



OSCE/ODIHR, Anti-Slavery International and TUC

Report of the Meeting on the Identification and Referral of Victims of Trafficking and National Referral Mechanisms

30 January 2009

**TUC Congress House, Great Russell Street, London
Council Chamber, 5th Floor**

Introductory remarks by OSCE/ODIHR, Anti-Slavery International, TUC

The **ODIHR** explained that its activities include monitoring the compliance of government action with OSCE commitments on trafficking. Its main objective was to improve the protection of the human rights of exploited and trafficked persons. In 2005 it had initiated a series of 'National Referral Mechanism' assessments in countries about which it was considered there was little public information available on how victims of trafficking were protected. The NRM assessment on the UK was shared as a background paper for the meeting. It provided background only as the data collection for the report stopped in July 2007 and since that time there had been numerous developments in the UK in preparation for its implementation of the Council of Europe Convention on Trafficking (Trafficking Convention). The meeting therefore provided an opportunity to discuss some of the more recent developments on the identification and protection of victims and to identify improvements for the future. A wide range of actors, from government, law enforcement, civil society, immigration law practices and academia had been invited. Also a labour inspector from Belgium was participating to share his experience on identification and assistance of victims of labour exploitation in Belgium.

The **TUC** were pleased to host the event. In particular they were interested and concerned by the activities of the Gangmasters' Licensing Agency which highlights the fact that trafficking for labour exploitation exists in the UK and not far from the location of the meeting. The TUC was concerned to ensure that any strategy to combat trafficking placed the person affected at the centre.

Anti-Slavery International considered that the meeting provided an opportunity to discuss how the UK was going to implement what it had recently committed to: implementation of the Trafficking Convention. Formally everything was in place in the UK but implementation might still cause difficulty. It questioned what the concrete steps and processes to ensure compliance with the Convention were. It also noted that there had been numerous references to 'NRM' as if it were a magic word and an inference, on the part of the authorities, that once one were established all would be well. But it was not clear what kind of NRM was intended nor what its

specific aims were. It was noted that the OSCE's version was to ensure protection of the rights of those exploited. But it seemed that in this instance it was being reduced to just the initial stage of the process ie the identification process. She also noted that often people dwell only on 'rescue' which is both drastic and romantic. But victims frequently do not feel that they are rescued, but confronted with many more problems following their identification. One should be clear about what is happening to those being identified and also what happens to those who are rescued and then not identified as trafficked. This meeting provided an opportunity to further discuss concrete processes and challenges.

Panel Discussion

Panel participants: *UKBA (Rob Jones), Home Office (David Mc Donald) UKHTC (Glynn Rankin) , GLA (Paul Whitehouse) , ECPAT (Chris Beddoe), Poppy Project (Abigail Stepniz), Kalayaan (Kate Roberts), ILPA (Alison Harvey) , Belgian Labour Inspector (Bruno Deville)*

Moderator: *Shivaun Scanlan, OSCE/ODIHR*

1. How identification and referral works

This topic focused on how the UK authorities identify and refer trafficking victims for assistance. Attention was to be paid to the decision-making process and the grant of reflection delays, the protection of victims rights including rights to legal counselling and privacy the role of civil society in the identification and referral process and differences arising in the identification and assistance of child victims, adult victims of labour or sexual exploitation and EU nationals. The practice of Belgium in the identification of victims of labour trafficking will be presented by way of example.

ODIHR: The organisation of the identification and referral of victims had undergone the most significant changes since completion of the UK NRM assessment. Two stages were now envisaged in the identification process. Stage one encompassed an assessment by the first responder as to possible victim status. Stage 2 encompassed the deliberations of the competent authority to determine whether someone qualified for a 45 day reflection period. The UK had experiences to share from its recent law enforcement operations including the Pentameters, Operation Tolerance and Ruby on how identification and protection was progressing. Questions for the panelists focused on how the process operated with attention to any important differences for victims of labour exploitation and sexual exploitation, children, child victims, EU citizens and third country nationals.

UKBA emphasised that this was a transitional phase. A broad model of NRM had been agreed upon and now they were in the process of working on particular tools: MOUs, who would be the particular implementing agencies etc. Ministers had agreed the model and if it works then good but revision was still possible. The Trafficking Convention was a significant mile stone in their work. It provided an opportunity to get better at identifying victims. There had been a number of anti-trafficking enforcement operations: 'Pentameters', 'Tolerance' and 'Ruby' and the models used to identify and assist victims were evidence-based and were consulted and tested. It was important that all new arrangements were compliant with criminal justice,

immigration and labour law. It was decided that there would be a multiagency competent authority within the UKHTC but that cases that emerged within UKBA operations or processes should be dealt with by expert units in UKBA regions and specialist business areas. Therefore UKBA staff would be ‘first responders’ (making initial assessments of possible victim status) but specialist case owners would be trained up as part of a ‘competent authority’ (making decisions with respect to issuance of a reflection period). UKBA was chosen because many victims were from countries outside the EU and raised both linked and separate protection issues, such as asylum, that required UKBA consideration. The trial showed that UKBA was capable of making high quality and evidence-based decisions on trafficking in concert with public and voluntary sector partners.

First responders (police, local authorities) needed to know what trafficking was, but did not need to be experts. There was consensus that every single front line responder could not have the necessary expertise to identify victims but should be sufficiently aware to ensure referrals to the expert authority, which in most cases would be the competent authority in the UKHTC. The approach was the same for all nationals and all are eligible for support. Victims would be granted a 45 day reflection period (by the competent authority) during which they would not be removed if there are immigration issues. At the end of 45 days, it would be conclusively decided whether someone is a victim and if so a residence permit would be issued (on the basis of either cooperation with the police or personal circumstances). In all foreign national victim cases the conclusive trafficking decision, with respect to issue of a residence permit, would be made by a UKBA competent authority. There was still quite a lot of work to do around the exact arrangements between the agencies involved in the referral and this would be evaluated after a few months.

To identify a victim at the first stage a ‘reasonable grounds’ threshold would be used, which might be compared with the level of suspicion needed for a police officer to make an arrest. Information would then be referred to the competent authority which would then make an assessment on the basis of the information available at the first assessment. The competent authority might even have a direct meeting with the victim, but this was unlikely to happen often. During this time, the individual would be in safe accommodation and during the first five days (the time it should take for the competent authority to make its decision) this should be through a government funded core service.

Kalayaan: Their experience had been limited to Operation Tolerance. They work with migrant domestic workers whether or not they have been trafficked. They were still confused by the process and procedure established for Operation Tolerance. The agreement had been that if Kalayaan considered that someone had been trafficked, they would refer them to the Competent Authority who would establish whether there were ‘reasonable grounds’ to issue a reflection delay. During their participation in Operation Tolerance they made it clear that they would only refer people who wanted to be referred. Domestic workers have limited rights in law, for many of them “rescue” would not be of interest. If they had ID documents and a visa, they would prefer to get another job and get on with their lives rather than be referred.

Kalayaan explained that they had encountered a number of problems with the referral form. It was very difficult to fill out at first contact with a domestic worker. It was

difficult to say: we need to ask you all these questions before we can make you safe. They also found that they could not guarantee that the information given in the form would not be used against the person later as evidence (such as during immigration proceedings or criminal proceedings). It was important to reflect on when would be a good point in time to get such information. It was suggested that possibly it should be gathered at a later stage. It was also pointed out that police were not identifying individuals as trafficked even where the pilot competent authority had said that the person was trafficked. Serious training with police was still needed to ensure that they were able to identify victims. What also remained unclear was, once somebody had been identified on “reasonable grounds” who then had the overall responsibility to ensure that they did not slip between the gaps and that the person received all the necessary assistance for instance for a criminal case, employment tribunal case or medical assistance. There also was little capacity under the pilot to provide legal assistance. Kalayaan noted that all the victims that they had referred to the Competent Authority were confirmed as trafficking victims.

UKBA remarked that they believed that the provision of legal advice was already compliant with the Convention and that the Convention did not provide for better protection of trafficking victims than other crime victims.

Kalayaan pointed out that there was an issue with legal aid and that it was unrealistic to expect legal aid to cover domestic workers cases. Also it needed to be clear who was responsible for giving immigration and employment law advice and that the person received this advice. Operation Tolerance was important for domestic workers as they did not normally have access to public funds and therefore the pilot was beneficial, particularly with respect to providing accommodation. It had been disappointing however in that when the pilot ended, there was a lot of work to do, but there was no procedure and process to keep referring and working together with the authorities. This had left Kalayaan in a difficult position having to explain to possible victims that the same services were no longer available since the pilot had ended.

The Poppy Project uses more formalised criteria on who qualifies as a trafficking victim for assistance based on the conditions of their public funding. However the criteria, requiring recent exploitation, had changed to having been exploited within the last 90 days (rather than 30 as in the past). With respect to the referral forms, they also had concerns about the feasibility of getting such a volume of information at an early stage. Therefore they mainly used their old forms, which fed into the new form. More problematic for them however had been the problem of having a free place in a shelter. They also noted that all of their referrals to the competent authority had been confirmed as trafficking victims.

UKBA noted that when the referral was made by somebody who was already an expert (such as Kalayaan, Poppy), there was little risk that the competent authority would have a different opinion. If there were doubts or there were insufficient reasonable grounds, the competent authority would get in touch with the first responders.

ILPA pointed out the dangers associated with the referral form since it placed first responders in a position where they would be giving immigration advice (since advice was being given on the risks of submitting information), which they were not

authorised to do. It was very difficult to get a lawyer however through legal aid. The Legal aid board paid 270 pounds but it took hours to fill in the form, let alone get the trust of the client. It was also not clear where people were going for legal advice.

ILPA also noted that '*Achieving best evidence in criminal proceedings: guidance for children and vulnerable people*' was an excellent document. But the information provided through the referral form risked being tainted evidence because the information collected may be collected by NGOs etc, under pressure of time, who might ask leading questions, or make suggestions, or otherwise do what a trained interrogator would not. Also there was no appeal procedure built into the process yet decisions would be tested in immigration proceedings and criminal courts so it was important to ensure that the decisions were robust. For instance, if someone had claimed to have been trafficked as part of an asylum claim then the evidence that the person was trafficked would be tested there e.g. on appeal against a refusal of asylum. Other facts, relevant to both the allegation of trafficking and aspects of the asylum claim, such as route of travel to the UK, would also be tested and adjudicated upon in the decision on the asylum claim. Also if the trafficker was up for prosecution the question of whether a person was his/her victim would come up there – e.g. a victim may give a witness statement and be cross-examined or matters on which the victim had given evidence in the course of the trafficking application might come up in the criminal proceedings. This kind of evidence gathering was not in compliance with the standards set for vulnerable persons, which many of them would be. There had also been no legal aid impact assessment conducted which was a failing since the legal costs could be significant.

In response **UKHTC** stated that they were concerned about the poor opinion of the referral form. They explained that it was not a form for victims, but for the first responder to put evidence forward if they believe somebody is a victim. It was therefore for the benefit of the first responder. He stated that if somebody came to the authorities and said that they were a victim then there would be no need for a competent authority, but that person could be referred directly to safe accommodation. **UKBA** also explained that there was a difference in referrals from NGOs, UKBA or police. It was not necessarily the case that the referral forms would be filled out by a police officer alone. Assistance could be provided by expert service providers or other front line partners such as local authorities.

The Home Office noted that child trafficking is a form of child abuse and that trafficked children enjoy the same entitlements to protection as any other child at risk of harm. The proposed NRM was not a starting point in the identification of child victims since they have been working towards improving the identification of children for a long time. The 'Child Trafficking Assessment Tool' is in fact a pre-cursor to the NRM. There was also statutory guidance: '*Working together to safeguard children*' where trafficking is explicit and supplementary guidance had also been produced entitled "*Safeguarding children who may have been trafficked.*" Additional (DCSF) guidance would also be issued on children missing from home and care. Internal trafficking was also an issue. The Home Office were currently developing an assessment toolkit in cooperation with ACPO using risk indicators for trafficked children. This would act as a supplementary assessment to the 'Common Assessment Framework' used by social workers. A summary of the assessment could be used by

the first responder (local authority) to help them to make a referral to UKHTC and UKBA Competent Authority.

ECPAT were asked to act as National Advocate under Pentameter 2 and to monitor what happened to children. Pentameter 2 showed how poorly child referrals worked at the practitioner level with a lack of coordination between local police, UKHTC and the Local Authorities. The number of children identified was inconclusive and actual reports were higher than 'official' figures. Some cases were reported directly to the National Advocates by police and UKBA officials but not reported to UKHTC, or if they were the data was not stored. Thus the UKHTC figures were consistently different to the numbers reported to the National Advocate. Whilst the Pentameter 2 model identified some children it did not act anywhere near as well as a referral mechanism. At times it appeared to be only interested in gathering statistics and not actually keeping young victims safe from harm. To this day there are no reports available on what happened to all the 13 children officially identified in Pentameter 2. No case appeared to have resulted in a prosecution of any individual.

It was also pointed out that information collected quickly on identification could sometimes conflict with information gathered at a later stage which could prejudice a child's application for instance for protection before immigration authorities. There was a lack of coordination between police action, Local Authority children's services, and the immigration process often resulting in a challenge to the child's credibility in one or more process because one agency did not ask for or accept information regarding trafficking concerns by another agency. In a recent case the Home Office asylum refusal letter stated that they did not believe the young person's claim to be a victim of trafficking; and yet during this period there was an on-going police investigation resulting in the arrest of at least one person.

ECPAT also raised concerns with the privacy of data with information seemingly being transferred between agencies with little regard for confidentiality and the consent of the child. Most referrals of trafficked children came from concerned individuals across a range of agencies, and not only the police. The proposed NRM then had to work in harmony with what already existed. If it was not in the interests of a child to wait to be referred on to another authority (neither specialised, nor child trained), then the service providers would not refer them on. ECPAT warned against squeezing children's issues into the neat and tidy NRM. The role of local authorities in child protection needed to be respected allowing them also to act as "competent authorities".

The **Belgian Labour Inspector** was asked to describe any differences between the identification and assistance of victims in the UK and Belgium. The main difference was that in Belgium it was a specialised judge, accessible 24 hours a day, who accorded victim status and the reflection delay (of 45 days) to victims within a 'reasonable time frame'.¹ This status could be accorded on the basis of declarations of the person concerned, following which there was time to conduct an investigation to verify such statements and conclusively determine whether the person was a victim. Once there was an opinion of the judge as to a person's status, the

¹ Un délai raisonnable.

Immigration Office² respected this and would take no action against that person. The two main frontline responders who referred to a judge were the police and labour inspectors. Equally someone could come forward and, providing the indicators of exploitation were satisfied, would be accorded a status. Any individual, regardless of nationality could be granted the status of victim. To avoid differing interpretations as to who qualified as a victim there was one judge who made the assessment. The individual would then be put in touch with PAG-ASA – the social service provider in Brussels. One of the advantages of the Belgian approach was that there were fewer governmental agencies involved in the process of identification. The definition of trafficking for labour exploitation in Belgian law centred on having made someone work ‘*under conditions contrary to human dignity*’.³ This definition opened the door for labour inspectors to assess the hours of work, housing, payment of salary, freedom of movement and possession of documents. To assess these issues the person normally would be interviewed.

The inspector was also asked how one differentiated between exploited irregular migrants and trafficking victims. He explained that most trafficking victims did not have a regular immigration status but that if the factors described above indicated work ‘*contrary to human dignity*’ then a referral would be made to the judge for victim status. If not, then the labour inspector would call the police to regulate the issue of immigration status. He also noted that for all persons without regular immigration status a file had to be prepared for the Immigration Office. But in cases where the person was presumed trafficked the file would mention this fact and since there was close collaboration between the immigration office, social service providers the police, labour inspectors and the magistrate, a victim of trafficking would be properly protected.

In response **UKBA** explained that UK action on labour trafficking has been informed by the ILO’s indicators on forced labour and the Trafficking Convention definition of trafficking with reference to means, action and purpose. **UKHTC** also commented that under Operation Tolerance criteria were prepared and circulated to a number of agencies and since then there had been two further operations using clear criteria. Training would now be conducted with first responders.

General discussion

CPS – Pam Bowen commented that labour trafficking was addressed as an immigration offence and not a criminal act (the labour trafficking offence appearing in immigration legislation). It was hard for prosecutors to satisfy the high evidential threshold required to prove the intention to exploit at the point of entry into the UK. Therefore labour trafficking was not being prosecuted as it should. There have been recommendations from the CPS to change the law. **Kalayaan** expressed concern that they had spent time working with police to improve their understanding of the plight of domestic workers but still they did not investigate and that more help was still needed. **UKHTC** commented that if the competent authority had decided that somebody was a victim, there should be a duty of care on the part of the police to investigate the crime.

² L’Office des Etrangers.

³ ‘de mettre au travail ou de permettre la mise au travail de cette personne dans des conditions contraires a la dignité humaine’

Amnesty International – Poonam Joshi expressed concern that the informed consent of the individual was needed before embarking on the identification process, alongside guarantees of confidentiality and access to legal representation and it was not clear whether this was the case. Support services also needed to be bolstered. **Kalayaan** also reiterated the need for the criteria used to identify victims and the basis for establishing reasonable grounds to be made public. **UKBA** explained that the criteria for identification would be accessible to caseworkers/specialised first respondents. Also that the need for more legal assistance, although not an issue in terms of compliance with the Trafficking Convention, could be usefully addressed by the UK Action Plan in a future review.

London School of Tropical Medicine, Cathy Zimmermann queried whether first responders were adequately trained to ask questions of presumed victims of trafficking and equally whether a possible victim was fit to be interviewed. She also asked whether a mental health assessment was incorporated in the identification process. **UKBA** commented that it was up to NGO service providers to call for mental health assessments as there was no automatic screening. **ILPA** questioned why the same procedure for victims of torture, who were removed from the fast track in asylum proceedings when they alleged torture, was not applicable to victims of trafficking who were in the fast track.

Metropolitan Police, John Kielty commented on the awareness of police to identify victims noting that it was a problem and that many had not been trained but added that improvements had been made, particularly with respect to tackling trafficking for sexual exploitation since this has been the focus. But labour trafficking was a difficult area of work. He noted that there had been a very low ‘take-up’ under Pentameter with initially over 250 persons presumed victims but in the end only about 27 identifying themselves as victims. He noted that in his team’s experience self-referrals had led to the most successful outcomes in terms of investigations. He also commented that the Met did not prioritise immigration status of victims in the interests of a victims rights approach. **UKBA** commented however that this was a MET specific response, not UK wide. He also commented that the presence of **UKBA** staff could be positive as it allowed for a possible arrest opportunity against traffickers if insufficient grounds existed in relation to human trafficking.

TUC noted the difficulties in defining trafficking and distinguishing it from other forms of exploitation and queried whether there was any notion of ‘gross exploitation’ in British law. **ILPA** commented that there was a legal problem and a practical problem. As long as there were no prosecutions, there was no case law nor judicial interpretation of any of the terms. **CPS** reiterated the point that the main problem with prosecuting trafficking for labour exploitation was proving the intention to exploit at the point of arrival and that so far there had been one only case prosecuted. **GLA** noted that the situation in the sectors that were now regulated were much better and that they were finding fewer illegal workers with gangmasters.

Migrant Rights Network, Don Flynn commented that the success of Belgium in identifying victims of labour trafficking was due to the fact that decision-making was taken at the lowest level possible, close to the ground. It would be important to locate the competent authority as close as possible to where the problems were arising – therefore on a local, community level – which was the intention of an NRM.

Attention also needed to be paid to creating empowering ways for bonded workers to self-identify. **UKBA** commented that it was possible that within the next spending cycle they would look into developing something closer to the ground. When it started to develop the NRM it was under time pressure since the Convention enters into force in April 2009 and there was little expertise. **UKHTC** also noted that the advantage of Operation Tolerance was that it was more focused, smaller and local. Also Operation Ruby was based on police knowledge.

2. Residence permits

This discussion focused on the criteria on which residence permits were to be issued and the opportunities for protection where criminal proceedings had not been initiated. Also any overlapping issues with claims for asylum, humanitarian protection and discretionary leave to remain were to be highlighted.

The Home Secretary decided that a one year residence permit, eligible on grounds of cooperation with law enforcement or personal circumstances, would be made possible. The personal circumstances route was already provided for by existing protection routes, including through discretionary leave. The expectation then was not to extend discretionary leave for trafficking victims in particular, but it would be made clearer in the guidance for case workers.

Poppy Project noted that discretionary leave was rarely granted. If “personal circumstances” therefore were akin to discretionary leave currently it would not be very helpful. In Poppy’s experience so far only one client had received discretionary leave, and only after having taken the case to the European Court of Human rights.

Anti-Slavery expressed disappointment with the fact that residence permits had not been piloted. This had prevented some victims from coming forward. It also queried how ‘cooperation’ with police was assessed/defined, especially in light of the fact that police were failing to investigate many allegations of trafficking.

UKBA explained that their interpretation of cooperation was that the investigating authority needed that person in the UK for their investigations. Therefore willingness to cooperate was not sufficient.

Closing remarks

ODIHR commented that the NRM had become a metaphor for many different aspects of anti-trafficking work in various countries. It was important to recall however that the recommendations of the OSCE were for a mechanism based on local action to identify and assist victims through strengthened cooperation between civil society organisations and state agencies. Protection of the rights of the person subject to trafficking was the cornerstone of such a mechanism. The current proposals in the UK were not entirely based on this logic and there was a risk that the proposed NRM could undermine existing expertise on the identification and assistance of victims and alienate service providers. This might lead to parallel systems of official and unofficial identification and protection. It was hoped that there might be scope, as indicated by UKBA, to get closer to the kind of mechanism envisaged by the OSCE in the future.

ANNEXE

OSCE/ODIHR, Anti-Slavery International and TUC

**Meeting on the Identification and Referral of Victims of Trafficking
and National Referral Mechanisms**

30 January 2009

TUC Congress House, London

LIST OF PARTICIPANTS

NGOs

POPPY

Abigail Stepnitz

KALAYAAN

Kate Roberts'

MIGRANT HELPLINE

Susan Fawcus and one other

SALVATION ARMY

Maureen Hepburn (through Dawn Sewell)

MEDAILE TRUST

Sister Ann-Theresa and one other.

MIGRANTS RIGHTS NETWORK

Don Flynn

ECPAT

Christine Beddoe and one other

AMNESTY UK

Poonam Joshi

Rachel Witkin (Independent Consultant)

TARA PROJECT

Anne Hamilton

ANTI-SLAVERY INTERNATIONAL

Klara Skrivankova

LAWYERS

IMMIGRATION LAW PRACTITIONERS ASSOCIATION

Alison Harvey

IMMIGRATION ADVISORY SERVICE

Kalvir Kaur

FISHER MEREDITH

Christopher Dowd and Catherine Robinson

GARDEN COURT CHAMBERS

Nadine Finch

GOVERNMENT OFFICIALS AND LAW ENFORCEMENT

HOME OFFICE

Mohib Rahman
Rob Jones
David Mc Donald

HMRC

Will Mottram

CPS

Pam Bowen

DWP

Stephen Richards

GANGMASTERS LICENSING AUTHORITY

Paul Whitehouse

SOCA

Andrew Cronin

UKHTC

Glynn Rankin

METROPOLITAN POLICE

John Kielty

TRADE UNIONS

TRADE UNIONS CONGRESS

Sean Bamford

UNITE

Omer Ahmed

ACADEMICS

UNIVERSITY OF LIVERPOOL

Alex Balch

LONDON SCHOOL OF HYGIENE AND TROPICAL MAGAZINE

Sian Oram on behalf of Cathy Zimmerman

EU PARTICIPANT

BELGIAN LABOUR INSPECTORATE

Bruno Deville

OSCE/ODIHR

Shivaun Scanlan

Astrid Ganterer