in the UK also reduces the likelihood of the person making contacts with those to whom they can disclose their situation.

## **7. How can we reduce the demand for the services of trafficked persons, in particular for forced labour, including domestic service?**

There are many elements to exploitation that make it profitable for the traffickers. These include:

- People working for less than the minimum wage, and no wages.

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<sup>10</sup> See the Nationality, Immigration and Asylum Act s.94(4) and the orders made under it. It is notable that the most recent order, the Asylum (Designated States)(No.2) Order 2005, the presumption in the cases of Ghana and Nigeria has been confined to men, in part on the basis that women from those countries are at risk of trafficking.

<sup>11</sup> See the Home Affairs Committee oral evidence session of 14 February 2006 for a detailed discussion of these changes.

- People working without protection, whether it be the protection of health and safety standards (for example people undertaking dangerous work, or working in unsafe premises), or protection of their employment rights.
- People undertaking illegal work or work that they would not otherwise consent to do

All the above represent economies and advantages for the trafficker – saving money or time spent complying with standards, or the means to undertake work which could not be undertaken legally. Domestic service, for example, allows employers to avoid paying workers, to give them illegal and unsafe working conditions, often to avoid any paperwork, and to make use of the person in domestic service for a range of activities, which may not be legal, or may not be ones to which the person would consent. Kalayaan, who work with migrant domestic workers, have summarised the factors contributing to their exploitation thus:

*“The isolated, dependant and unregulated nature of working in private household, combined with gender-based and racial discrimination means that domestic workers are vulnerable to exploitative practices”<sup>12</sup>*

Reduction of demand involves making the risks greater than the profits to be gained. In attempting such work, it is vital that where migrant workers are detected, they receive proper support and protection, and are not whisked from the country before anyone has examined their case and needs. If this is not done, then the risk of employee colluding with employer to avoid detection of illegal employment practices is greatly increased and the risks to the employer fall accordingly. At the moment, the experience of many practitioners, NGOs and others is that there appears to be more interest from the immigration service in removing those who have been working illegally (the case for some, although not all, trafficked persons) than prosecuting the trafficker, and this works to the advantage of the trafficker. Increased prosecution of employers who exploit trafficked people, whether under laws relating to trafficking, to health and safety offences, to terms and conditions of employment, may deter some.

Making it easier to employ people legally, for example people from abroad working in restaurants where they are required to know a specific language or cuisine, or domestic workers, is more likely to result in a workforce that can seek the protection of the law if threatened with exploitation. The converse of this is making it harder for people who have broken the law, whether as to health and safety standards, or trafficking itself, to employ people at all, and policing this.

#### *Re: Preventing trafficking at source*

We should like to see more information on what the UK government is doing to reduce exploitation, including sexual exploitation, by those involved in military, “peace-keeping” and development activities abroad, whether by those working for the UK or UK based agencies or those working with international bodies and to explore what nexus there may be between exploitation by international staff and trafficking.

#### *Re: Demand reduction*

We are sceptical as to whether addressing “the harms caused to communities associated with on street prostitution” will reduce the demand for those trafficked for sexual exploitation. They are more likely to be off-street, to avoid detection and increase the control traffickers can exert. Reducing on-street prostitution may well increase the demand off-street and thus increase the likelihood of exploitation of women from abroad for prostitution.

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<sup>12</sup> [www.kalyaan.org.uk](http://www.kalyaan.org.uk)

We are unclear what is the basis for the assertion that the new offence in the Immigration, Asylum and Nationality Bill 2005 will address demand because it criminalises those who knowingly employ illegal migrants. The new criminal offence will be narrower than the existing one. It will be supplemented by a civil penalty. Employer sanctions, as recognised in the impact assessments for that legislation are a disincentive to employing people under immigration control at all. There is a real risk that those choosing to do so will prefer the black market to the risks of partial compliance. The effect on demand is asserted not argued for in the response and we are sceptical as to whether it accurately describes reality.

## **8. How should we tackle the specific problem of child trafficking?**

See response to 3 (*bis*) above and see also Annexe.

As a first step it needs to be acknowledged that children subject to immigration control do not receive the same standards of protection as other children<sup>13</sup>. Because improving knowledge involves facilitating disclosure, the same considerations have weight in response to both questions. Provide proper protection for children under immigration control in accordance with Children Act and UN CRC standards. Recent and current plans to run review panels chaired by immigration service staff to determine the best interests of unaccompanied children whose claims to asylum have failed, and remove them to specially created centres in countries such as Albania<sup>14</sup> or Vietnam where trafficking is rife and child protection systems embryonic and chronically under-resourced are ill conceived. They fail to utilise the extensive expertise and knowledge built up and acquired through the family courts, social services and tested through numerous public enquiries. They fail to enable determination of the best interests of the child in accordance with CA and CROC. Instead, accord these children the same protection as would be given in cases of, for example, inter-country adoption. Do not assume that return to the family is always safe, where the family may have been involved in the trafficking. Ensure proper legal processes are followed where it is proposed that a child under immigration control leave local authority care, or leave the UK. Appoint guardians to promote the best interests of these children<sup>15</sup>.

Home Office funding to local authorities looking after children under immigration control, normally in the asylum system, should reflect the true costs of providing services in accordance with a proper assessment and care plan, so the multiple and complex needs of these children can be met.

## **9. We have provided for heavy maximum penalties for trafficking offences. Are we achieving the right sentences in these cases?**

The appeal against sentence in *R v Placiki* resulted in increase of length of sentence. Similar appeals should be pursued in relevant cases.

The main problem is that you are not achieving enough prosecutions, and not enough successful prosecutions. We find it difficult to understand the low level of successful prosecutions under the existing offences,<sup>16</sup> and even the level of prosecutions and investigations. The only prosecutions for trafficking have been for trafficking for sexual exploitation. While appreciating that it is difficult to secure a criminal conviction, we should

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<sup>13</sup> See ILPA's policy paper *Child First, Migrant Second*, forthcoming in print, extracts from which are appended hereto.

<sup>14</sup> Off the agenda at the time of writing

<sup>15</sup> See *Working with children and young people subject to immigration control*, H. Crawley et ors, ILPA, November 2004, and *Child First, Migrant Second*, *op. cit.*

<sup>16</sup> Asylum and Immigration Act 1996, section 8.

still have expected to see more investigations, more prosecutions and more successes. Are sufficient political will and resources being devoted to this area? How many enforcement officers are working on it? The Serious and Organised Crime Act 2005 makes provision as to forfeiture of profits of crime and could be used against traffickers.

Some traffickers are likely to fall within the narrower scope of the criminal offence of employing people without permission to work under the current Immigration Asylum and Nationality Act (of course others may be employing EEA nationals or people with such permission). It remains to be seen whether the civil penalty regime proposed under the Bill will be used against them. Debates on the Bill have highlighted the difficulties, perhaps the impossibility, of using such legislation to protect against exploitation without exacerbating the discrimination in employment faced by those who are subject to immigration control or who employers wrongly identify as being so subject.

Prosecutions for trafficking are one way of tackling the activities of traffickers but there is also the potential to use prosecution for health and safety or environmental health offences; for failure to pay the national minimum wage; for failure to respect the law on hours of work or for failure to declare income or pay national insurance etc., as means of disrupting their activities. Trafficked people may be important potential witnesses in all these cases.

#### **10. What more needs to be done to get trafficking into core police business?**

Set targets. Current managerial and bureaucratic culture prioritises the achieving of targets and where there are no targets a crime is likely to be treated as a lower priority and fighting it to attract fewer resources. Where a person is interviewed, questioned, detained or arrested in the immigration context, including as part of immigration enforcement, for example for working illegally, there should be a requirement that the possibility of trafficking, has been explored, to identify perpetrators and victims. Where the case did involve trafficking, there should be an expectation of an attempt to protect the trafficked person and to prosecute the trafficker.

#### **11. What more needs to be done to raise awareness of organised immigration crime, including trafficking, amongst police forces?**

See response to question 10 above. Make sure trafficking is identifiable separately from other forms of immigration crime. Include it in training on crimes against the person, money laundering, drugs, and rape. Include it in the Best Value Performance Indicators (BVPIs) for police forces.

Passport retention is one means of controlling domestic workers and consideration should be given to the means by which it can be ensured when undertaking checks etc that the worker and not the employer is in possession of his/her passport. Production of the passport by an employer should always be a reason for a separate, and confidential, interview with the employee.

As stated, the number of successful prosecutions is extremely low. Prosecutions have the potential to disrupt the activities of traffickers. Ensuring successful prosecutions of traffickers and publicising these more widely should be part of any strategy – awareness raising training is all very well, but without developing a track record of prosecutions that succeed matters are likely to remain at the level of all talk no action.

### **PROVIDING PROTECTION AND ASSISTANCE TO VICTIMS**

## **12. How could support services provided to victims of trafficking be replicated or expanded?**

Practical emergency assistance must be available for those fleeing people who exploit them. It is important that services are available a local level so that people who have been trafficked can access them. Women trafficked for sexual exploitation can be supported through the Poppy Project and children can be supported by local authorities but there are no powers to support adult men, or to support women trafficked other than for sexual exploitation. The government was expressly invited (twice) during the passage of the immigration, asylum and nationality bill to take powers to support adult women trafficked other than for sexual exploitation, and adult men (see *Hansard* 19 January 2006 HL Report GC 280 to 289; and 7 February 2006 col. 607ff). The Baroness Ashton of Upholland, speaking for the government, rejected not only the imposition of a duty but the taking of a mere power. Given these recent refusals we find it difficult to be optimistic that there is any political will to improve services to people who have been trafficked.

Strengthening of systems to protect workers rights, and to fight racial discrimination, across the board, contribute to reducing the risks of exploitation and migrant domestic workers. It is vital that health and safety standards are properly enforced and that information is shared between inspecting agencies making this type of check and others working on trafficking. But it is also vital that where migrant workers are detected, they receive proper support and protection, and are not whisked from the country before anyone has examined their case and needs. If this is not done, then the risk of employee colluding with employer to avoid detection of illegal employment practices is greatly increased. There would seem to be little or incentive for whistle-blowing by trafficked workers, and little or no protection for the whistle-blowers more widely. This needs to be considered within the context of work to protect whistle-blowers generally, as well as that of reflection periods.

See also our response to question 15. Law and practice on removal must be addressed. As described above, the Home Office should reimburse local authorities at the level of true cost for support to accompanied minors. On compensation see answer to q.3 above.

## **13. Do you know of organisations that can provide specialist care and support to victims of trafficking?**

Yes. A number of these, e.g. the Poppy Project, are mentioned in the report. We have mentioned others, such as Kalayaan in this response.

ILPA counts among its members legal representatives, both in private practice and voluntary organisations, who have built up expertise in providing legal advice and representation to people who have been trafficked. Such advice and representation is vital: people who have been trafficked must have alternatives to the exploitation they suffer, and the opportunity to make the case for the protection they require.

## **14. How do we identify vulnerable child victims?**

It is necessary to pay careful attention to the procedures used and support given to children from abroad. Inadequate support, lack of high quality legal representation, a failure properly to address disputes on age, and procedures too rapid or too crude to take into account the needs and fears of a child, militate against disclosure and thus decrease the likelihood both of assisting children who have been trafficked and of improving our knowledge.

There is a need to provide guardians to unaccompanied children from abroad, especially those involved in making immigration applications. People who lack mental capacity and have their affairs managed by the Court of Protection can have the Official Solicitor appointed to give instructions in their immigration cases; but children cannot, unless their cases go to the higher courts. In the absence of litigation friends or guardians *ad litem* in the immigration jurisdiction a representative has no one else to turn to for instructions. Legal representatives act on instructions; they cannot turn around and act in what they identify to be a child's best interests absent such instruction. See also case study in our response to question 4 and the Annexe.

Local authorities should involve the family courts and bring care proceedings when dealing with children who are or who may have been trafficked, instead of just settling for "accommodation" under the Children Act 1989. They need to be resourced to make the appropriate enquiries (see for example the case of the 8 year girl cited in response to question 4), and not only when ordered by a court to do so. The Immigration Service and embassies abroad do not have the protection skills and expertise that we expect from trained specialist social workers. The FCOS work on forced marriage and child abduction is worth examination in this context.

Consideration must be given to what happens when a child turns 18. Risks do not vanish at this point and the policy of granting leave to unaccompanied children until their 18<sup>th</sup> birthday may put them at risk at that point. There is also a particular need to ensure that procedures safeguard unaccompanied children from abroad aged 16 and above, who have in our experience often been given less protection and assistance.

Consideration should be given to making representatives of the Immigration Service part of Safeguarding Children Boards in their local area. The failure to make the IND, the Immigration Service., NASS and those operating detention centres subject to safeguarding duties under s.11 of the Children Act 2004 is a glaring omission if they are to work to protect children from trafficking. The arguments against this such as have been advanced in the debates on the Children Act 2004 and the Immigration, Asylum and Nationality Bill do not hold water. Just as the prison service and the police are able to fulfil their primary functions despite the s.11 duty, so too the IND. The refusal to make them so subject suggests a lack of will to protect children who have been trafficked.

See also Annexe hereto, an extract from ILPA's *Child First, Migrant Second: Ensuring That Every Child Matters*<sup>17</sup>, which discusses the following recommendations, all of which are relevant to facilitating disclosure, in greater detail:

- the current framework used for assessing children in need, the Integrated Assessment Framework and the training of professionals using such frameworks should include specific reference to the risk factors affecting this group of children. Reference to trafficking should be included in social work courses and in training social, health and education professionals.
- The recommendations of the report of Operation Paladin Child should be revisited, and in particular the recommendation that there be more child protection officers at major ports of entry, as recommended in the Operation Paladin Child report, should be implemented.
- The Home Office's Trafficking Toolkit should be more widely disseminated
- The DfES should produce guidance, resources and training for all Social Service Departments on the identification, care and protection of children at risk entering the country, and in particular on victims of trafficking. This training and guidance should encourage social workers to photograph every separated child with whom they come into contact for identification purposes and to contact the police where

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<sup>17</sup>, Crawley, H., for ILPA, February 2006

there is suspicion that a child either is, or is at risk of, being exploited or trafficked.

- Whilst the *National Plan for Safeguarding Children from Commercial Sexual Abuse* (DoH 2001) recognises the need for co-ordination and co-operation, it has not been delivered in practice. This must be addressed.
- There is a need for a national strategy that would ensure effective monitoring and registration of unaccompanied children at all ports of entry in the UK, swift and appropriate social services follow up for all children at risk, and a comprehensive care package for victims. This requires strategic communication and cooperation between different government departments and agencies involved in child trafficking cases.
- Strengthen the regulation of private fostering arrangements. Privately fostered children and their parents must be afforded the same standard of safeguarding as those children who are child minded or accommodated by the local authority. All children who are believed to be entering the UK as part of a private fostering arrangement to the relevant local authority. Revisit the BAAF recommendation that a registration and approval system for the most vulnerable children be implemented.

In addition we suggest that the following could usefully be examined as means to improve the identification of child victims of trafficking and thus improve both their protection and our knowledge of child trafficking:

- Consideration should be given to the role of embarkation controls in detecting trafficking and traffickers
- Better protection is needed for children from abroad whose age is disputed. Age dispute has created considerable problems in the immigration field, particularly in protection cases, where identification as a child is a highly policed gateway to superior rights and entitlements. The risks to children, often travelling on false passports to lessen the risks of identification, are exacerbated where they are not recognised as children. A child should be accepted as a child where age is uncertain and special measures taken pending resolution of the dispute on age.
- Provision for legal or other guardians for unaccompanied children, acting in the best interests of the child.
- The Immigration Service and NASS should be made subject to safeguarding duties under s.11 of the Children Act 2005
- Ensuring that children in immigration cases are not treated as mere appendages of the adults they are with, but receive separate advice and representation where this is necessary<sup>18</sup>

In auditing the policies and procedures used by those who may come into contact with trafficked children it is worth assessing whether they provide for the following, all of which can be identified as facilitating disclosure::

- A relationship of trust;
- Clear information about policies on confidentiality;
- Confidentiality in practice;
- Opportunities to express concerns. This is particularly important when a child communicates through an interpreter. The interpreter may be involved in the trafficking, or his/her discretion may not be trusted, or the child may be afraid of humiliation etc., in disclosing his/her actions through an interpreter.

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<sup>18</sup> See the comments of the Official Solicitor reproduced in evidence submitted to the Special Standing Committee on the Immigration and Asylum Bill Session 1998 to 1999: her Memoranda and Evidence submitted to the Committee: Supplementary Memorandum from the Medical Foundation for the Care of Victims of Torture

It is, in our experience, worth paying special attention to the following:

- For children coming through the “asylum route” or interviewed, for example by social services, a factor to consider is children who stick to a wildly improbable and clearly untrue story about their journey, have a reason for not telling the truth. One possible reason is that they have been trafficked.
- Children who say they have just arrived, but appear to know English expressions or habits, suggesting to you that they may have been here longer, may have a reason for this. One possible reason is that they have been trafficked.
- Children whose documents have been confiscated (other than those whose documents are held by the Home Office)
- In known cases of trafficking, children have entered the UK with mobile phone numbers on them, or known to them, or social services have been contacted by third parties claiming to be legal representatives, shortly after arrival.

Interviewing techniques matter. Interviewers should be trained and experienced in child protection best evidence interviewing techniques<sup>19</sup> In taking histories from adults it would be useful to look at the numbers who were first trafficked as children.

#### **15. What are the benefits and drawbacks of providing reflection periods and/or residence permits to victims of trafficking?**

A significant omission from this part of the consultation paper is the lack of any reference to the Council of Europe Convention. States within the Council of Europe have come to an informed decision that recognises that the benefits of reflection periods and the possibility of residence permits outweigh the risks. It would have been helpful to see a detailed analysis of the proposals and the thinking behind them in this part of the document.

Main benefits:

- Given proper protection those who might not otherwise have been willing or able to testify against their traffickers may be willing to do so. Thus the benefit at stake is more prosecutions of traffickers, and thus more disruption of trafficking networks.
- Return is voluntary and therefore more likely to be safe and sustainable. Benefit: more sustainable returns.

There is a need to provide a level of witness protection adequate to the risks witnesses face. Anecdotal evidence gathered by members representing people who have been trafficked, suggests that permitting people to remain for short “reflection periods” or granting discretionary leave to remain until the criminal proceedings have been completed would in many cases be unlikely to offer the protection necessary to persuade a victim to give evidence against his or her trafficker. Witness protection provisions also need to be considered. The consultation paper refers to witness protection having been placed on a statutory footing in the Serious Organised Crime and Policing Act 2005 (into force 1 April 2006). It is vital to draw on these provisions in the case of people who have been trafficked. Where a large network is at work, the conviction of one or a few people may not suffice to make the witness safe. The provision of long term or indefinite leave to remain in the destination country; relocation or resettlement to a third country, or provision of education and training to enable a voluntary return because there is an alternative source of income and independence in the country of origin should all be considered as means of witness protection.

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<sup>19</sup> See Home Office Lord Chancellor’s Department, Crown Prosecution Service, Department of Health and Cynulliad Cenedlaethol Cymru, *Achieving best evidence in criminal proceedings: Guidance for Vulnerable or Intimidated Witnesses, including children* Home Office, Home Office Communications Directorate, 2002

Do not force trafficked people to make a rapid decision as to whether to give evidence, under threat of removal. It is misguided to distinguish at the outset of a case between those willing to cooperate in prosecutions and those reluctant to do so, and only to offer to protection conditional on cooperation. Given protection, a person who was initially reluctant to cooperate with a prosecution may over time become willing to do so: all forms of protection for those trafficked, not merely those designed for someone who has indicated a willingness to cooperate in a prosecution, are likely to increase the likelihood of being able to prosecute traffickers.

An opportunity for reflection is not usually afforded to those trafficked in the UK, who may be detected in raids to discover people working without permission to do so. ILPA is concerned that where workers are discovered in this situation there is insufficient attention given to whether they have been trafficked, and they may be removed rapidly from the UK without having had the opportunity to secure advice, care treatment or for the risks to them to have been assessed.

Where immigration offenders are identified they are usually taken to police stations where they are interviewed very briefly by Immigration officers who then serve them with removal directions. A few hours is insufficient for the balancing of the circumstances of an individual who has been living for some time in the UK against the importance of maintaining immigration control, as required by the Immigration Rules. It is grossly insufficient for identifying that the person has been trafficked and is intimidated by a trafficker or under duress.

Immigration offenders held in police stations should be provided with access to accredited immigration lawyers who are able to attend police stations in person to take instructions and represent the client before the Immigration Service before any decision is taken on removal. This requires proper funding by the Legal Services Commission who at present are only willing to provide a limited telephone advice service.

Main risks:

The risk most frequently cited is that such permits will act as a “pull” factor. This is an example of thinking that opposes migration polluting thinking about human rights. We have a duty to protect and to assist individuals who have been trafficked or who are at risk of being trafficked. Not only does a “pull factor” analysis fail to acknowledge this obligation, it is also confused. It is important to distinguish factors influencing the trafficker, and those influencing the trafficked person who is acting under duress and coercion.

If those identified as trafficked are properly protected once identified, the provision of a permit to them does not represent an opportunity for the trafficker. Traffickers control people through, for example:

- Threats of violence to the trafficked person or, not uncommonly, to family members including those overseas.
- Debt bondage
- Restrictions on freedom of movement. These include physical confinement, confiscation of documents, equipping the trafficked person with a mobile phone.
- Instilling a fear of authority – saying national police are in the pay of traffickers, or that if the person goes to the police s/he will be imprisoned/deported
- Isolation
- Emotional attachments
- In certain cases, from certain countries, use of religious and magic ceremonies with threats that harm will occur if the person seeks to escape the bond with the traffickers.

Providing a person who has been trafficked with a legal status in the UK will tackle some of these means of control, but not all. Residence alone does not make a person safe, and that legal status in the UK without protection may provide an opportunity for the trafficker.

Reluctance to grant resident permits and reflection periods can be traced to a deeper reluctance to grant third country nationals enforceable rights. The European example is instructive. In summary, British policy since 1999 has been to decline to opt-in to immigration measures that would require the UK to grant a right of admission to certain categories of person. For example the UK has not opted into the EU Council Directive on short term permits (21004/81/EC) which sets our criteria for issuing a residence permit to people who have been trafficked. The UK has declined to opt into other, more general, measures, that could assist survivors of trafficking, the Long Term Residents Directive.

**16. How can we ensure that vulnerable victims returning to their countries of origin are not re-trafficked?**

If you cannot, do not return them. Return should be voluntary, otherwise it is unlikely to be sustainable.

As noted, returning those with particular vulnerabilities to exploitation (eg children) to countries where there are high levels of trafficking (e.g. Albania and Vietnam) and returning them to centres where their status as returnees will be easily identified is asking for trouble. Yet this is what the Home Office proposes to do in the case of children whose claims for asylum have failed. We thus detect no political will to address this problem.

Do not separate out risk of re-trafficking and risk of trafficking until there is evidence to support such separation. If a 17 year old with a particular profile, who has been trafficked, is at risk of re-trafficking if returned to Albania, then it is necessary to consider whether a 17 year old who has not been trafficked is at risk of trafficking in Albania, or on return if s/he was previously here for some reason other than having been trafficked. A previous history of having been trafficked must be proven, not assumed, to be the touchstone of risk. Where it is not, the wider group at risk must be the target of efforts to protect.

**17. How do we ensure safe and sustainable return and reintegration of victims into their home countries.**

See above. Return should be voluntary, so that the person returning is not simply seeking another means of escape. Voluntary return means provision of residence permits until such time as the trafficked person wishes to leave.

It is extremely difficult for the UK to build up a safe programme in a foreign country. That is why Home Office proposals to return children to special centres in Albania and Vietnam, and other countries, are so fatally flawed. Sustainable return and reintegration will take place where the domestic systems in the country of return have a capacity to protect, not where attempts are made to deliver protection through a special project relying on foreign funding, without fundamental improvement to the infrastructure.

The importance of fighting corruption in the countries to which people return cannot be over-emphasised.

**18. How do support needs of those trafficked for labour exploitation differ from the needs of those trafficked for sexual exploitation.**

As noted in paragraph 6 of the Partial Regulatory Impact Assessment at Annexe C oppression of those in positions of power over those in positions of vulnerability is rarely confined to a single form of exploitation. It is important to recognise that those trafficked for labour exploitation may have been sexually abused by their traffickers. This is a repeated feature of domestic slavery cases, although the primary exploitation may have been domestic slavery. Similarly in cases where people are working in sweat-shops or other closed communities where they are powerless and exploited.

In addition, both those who have been trafficked for sexual exploitation and those trafficked for labour exploitation may have been subjected to physical and psychological violence and abuse. Thus it cannot be assumed at the outset that there are clear distinctions between the needs of the two groups.

*ILPA 05 April 06*