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HUMAN TRAFFICKING – A ROLE FOR YOUTH AND CRIMINAL JUSTICE WORKERS?

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HUMAN TRAFFICKING

A ROLE FOR YOUTH AND CRIMINAL JUSTICE WORKERS?

Introduction

The illegal trading of people is a global problem, thought to be the third largest illegal trade after drugs and weapons smuggling. Scotland is not immune from the issue of human trafficking and a number of government initiatives and research reports have documented cases and responses, although knowledge and understanding remains limited. This paper briefly outlines the issue of trafficking, before discussing the potential role of youth and criminal justice workers in helping to identify and support victims in Scotland.

What is human trafficking?

The Palermo Protocol (United Nations 2000) provides a definition which is widely accepted as an international standard:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (article 3a)

The three elements defining trafficking of recruitment, movement and intention to exploit are detailed here although debates about exactly what constitutes trafficking continue as definitions differ depending on the country or region, or the nature of the organisation defining the issue (Kelly 2005; Parmentier 2010). The trafficking / smuggling distinction is particularly controversial and while there are separate international protocols defining both,¹ a distinction is often considered to be arbitrary, creating 'deserving' trafficked and 'undeserving' smuggled categories (Skrivankova 2007). Consent at point of departure and arrival are often not clear and circumstances may change so that somebody may be smuggled one day and a trafficking victim the next, such that a continuum may be a better way of

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) linked to the UN Convention against Transnational Organised Crime (2000) - aiming to identify those people who may have been forced or coerced into journeys and those who entered into a voluntary financial transaction,

describing trafficking / smuggling (Bhabha & Zard 2006; Buckland 2008; Gallagher 2002; Kelly 2005). For children, anybody under the age of 18 for the purposes of the protocol, the distinction is more problematic as threats or coercion do not need to be present for trafficking to be considered, if there is evidence of movement and abuse or exploitation.

What are the causes?

“With globalization and competing economic markets and the population boom, the environment is unfortunately ripe for human exploitation” (Winterdyk & Reichel 2010:6)

The causes of trafficking vary and differ from one country to another such that any antecedents and contributory factors may not apply universally (UNODC 2006). Factors that have been identified are often broken down into the ‘push’ and ‘pull’ factors related to the personal, social and economic circumstances in source and destination countries. Push factors may include poverty, gender inequality; armed conflicts, low educational attainment and family break up; while the pull factors include the demand for cheap sex and labour and the high rewards for traffickers. Globalisation has contributed to the growth of trafficking and due to the fact humans can be re-sold it is comparatively low risk and with the high rewards it is a profitable activity for traffickers (Rafferty 2007; Omelaniuk 2005; Scarpa 2005).

Despite an increase in recent years in government and international responses to trafficking there is insufficient awareness about its causes to clearly identify who is vulnerable and why. There is no guiding theoretical framework attempting to understand the complex inter-relationship of the social, economic and cultural factors that contribute to the trade (Rafferty 2007; Van Impe 2000; Omelaniuk 2005). People from any background may be vulnerable to exploitation through trafficking (Wirtz 2009).

What is the extent of human trafficking?

Due to numerous difficulties including its illegal and hidden nature, few convictions of traffickers, the reluctance of victims to speak out, the low priority given to research and systematic data collection, and inconsistent definitions and identification processes the numbers of trafficked people remains largely unknown and based on estimates (Laczko 2005; Scarpa 2005). The US Dept of State (2008) estimates that 800,000 people are trafficked across national borders annually, nearly 50% of these being children. This figure is considered to be a minimum, although in effect reliable estimates do not exist because statistics are often based on the number of victims assisted, which underestimates prevalence because so few victims are identified (David 2010; Kangaspunta 2010). It has been suggested that less than 5% of victims are actually identified (UNODC 2009a).

While there remains confusion over the prevalence of trafficking there is some consensus that nearly all countries in the world are now implicated in the trade, as countries of origin, transit or destination, and few regions are immune from one, or all, aspects of trafficking (Turner & Kelly 2009; UNODC 2006). Despite the recognition of the global impact and distribution, many western nations continue to struggle with the concept that human trafficking can occur in their countries (Winterdyk & Reichel 2009).

The United Kingdom is considered a high risk destination country for victims of human trafficking by UNODC (2006) and there is increasing evidence it may also be a transit country. A number of research studies and data collection exercises have documented the existence of trafficking into and out of the country (Kelly & Regan 2000; CEOP 2007; Somerset 2004; Beddoe 2007). However, these studies still remain partial and the true figure remains unknown.

International Responses

Efforts to combat the trade have been hampered by the lack of accurate data and any conceptual framework to understand the antecedents and consequences of trafficking (Omelaniuk 2005). There have also been concerns that policies initially developed in an information vacuum, with trafficking being sensationalized, misrepresented and politicised (Koser 2000; Brennan 2005).²

These concerns are being addressed and most international governmental and humanitarian agencies now have policies, guidelines and research activity focussed on human trafficking. Unfortunately, this increased activity does not necessarily result in any clearer understanding and improved knowledge base as most research is policy oriented with short time lines and policy recommendations (Kelly 2005), and there remain criticisms about the relatively limited empirical knowledge base (Gozdziak 2008). A better understanding of the scope and nature of trafficking is required, that utilises both quantitative and qualitative research methods to capture the extent and complexity of the issues (UNODC 2009b).

In the last ten years the international response to child trafficking has been supported by the ratification in many countries of the Palermo Protocol. As indicated, this protocol has provided the international definition and guiding principles for responding to trafficking. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) is Europe's implementation of the UN protocol and seeks to address trafficking through prevention, prosecution and protection. It was signed by the UK government in March 2007 and ratified at the end of 2008.

² Media reporting has often been the only source of information. Last year the Guardian (6/5/09) reported that Glasgow and Dundee were the fourth and fifth most common destinations for child trafficking victims.

UK responses to human trafficking

ECAT aims to ensure that each signatory country has mechanisms in place – The National Referral Mechanism (NRM) – for identifying and recording cases of trafficking. This formal procedure for assessing and recording all trafficking cases, including children, became operational on 1 April 2009. From this date new arrangements came into force to allow all cases of human trafficking to be referred by frontline agencies for assessment by designated Competent Authorities. In the UK the competent authorities are a central UK Human Trafficking Centre (UKHTC) and a linked authority within UKBA for cases of immigration and asylum. To the end of 2009 527 individuals had been referred to the Competent Authority.³ While welcomed as an additional tool in the fight against trafficking the NRM process was criticised by the OSCE (2009) for its reliance on one central agency to make the final decision in respect of whether an individual has been trafficked, marginalising the opinions of front line service providers which appear to “*not count for much*” (p88). A recent report by the Anti-Trafficking Monitoring Group (2010) further criticised the NRM process in a number of areas, including its focus on immigration issues over victim support and its inability to provide any additional protection for victims.

The UK Action Plan on Tackling Human Trafficking (2007) published jointly by the Home Office and Scottish Executive detailed the UK responses to human trafficking aiming to:

- reduce the number of people trafficked into the UK
- increase the effectiveness of investigations and prosecutions of trafficking cases in order to disrupt trafficking business
- enhance the protection and support of trafficking victims.

UK legislation and policy is clear that trafficking is both a crime and a violation of human rights, and the action plan is focused both on the disruption and reduction of trafficking and providing support for victims. Multi-agency delivery is the cornerstone of practice and policy, involving central and local government, law enforcement agencies and voluntary and community groups. Such an approach reflects the international literature which reiterates the need for a multi-agency response (Asquith & Turner 2008; Van Impe 2000).

Human Trafficking in Scotland

Scotland is not immune from the influence of trafficking. Amid suspicions that Scotland has a disproportionate share of the trade the Equalities and Human

³ <http://www.soca.gov.uk/about-soca/about-the-ukhtc/statistical-data>

Rights Commission announced an inquiry into trafficking earlier this year (EHRC 2010). The Scottish Parliament is also undertaking an inquiry into migration and trafficking in Scotland and noted there are at least ten organised crime groups thought to be actively involved in human trafficking in Scotland, although there have been no convictions to date. The Scottish Government (2009a) published a practice document and assessment toolkit for practitioners working with children who they suspect may have been trafficked. Glasgow is also one of thirteen local authorities areas involved in a UK pilot monitoring the implementation of an assessment framework for child trafficking.

There have been two research studies attempting to document prevalence in Scotland, both having methodological limitations restricting the findings to particular areas or client groups. In a retrospective social work case file analysis utilising a list of possible trafficking indicators, Rigby (2009) suggested that approximately 25% (21 children) of unaccompanied asylum seeking children in Glasgow had probably been trafficked. An interview based research project by Lebov (2009) identified 79 individual adults across Scotland thought to have been the victims of trafficking. Glasgow Child Protection Committee also recently published a report documenting the experiences of frontline practitioners which indicated positive developments, but only the embryonic stages of an understanding and response to the complexities of trafficking (Rigby 2010).

The Trafficking Awareness Raising Alliance (TARA), an organisation providing support to female adult victims of trafficking for sexual exploitation in Glasgow, had 47 referrals from April 2009 to March 2010 (TARA 2010). The Migration Helpline in its submission to the parliamentary inquiry on migration and trafficking suggested 60 adults have been referred to their service as potential victims of trafficking, mainly for forced labour from the Slovak Republic (Migrant Helpline 2010).

Despite government initiatives, exploratory research projects and the work of specialist agencies like TARA there remains little indication of the full extent of trafficking in Scotland, nor of possible responses to it - *"It is difficult to identify the true nature, scale and extent of human trafficking as it affects Scotland"* (Scottish Parliament 2010). Experienced practitioners who have worked with trafficking victims indicate what we know *"is just the tip of the iceberg"* (Rigby 2010:10).

Identifying victims of trafficking

There has long been concern that responses to trafficking are hampered in the first instance by a lack of awareness of the issue amongst front line practitioners in most agencies (CEOP 2009; Kelly 2009; Pearce et al 2009; Rigby 2009). This makes initial identification difficult as professionals are not aware of what they are looking for. In responses to these concerns various national and international documents have published guidelines for practitioners which contain list of factors that may indicate trafficking.¹ While these lists of indicators are now being used there is little empirical evidence that can identify to what extent each is associated

with actual, or risk of, trafficking. However, at the moment they are the only 'assessment' indicators available and without definitive evidence from conviction of traffickers, or specific witness statements and testimonies from children, they are one of the best methods of identifying and estimating the prevalence of trafficking (Lackzo & Gramegna 2003).

In the UK the NRM is the mechanism through which all cases of trafficking can be identified at a central point, although reporting is not mandatory and for adults consent has to be provided by the victim for a referral to be made. For children the NRM is accompanied by an assessment framework and toolkit, containing a 'matrix' of indicators that workers can refer to if they suspect a child has been trafficked. While a similar matrix is not available for adults, indicators may not be vastly different. In the Glasgow research the most common indicators identified amongst the suspected trafficked children included a history of missing links and unexplained moves, signs of physical or sexual abuse, being cared for by adults who are not their parents / legal guardians and frequently in the company of older 'friends' (Rigby 2009).

The role of social work services

In recognition of the particular characteristics of children and the risks and organisational issues involved in child trafficking, all referrals regarding children to the NRM should come from the child's lead professional or their equivalent in local authority social work departments (DCSF 2009; Scottish Government 2009b). These guidelines are an acknowledgement that child trafficking is child abuse and social work is the primary agency for addressing the child protection concerns related to trafficking (ILPA 2009).

Safeguarding children in Scotland who may have been trafficked (Scottish Government 2009a) also identifies local authority youth justice teams / workers as professionals who may encounter children who have been trafficked. There are cases when trafficked children have been charged with criminal offences, for example when recovered from cannabis farms (Anti-Trafficking Monitoring Group 2010). Ongoing research in England and Wales is presently investigating the links and crossovers between the youth justice system and victims of trafficking.

Similarly adult criminal justice services may encounter adults or children who may have been trafficked during the course of their work. Victims of trafficking may be convicted of immigration offences while being coerced as part of the trafficking and subsequently appear in court for a variety of offences. These include possession of false passports and documents, or failure to have in their possession travel documents. Other possible offences while under coercion may include prostitution offences, theft and cultivation of cannabis plants. The Migrant Helpline (2010) expressed concern that a number of Vietnamese nationals held in Scottish prisons

for offences related to cannabis cultivation at the beginning of 2010 were potential victims of trafficking.

TARA has worked with women who have been charged in possession of illegal travel documents, prostitution offences, cannabis cultivation and shoplifting. The organisation has also received referrals from HMP Cornton Vale for women who have been charged with cannabis cultivation and prostitution offences; social workers have also consulted the service during preparation of social enquiry reports on women they suspect may have been trafficked.

Youth and criminal justice workers may encounter people pre and post conviction that have not been identified previously as potential victims of trafficking. During the assessment and / or supervision process, information may be uncovered that begins to raise suspicions a person may be the victim of trafficking.

International guidelines of good practice

If the offences for which a person is appearing in court or at a children's hearing are as a direct consequence of their victimisation international guidelines are clear that trafficking victims should not be subject to criminal procedures for these actions. UNHCHR (2002) recommended guidelines on human rights and human trafficking state that government and organisations should consider:

“Ensuring that legislation prevents trafficked persons from being prosecuted, detained, or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons” (guideline 4.5) and that “law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation” (guideline 5.5).

ECAT (2005) also states that:

“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.” (article 26)

In England and Wales CPS guidance has been issued to prosecutors following the judgement in *R v O* (2008) [EWCA Crim 2835]. This involved the trafficking of a girl into the UK from Nigeria who was subsequently convicted of immigration offences regarding false documents. Part of the judgement indicated that both prosecutors and defence lawyers should make enquiries in proceedings to ensure that individuals are protected if there are concerns about trafficking. While not legally binding in Scotland, such cases can influence future Scottish guidance and practice such that special consideration is given to victims. The Crown Office in Scotland is presently preparing guidance to address these issues.

Implications for practice

The potential role for youth and criminal justice workers in identifying and working with victims of trafficking has implications for organisations in providing appropriate support to staff and for practitioners in re-focussing on the victimisation of people who have been previously identified as offenders. To facilitate the contribution of workers in identifying and protecting victims the first step for agencies is to include them in multi-agency awareness raising sessions and training. At a minimum, workers need to be familiar with the indicators of trafficking and be aware that disclosure of movement, abuse or exploitation and coercion could meet international definitions of trafficking, requiring a change of direct in their intervention.

If youth and criminal justice workers encounter victims of trafficking, or become suspicious, they should be clear of procedures for reporting these suspicions, as inaction may result in further victimisation for individuals, or conviction and sentence for actions over which victims had little control. There are national guidelines for working with suspected child trafficking victims (Scottish Government 2009a) and any concerns should be progressed in line with local procedures, similar to all child protection investigations. The process for adult victims is less clear, although in all cases speaking to prosecutors and / or police about any suspicions may avoid inappropriate convictions or sentence. As in any other sphere of work, multi-agency dialogue and sharing of information will be important in providing support and, until such a time comprehensive guidance is available, individual practitioner's awareness of the issues will be paramount in identification and appropriate action.

Conclusions

This briefing paper has located the issue of human trafficking in a Scottish context, as part of a wider global network, and highlighted the potential role of youth and criminal justice workers in supporting victim's human rights. While many organisations have the potential to encounter trafficking victims, and any response should be a multi-agency effort, youth and criminal justice workers may be in an ideal position during their assessment and / or supervisory roles to identify concerns about trafficking and highlight these to the appropriate authorities. Appropriate action may contribute to victim's protection and ensure that individuals are not prosecuted or sentenced contrary to international guidelines.

In Scotland the contributions of professionals and agencies is compromised by a limited awareness and knowledge base. While a small number of research projects and ongoing inquiries are highlighting the issues there is insufficient data available about the scope and nature of trafficking and confusion over definitions. All agencies are struggling to come to terms with the phenomena of human trafficking

and to generate effective responses. Research, policy and practice developments will have to progress simultaneously to develop an improved evidence base to achieve positive outcomes for victims and link the Scottish experiences into national and international resources. Youth and criminal justice workers are one link in the chain of international responses.

ⁱ **Useful toolkits and manuals for reference and indicators of trafficking**

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