



House of Lords
House of Commons
Joint Committee on Human
Rights

Human trafficking

Twenty-sixth Report of Session
2005–06

Volume I



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Report, together with formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

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Summary

In this Report, the Committee considers human trafficking, one of the most serious human rights issues in the modern world. Human trafficking is first and foremost a criminal activity perpetrated against its victims, but it also engages a number of crucial human rights obligations which apply to the policies and practices adopted by Governments to combat trafficking and afford protection to victims.

In Chapter 2 the Committee explains the principal human rights standards and obligations which apply to the UK under the European Convention on Human Rights and other international instruments to which the UK is a party. The three main obligations are to:

- prohibit and prevent trafficking and related acts
- investigate, prosecute and punish traffickers
- protect victims of trafficking.

In May 2005 the Council of Europe adopted a Convention on Action against Trafficking in Human Beings. This Convention has not yet come into effect, and the UK has not signed it. In Chapter 3 of this Report the Committee describes the provisions of the Convention which relate to the protection of trafficking victims, and explains the arguments for and against signature and ratification of the Convention by the UK.

After examination of the evidence on the scale and nature of human trafficking in the UK (Chapter 4), the Committee considers, in Chapter 5, the effectiveness of the UK's fulfilment of its obligations to prohibit trafficking and enforce the law against traffickers. In Chapter 6 the Committee considers the effectiveness of policies in the UK for the protection of victims, and compares these with the approach adopted in Italy.

The Committee takes the view that, in accordance with human rights standards, the effective protection of victims must be the starting point from which all other policies relating to trafficking should flow (paragraph 138). In light of the evidence presented to it, the Committee concludes that, although the Government has started taking some significant steps to improve the protection of victims, the current level of protection as a whole is still far from adequate (paragraph 197).

The Committee broadly agrees that the current legislative framework to prohibit and criminalise trafficking complies with relevant human rights obligations (paragraph 115), and it applauds the Government's ongoing effort to improve investigation, and the bringing to justice of traffickers, welcoming in particular the establishment of the UK Human Trafficking Centre to provide further co-ordination and focus to law enforcement efforts (paragraph 133). However, the Committee argues that the protection of victims should be placed at the heart of the legislative framework to combat trafficking, and calls for the Government to review immigration laws and policies in the context of their impact on trafficking victims (paragraph 118). In relation to law enforcement, the Committee says that this must always make the interests and needs of victims a primary consideration (paragraph 134).

To improve protection of victims, the Committee recommends, among other proposed measures—

- the establishment of a national identification and referral system, along with improved training in identification of victims (paragraphs 146 and 198)
- more comprehensive and securely financed support and assistance to victims once they have been identified (paragraph 198)
- more assistance to those returned or voluntarily repatriated to their country of origin to assist them in re-integrating into their society (paragraph 198).

The Committee considers the Government's argument that the provisions of the Council of Europe Convention relating to reflection periods and residence permits for trafficking victims could act as a pull factor for migration into the UK for those willing to make fraudulent claims of victim status. Taking into account the safeguards contained in the Convention and the evidence it received on the subject, the Committee concludes that there is no realistic likelihood of adoption of the Convention's provisions acting as a pull factor (paragraph 200). The Committee concludes that the Government should sign and ratify the Council of Europe Convention (paragraph 205). It also concludes that the standard length of time for reflection periods should be three months (paragraph 203), and residence permits should be of six months duration (paragraph 204).

A full list of the Committee's principal conclusions and recommendations is set out in Chapter 7.

1 Introduction

Our inquiry

1. In this Report we consider one of the most serious human rights issues in the modern world, human trafficking, which in recent years has brought to the heart of Western societies, the UK included, a new and pernicious form of slavery inflicting suffering on many thousands of people across the world.

2. The phenomenon of human trafficking, which takes a variety of forms, is first and foremost a criminal activity perpetrated against its victims. As we explain in this Report, however, it also engages a number of crucial human rights obligations which apply to the policies and practices adopted by Governments to combat trafficking and afford protection to the victims of trafficking. Appropriate legal and policy responses to human trafficking have been under detailed consideration by international organisations over the last decade or so, and this consideration has resulted in the adoption of a number of international instruments, notably by the UN, the European Union and the Council of Europe, defining human trafficking and setting out the standards to be observed by member states in combating it.

3. Within this context, at national level Governments have been fashioning their own responses to trafficking, normally encompassing legislation to create specific criminal offences of trafficking and to provide protection to victims. One of the main purposes of this Report is to assess the extent to which the response made so far by the UK Government has satisfied the human rights obligations by which it is currently bound. At the same time, we are aware that UK policy and practice in relation to trafficking is continually under review and development. In particular, the Government has recently consulted on a UK Action plan to tackle human trafficking, and intends to produce a final Action Plan later this year (see paragraphs 9 and 10 below).

4. The Government's consultation on its Action Plan did not formally ask for respondents' views on whether the UK should sign the Council of Europe Convention on Action against Trafficking in Human Beings,¹ though it did seek views on the provision of reflection periods and residence permits to victims of trafficking, two of the core provisions of that Convention, and in that context a large number of respondents took the opportunity to urge the Government to sign up to the Convention. In this Report we consider the provisions of the Convention relating to protection of victims in some detail, and weigh the evidence for and against the Government's current concern that those provisions could act as "pull" factors to the UK, thus exacerbating the problem of trafficking.² As we announced in our call for evidence of 19 October 2005, our Report also considers more generally whether or to what extent ratification of the Convention by the UK would enhance human rights protection in relation to human trafficking, and assesses the changes to law, policy

1 Council of Europe Treaty Series/197. Henceforth "Council of Europe Convention" or "Convention".

2 Appendix 1, para 67

and practice which would be necessary in order to ratify and successfully implement the Convention.³

5. First, in Chapter 2 of this Report, we describe the most significant extant human rights standards applicable to human trafficking, structured in accordance with the three principal obligations imposed upon states—

to prohibit and prevent trafficking and related acts

to investigate, prosecute and punish⁴ traffickers

to protect victims of trafficking.

In Chapter 3 we explain the main provisions of the Council of Europe Convention relating to the protection of victims of trafficking. This Convention has not yet come into effect. Chapter 4 sets out the available evidence on the scale and nature of the problem of human trafficking in the UK, and in Chapter 5 we consider current UK legislation and policy on the prohibition and prevention of trafficking, and the enforcement of the law against traffickers. In Chapter 6 we focus on UK practice on the protection of trafficking victims, and also give a comparative account of the different approach adopted by Italy to this matter, primarily in the context of the protection of victims. The discussions we held during our visit to Italy made a profound impression on our thinking about the best ways to address human trafficking, and the lessons we learnt resonate through the rest of this Report. In this Chapter we also consider the impact which signing up to the Council of Europe Convention would have on UK policy on protection of victims within the context of its anti-trafficking strategy. Finally, in Chapter 7, we set out our principal conclusions and recommendations.

6. One consistent thread runs through our consideration in this Report of the different aspects of human trafficking in the UK. That is the question of whether the Government has got the human rights balance right in its attempt to reconcile the various objectives of enforcing the law against traffickers, preventing trafficking and illegal immigration when it is associated with trafficking, and protecting the victims of trafficking. As we explain in the rest of this Report, it is our firm belief, based on the evidence we have received, that the Government needs to reconsider the balance it has struck between these different imperatives. We are encouraged by our further belief that the Government is also committed to achieving the best possible balance in its overall policy to combat trafficking, grounding that policy in human rights standards, and has an open mind about how this can best be achieved.

7. Written evidence received in our inquiry is published as Appendices to this Report. We also publish with this Report the transcripts of oral evidence we took. In addition to this formal oral evidence, we held informal meetings with representatives of Reflex and the

3 In this sense this Report reflects our recent undertaking to report on human rights treaties before their ratification, if they raise any significant issues of which Parliament should be aware (Twenty-third Report of Session 2005-06, *The Committee's Future Working Practices*, HL Paper 239/HC 1575, para.68).

4 "Punish" is the word used in some places in the relevant instruments. We do not consider this word to mean necessarily anything beyond bringing traffickers to justice and imposing sanctions.

Metropolitan Police's Clubs and Vice Unit at the start of our inquiry, and visited the offices of the Eaves Housing for Women Poppy Project, where we met and talked to project staff and two Eastern European women victims of trafficking for sexual exploitation who were being supported by the project. Italy is often cited as a country which has adopted best practice in its policy on human trafficking, and in June we visited Rome and Venice where we had discussions with central Government Ministers and officials, as well as with local government officials and NGOs running support schemes for trafficking victims, along with others. We are most grateful to all those who assisted us in the course of our inquiry.

8. Two specialist advisers assisted us in this inquiry: Dr Vanessa Munro of King's College London and Dr Tomoya Obokata of Queen's University Belfast. We record our gratitude to them as well for their assistance.

The Government's consultation on a UK Action Plan

9. As mentioned above, in parallel with our inquiry, but as an entirely separate exercise, the Home Office launched on 5 January 2006 a national consultation exercise on proposals for a UK Action Plan on Human Trafficking.⁵ Such Action Plans have been recommended by international organisations including the Organisation for Security and Cooperation in Europe (OSCE).⁶ The Home Office has been considering what elements should be included in the Action Plan, particularly in the areas of (a) prevention, (b) investigation, law enforcement and prosecution, and (c) protection and assistance to victims. During the consultation period, approximately 200 individuals and organisations both within and outside the UK responded, and in June 2006, the Home Office published a follow-up report which contains a summary of responses received.⁷ The following is the list of key points raised:

General

- The National Action Plan lacks a human rights focus.⁸ Trafficking should be seen not merely as an organised immigration crime, but also as a grave violation of fundamental human rights. The human rights of victims should be at the core of UK response to trafficking.
- The National Action Plan must pay special attention to children and young people who are trafficked, and also incorporate a gender perspective.⁹
- The National Action Plan is not legally binding, so it is difficult to hold authorities accountable in case of non-compliance.¹⁰

5 *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, Home Office and Scottish Executive, January 2006

6 Appendix 1, para. 4

7 *Tackling Human Trafficking – Summary of responses to the Consultation on Proposals for a UK Action Plan*, Home Office and Scottish Executive, June 2006

8 *Ibid.*, p.7

9 *Ibid.*, p.9

10 Q 31 [Ms. Patel]

- The National Action Plan must be as detailed as possible. It should contain specific timeframes for implementation, allocation of resources and division of labour.¹¹

Prevention

- There needs to be a stronger emphasis on demand reduction and tackling the causes of trafficking in the National Action Plan.¹²
- The National Action Plan should promote research and intelligence gathering focused not only on source states, but also on the UK itself. The Government needs to understand what makes the UK an attractive destination and what deters traffickers from using other countries.¹³
- The National Action Plan must include effective training and awareness raising programmes both within UK and abroad, in co-operation with NGOs and other concerned partners.¹⁴

Investigation, Law Enforcement and Prosecution

- Protection of the human rights of victims should be at the core of law enforcement in the UK.
- The National Action Plan should promote effective co-ordination and co-operation among competent authorities and with NGOs and other members of civil society to avoid duplication of effort and expenditure.¹⁵

Protection and Assistance to Victims

- The National Action Plan fails to provide the minimum standards of care and protection that the Council of Europe Convention would provide.
- The National Action Plan should promote a nation-wide victim protection/support system, including effective identification and referrals, for all victims of trafficking.¹⁶
- The National Action Plan does not touch upon longer term protection of victims.¹⁷

10. In addition to these main points, the respondents proposed a number of other recommendations in order to improve the current UK response to trafficking. **We welcome the Government's consultation on its National Action Plan to combat human trafficking, and urge the Government to take the responses to that consultation on board in order to promote an effective human rights approach to combating trafficking. While this Report is not a formal response to the Government's consultation, many of our conclusions and recommendations, as will be seen, mirror**

11 *Tackling Human Trafficking – Summary of responses*, op.cit. , p.14.

12 *Ibid.*, p.8.

13 *Ibid.*, p.10.

14 *Ibid.*, pp.10-11.

15 *Ibid.*, pp.13-14.

16 Q 66 [Ms. Joshi]

17 *Tackling Human Trafficking – Summary of responses*, op.cit., p. 12.

those submitted to the Government during that consultation. We expect the conclusions and recommendations contained in this Report to be given serious consideration by the Government when it decides the contents of that Action Plan.

2 Human rights standards

11. It has been widely accepted that trafficking of human beings is not merely a criminal justice or migration issue, but also a human rights issue. Indeed, a number of positive obligations have been assumed by the UK under the European Convention on Human Rights (ECHR) and other pertinent human rights instruments to which the UK is a party. A human rights framework to address trafficking therefore has an important role to play.

12. The purpose of this Chapter is to identify existing human rights norms and principles applicable to trafficking of human beings, and to articulate the human rights obligations which are thereby imposed upon the UK. It starts by exploring the definitions of trafficking of human beings adopted at national, regional and international levels. It then continues to analyse the applicable human rights norms and obligations imposed upon States. All of the instruments mentioned in this Chapter, except for soft law instruments, are ratified by the UK unless otherwise stated. The provisions of the Council of Europe Convention relating to the protection of victims are considered in more detail in Chapter 3.

Human trafficking: international definitions

13. Before proceeding to describe the appropriate human rights obligations and standards, the definition of trafficking should be examined and key elements identified. There are three key instruments which are important. The first is the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime 2000.¹⁸ The UK ratified this instrument on 6 February 2006. Article 3 stipulates that:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the 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 removal of organs”.

An identical definition of “trafficking in human beings” is given in Article 4 of the Council of Europe Convention.

14. Another important instrument for the UK is the EU Council Framework Decision on Combating Trafficking in Human Beings.¹⁹ The UK, like other members of the EU, is bound by this Framework Decision. Article 1 describes trafficking as:

the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

18 A/RES/55/25 (2001), Annexe II. Henceforth “Trafficking Protocol”. It is also commonly referred to as the “Palermo Protocol”.

19 OJ L 203/1 (1/8/02). Henceforth “EU Framework Decision”.

- (a) use is made of coercion, force or threat, including abduction, or
 - (b) use is made of deceit or fraud, or
 - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
 - (d) payments or benefits are given or received to achieve the consent of a person having control over another person
- for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
- for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography”.

Smuggling

15. Trafficking of human beings should not be confused with “smuggling” of human beings. Although these two terms have been used interchangeably in the past, there is a consensus now that they are different acts. This is illustrated by the adoption of the Protocol Against the Smuggling of Migrants by Land, Sea and Air,²⁰ also attached to the UN Convention against Transnational Organised Crime. Under Article 3, smuggling is defined as:

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party of which the person is not a national or permanent resident.”

16. The following key factors can be identified in distinguishing between trafficking and smuggling. First, trafficking is carried out with the use of coercion and/or deception, whereas smuggling is not, indicating that the latter can be a voluntary act on the part of those smuggled. Second, trafficking entails subsequent exploitation of people, while the services of smugglers end when people reach their destination. Third, trafficking can take place both within and across national frontiers, whereas international movement is required for smuggling. Finally, entry into a state can be legal or illegal in the case of trafficking, whereas smuggling is characterised by illegal entry.

Human trafficking under UK domestic law

17. In the UK, although a specific definition akin to that contained in the Trafficking Protocol and the Council of Europe Convention is not incorporated into domestic law, there are several pieces of legislation which have been introduced to criminalise the practice. The first was the Nationality, Immigration and Asylum Act 2002, section 145 of which established an offence of trafficking for prostitution. This stop-gap provision was repealed by the Sexual Offences Act 2003, which introduced wide-ranging offences of

20 A/RES/55/25 (2001), Annex III.

trafficking for the purpose of any sexual offence (sections 57-59). Finally, section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 criminalised trafficking for labour exploitation and the removal of organs. With enactment of these domestic laws on prohibition of trafficking, which we consider in more detail in Chapter 5, it has been argued that the UK legislation is compatible with regional and international standards in this respect.

Key human rights obligations

18. An examination of the existing human rights norms and principles reveals that certain human rights obligations in relation to trafficking of human beings already exist. While there may be a wide variety of obligations, this Report focuses on three key obligations imposed upon all states, regardless of their status as source, transit or destination states. They are obligations to:

- 1) prohibit and prevent trafficking and related acts,
- 2) investigate, prosecute and punish traffickers, and
- 3) protect victims of trafficking.

The Recommended Principles and Guidelines on Human Rights and Human Trafficking 2002²¹ issued by the UN High Commissioner for Human Rights affirm in this regard (Principle 2) that “States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.”

Positive and negative obligations

19. Before describing specific obligations, it is worth explaining the major difference between positive and negative obligations, concepts which appear often in human rights discourses. The jurisprudence established by the European Court of Human Rights provides us some guidance in understanding these concepts. A positive obligation requires states to undertake specific actions, whereas they must refrain from taking certain actions under a negative obligation. Most of the ECHR rights are said to be negative rights in that member states are obliged to refrain from interfering with them. However, the European Court of Human Rights recognizes the existence of positive obligations to take preventive or protective actions to secure ECHR rights. Some examples include investigating killing, protecting vulnerable persons from ill treatment, and securing respect for private life. As will be shown below, there are several positive obligations related to trafficking of human beings, and some of the concrete measures to fulfil such obligations are illustrated.

21 E/2002/68/Add.1. Henceforth UN Principles and Guidelines.

Obligation to prohibit trafficking and related acts

20. There are various international human rights instruments which explicitly require states to prohibit trafficking. Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), for instance, provides that:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

21. In relation to children, Article 35 of the Convention on the Rights of the Child 1989 (CRC) states that:

“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”²²

22. With regard to instruments specifically on trafficking of human beings, the obligation to prohibit is set out in Article 5(1) of the Trafficking Protocol, Article 1 of the EU Framework Decision, and Article 18 of the Council of Europe Convention.

23. In addition to these legally binding instruments, some non-binding instruments are relevant. They include:

- Article 5(3) of the Charter of Fundamental Rights of the European Union 2000

“Trafficking in human beings is prohibited.”

- Principle 12 of the UN Principles and Guidelines:

“States shall adopt appropriate legislative and other measures necessary to establish as criminal offences, trafficking, its component acts, and related conducts.”

Guideline 4 of the UN Principles and Guidelines supplements this by illustrating detailed legislative measures for states to take.

24. In addition to trafficking itself, other related acts are also prohibited under international human rights law. Slavery and/or forced labour are good examples. Article 4 of the ECHR stipulates in this regard that:

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

25. The recent case of *Siliadin v France* is of great importance in relation to Article 4. In this case, the European Court of Human Rights held that member states have a positive obligation to penalise slavery and forced labour.²³

²² Also relevant is the Optional Protocol on Sales of Children, Child Prostitution and Child Pornography 2000. Although the United Kingdom signed this instrument on 7 September 2000, it has not ratified it yet, though it has confirmed its intention to do so at the earliest opportunity, an intention which we welcomed in our Report on the Government's recent review of international human rights instruments (17th Report of Session 2004-05, *Review of International Human Rights Instruments*, HL Paper 99/HC 264, para.28.

26. Other pertinent instruments include the Slavery Convention 1926, the Forced Labour Convention 1930, and the International Covenant on Civil and Political Rights 1966 (ICCPR),²⁴ ILO Convention No. 183 (Worst Form of Child Labour Convention) 1999, and Article 19 of the Council of Europe Convention. It has long been established that prohibition of slavery is part of customary international law and constitutes *jus cogens*.²⁵

27. Another pertinent obligation arises from the prohibition on torture and other inhuman, cruel or degrading treatment or punishments. States are under a clear obligation to prohibit these acts. This obligation is stipulated in Article 3 of the ECHR, the European Convention for the Prevention of Torture and Inhuman, Degrading Treatment or Punishment 1986, the UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, and Article 7 of the ICCPR. Similar to the prohibition of slavery and forced labour, the prohibition on torture and inhuman or degrading treatment is a part of customary international law and *jus cogens*.

Obligation to investigate, prosecute and punish traffickers

28. Another legal obligation imposed upon states is to investigate, prosecute and punish non-state actors, including traffickers, with “due diligence.” One important case which touched upon this was *Ergi v. Turkey*.²⁶ In this case, the European Court of Human Rights held that:

This obligation to (investigate) is not confined to cases where it has been established that killing was caused by an agent of the State. Nor is it decisive whether members of the deceased’s family or others have lodged a formal complaint about the killing with the relevant investigatory authority. In the case under consideration, the mere knowledge of the killing on the part of the authorities gave rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation ...²⁷

This obligation has been affirmed by the European Court of Human Rights in such cases *Osman v. United Kingdom*,²⁸ and *Z and Others v. United Kingdom*,²⁹ and endorsed also by

23 Application No. 73316/01, Judgment of 26 July 2005, para. 112. This case was about a Togolese national who was forced to work as a domestic servant on very low, sometimes non-existent, wages and in harsh living and working conditions. The Court found that there had been a violation of France’s positive obligations under Article 4 ECHR.

24 Article 8.

25 Article 53 of the Vienna Convention on the Law of Treaties 1969 provides that *jus cogens* is “a peremptory norm of general international law” which is “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

26 Application No. 23818/94, Judgment of 28 July 1998. In this case, a Turkish national of Kurdish origin claimed, among other things, that his sister was unlawfully killed by the Turkish security force in violation of Article 2 ECHR, when they opened fire indiscriminately in his village against PKK members.

27 Para. 82.

28 Application No. 23452/94, Judgment of 28 October 1998, paras. 115-116. This case involved a claim by the applicant that the UK authorities had failed to protect her husband and son from a school teacher who developed an obsession with her son.

29 Application No. 29392/95, Judgment of 10 May 2001, para. 109. In this case, Z and others, who were minors, successfully argued that the local authority failed to protect them when they were subjected to ill-treatment and neglect at home in contravention of Article 3 ECHR.

other human rights mechanisms including the UN Human Rights Committee³⁰ and the Special Rapporteur on Violence against Women.³¹

29. In relation to trafficking-related instruments, the obligation to investigate, prosecute, and punish traffickers is established by the EU Framework Decision (Articles 3, 4, 5, 6). The Trafficking Protocol also touches upon international co-operation to strengthen law enforcement in Article 10. Further, Article 23(1) of the Council of Europe Convention provides that:

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences ... are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include ... penalties involving deprivation of liberty which can give rise to extradition.

Other pertinent provisions in the Council of Europe Convention include Chapter V (Investigation, Prosecution and Procedural Law) - Articles 27-31.

30. In relation to soft law, Principle 13 of the UN Principles and Guidelines provides that states “shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-state actors.”³² Further, Guideline 5 of the same document goes further to elaborate on some of the measures which should be taken by states. They include adequate training for law enforcement agencies, enhancement of investigative powers and technology, and establishment of anti-trafficking units.

31. It should be noted, however, that investigation, prosecution and imposing sanctions must be carried out in accordance with international human rights law. This means that the rights of those accused of trafficking must also be respected. The key human rights principles which must be respected and protected include the right to liberty and security (Article 5 of the ECHR and Article 9 of the ICCPR) and the right to a fair trial (Article 6 of the ECHR and Article 14 of the ICCPR).

Obligation to protect victims of trafficking

32. States also have an obligation under international human rights law to protect victims of trafficking of human beings.

33. A number of human rights instruments including the Optional Protocol to the CRC³³ contain provisions on protection of victims. Other pertinent provisions and instruments include Articles 6 to 8 of the Trafficking Protocol, Article 7 of the EU Framework Decision, and Chapter III (Articles 10-17) of the Council of Europe Convention, which is considered in greater detail in Chapter 3 below. Further, Principles 7-11, and Guidelines 6, 8, and 9 of the UN Principles and Guidelines elaborate on this obligation to protect victims of trafficking.

30 General Comment No. 7 (Torture, Inhuman or Degrading Treatment and Punishment)(1982), paras. 1 and 2, and *Herrera Rubio v. Colombia*, Communication No. 161/1983, CCPR/C/31/D/161/1983, para. 11.

31 Special Rapporteur on Violence against Women , E/CN.4/2000/68, paras. 51-53.

32 Principles 14 (Extradition) and 15 (Sanctions) are also pertinent.

33 Articles 8, 9, and 10 of the Optional Protocol (see footnote 22).

34. Although other human rights instruments do not contain provisions specifically related to the protection of victims of trafficking, the obligation can be inferred from a general duty to secure, ensure, or restore rights, and to provide remedies. Article 2(3)(a) of the ICCPR for instance, provides that:

States are under an obligation to ensure that “any person whose rights and freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

Even though the wording may be different, a similar obligation is established by such instruments as the CRC³⁴ and ECHR.³⁵

35. The obligation to protect also arises when states fail to take positive steps to prevent non-state actors from committing illegal acts. A case which touched upon this is the *Case Concerning United States Diplomatic and Consular Staff in Tehran* (Iran v. United States), in which the International Court of Justice held that although attacks by militants were not imputable to Iran, it was not “free of responsibility in regards to the attacks,” as Iran was placed under an obligation to “take appropriate steps to ensure the protection of the United States Embassy and Consulates.”³⁶

36. There is no precise list of protection measures which states are required to provide or implement, and some of the key measures will be described below. In Chapter 3 we consider in greater detail the provisions of the Council of Europe Convention relating to the assistance and protection of victims.

Identification of victims

37. A starting point is identification of victims. Article 10(2) of the Council of Europe Convention obliges states to “adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.” Guideline 2 of the UN Principles and Guidelines also stipulates that they are “under an obligation to ensure that such identification can and does take place.” Some of the measures recommended for effective identification of victims include development of manuals and guidelines for law enforcement agencies which come in contact with potential or actual victims, their training, and facilitation of law enforcement co-operation.

Non-refoulement

38. A related obligation to the identification of victims is the observance of the principle of *non-refoulement* or non-return. This applies in particular to refugees in accordance with Article 33 of the Geneva Convention Relating to the Status of Refugees 1951. Guidelines 1.6 and 2.7 of the UN Principles and Guidelines in this regard urge states to ensure that “anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from

34 Articles 2 and 3.

35 Articles 1 and 13.

36 *ICJ Report 1980*, paras. 58, 59, and 61.

persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement.”

39. Within the framework of the ECHR, the principle of *non-refoulement* is often invoked in conjunction with Article 3 (prohibition against torture). The cases such as *Soering v United Kingdom*³⁷ and *Chahal v United Kingdom*³⁸ in the European Court of Human Rights have established that if someone faces the risk of torture on return to his or her state of origin, then member states, including the UK, cannot return that person.

40. It has been accepted by UK courts that the obligation of states to respect this principle extends to cases where persecution is attributed to traffickers if states are unwilling or unable to bring them to justice. In a case involving a Ukrainian woman who was trafficked into the UK for prostitution, it was held that the inability of the Government of Ukraine to protect her made it more likely that she would be persecuted by traffickers if she was returned to Ukraine.³⁹ She was consequently granted asylum in the UK. The principle of *non-refoulement* also applies to cases where people are likely to face torture, or inhuman or degrading treatment perpetrated by non-State actors. This was affirmed in the case *Bensaid v. United Kingdom* by the European Court of Human Rights.⁴⁰ Moreover, it has been held in the past that expulsion of a person to a State where he/she would be subjected to slavery or forced labour might raise issues under the obligation to prohibit torture.⁴¹

41. In relation to soft law, Guideline 4.6 of the UN Principles and Guidelines urges states to ensure “that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.”

42. Some measures designed to secure the principle of *non-refoulement* comprise the granting of reflection periods and/or temporary or permanent residence permits to victims of trafficking so that they can legally reside in a given state. Such provisions are contained in Article 7 of the Trafficking Protocol and Articles 13 and 14 of the Council of Europe Convention. Although the UK is not bound by it, the EU Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities⁴² is also

37 Application No. 14038/88, Judgment of 7 July 1989. In this case, it was held that the UK would be in breach of Article 3 ECHR if it returned Soering to the US because he would suffer from experiences amounting to inhuman and degrading treatment.

38 Application No. 22414/93, Judgment of 15 November 1996. The Court found in favour of the applicant’s claim that there was a real risk that he would be subjected to treatment in contravention of Article 3 ECHR if returned to his country.

39 *Secretary of State for the Home Department v. Lyudmyla Dzhygun* (Immigration Appeals Tribunal), Appeal no. CC-50627-99 (00TH00728), 13 April 2000. The Immigration Appeals Tribunal recognised that the respondent belonged to a particular social group under the definition of a refugee.

40 Application No. 44599/98, Judgment of 6/2/01, para. 34. The applicant, a national of Algeria who was suffering from mental illness, argued that his removal to Algeria, where he would not receive the degree of support and access to medical facilities available in the UK, would place him at a real risk of a relapse in his illness, contravening Article 3 ECHR. The Court did not find in his favour.

41 Case of *Barar v. Sweden* (Application No. 42367/98) (unreported). Case Comment, 3 *European Human Rights Law Review* 330 (1999).

42 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Henceforth “the Council Directive on Residence Permits”. In addition to the UK, Ireland and Denmark are not bound by this Directive.

pertinent at European level. It obliges member states to issue residence permits of at least 6 months. Finally, Principle 9 and Guidelines 4.7 and 6.6 of the UN Principles and Guidelines urge states to permit victims to legally stay.

Voluntary repatriation

43. If trafficking victims wish to return to their source states, then voluntary repatriation must be facilitated. Voluntary repatriation is closely linked to one's right freely to return to the state of origin and is enshrined in the ICCPR⁴³ and the International Convention on the Elimination of All Forms of Racial Discrimination 1966 (CERD).⁴⁴ This is strengthened by Article 8 of the Trafficking Protocol and Article 16 of the Council of Europe Convention. In relation to soft law, Principle 11 and Guideline 6.7 of the UN Principles and Guidelines also urge states to promote voluntary and safe return.

44. When destination states decide to expel people in accordance with domestic law, international human rights law also stipulates that they must provide an opportunity to appeal against the decision to expel.⁴⁵

Consular assistance

45. For those trafficked who are foreign nationals, they must have an opportunity to seek assistance from their own Governments. States of destination such as the UK have a duty to provide access to consular assistance, while source states have the right to communicate with their own nationals to provide assistance in accordance with the Vienna Convention on Consular Relations 1963.

46. It is important to note here that this Convention concerns both rights of states and individuals. Although the Vienna Convention is not a human rights instrument *per se*, the International Court of Justice, in the *LaGrand* Case (Germany v. United States) stated that Article 36 of the Vienna Convention creates individual rights.⁴⁶ The Inter-American Court of Human Rights went further to state that consular assistance, as part of minimum due process guarantees, is recognised under Article 14 of the ICCPR.⁴⁷ Finally, Guideline 6.3 of the UN Principles and Guidelines urges states to ensure that "trafficked persons are informed of their right of access to diplomatic and consular representatives from their state of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons."

43 Article 12(4) and General Comment No.27 (Freedom of Movement) (1999) of the UN Human Rights Committee.

44 Article 5 (d)(ii).

45 Article 13 of ICCPR and the General Comment No. 15 (Position of Aliens under the Covenant)(1997) of the Human Rights Committee.

46 *ICJ Report* 2002, para. 77. This case involved two brothers of German nationality who were convicted of murder in the US. The US authorities, however, failed to inform them of their right to consular assistance. Germany asked the ICJ to grant a provisional measure to prevent the execution of one of the brothers. However, the US did not implement the court's ruling, and the ICJ later found in Germany's favour and held that provisional measures were legally binding.

47 *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, Ser. A, No. 16 (1999), paras. 80, 83, 84, 87, and 122-124.

Participation in the criminal justice process

47. An effective investigation into cases of trafficking can be regarded as a form of redress available to some victims. An integral part of this remedy is the right of victims to participate in investigations and judicial processes against traffickers.

48. There are several steps which must be taken in order to secure this right of victims to participate. The first is to ensure that they can remain in a state at least while criminal investigations or proceedings are under way (see the principle of *non-refoulement* and related obligations above). Second, states should also secure effective witness protection to protect the identities of victims, coupled with such measures as free access to interpreters and legal advice. These measures are stipulated in Articles 6(1) and 6(2) of the Trafficking Protocol, Articles 12(1)(e) and 15 of the Council of Europe Convention, and Principles 9 and 10, and Guidelines 6.5 and 6.6 of the UN Principles and Guidelines.

49. A right of all people to equal treatment before national tribunals is established under international human rights law,⁴⁸ and states must therefore take positive steps to secure “an effective right of access to the courts.”⁴⁹

Compensation

50. Source states bear the primary responsibility in this regard, as the fact that people are trafficked illustrates their failure to prevent traffickers from abusing the human rights of those trafficked. However this obligation can also be imposed upon states of transit and destination, if they fail to fulfil pertinent human rights obligations illustrated above. The obligation to provide compensation is explicitly stipulated in Article 6(6) of the Trafficking Protocol and Article 15 of the Council of Europe Convention.

51. In relation to other human rights instruments, the obligation to provide compensation may be inferred from Article 2(3) of the ICCPR and Article 13 of the ECHR. It is worth noting in this regard that where the right to life or prohibition against torture is involved, the European Court of Human Rights has held in the past that the payment of compensation may be required.⁵⁰

52. Further, Guideline 9 of the UN Principles and Guidelines notes that:

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.

48 General Comment No. 13 (Equality before Courts)(1984) of the Human Rights Committee; and General Recommendation No. 20 (Non-Discriminatory Implementation of Rights and Freedom)(1996) in which the Committee on the Elimination of Racial Discrimination notes that the right to equal treatment applies to “all persons living in a given State.”

49 *Airey v. Ireland* (Application No. 6289/73), Judgment of 9 September 1979, para. 25.

50 *Z and Others v. United Kingdom*, paras. 108 and 109.

3 The Council of Europe Convention

Background to the Convention and Status of Ratification

53. The Council of Europe has been at the forefront of the fight against trafficking of human beings. While it started dealing with the issues in relation to the subject matter in the 1980s, a concentration of activities emerged from the early 1990s.⁵¹ It has, for example, established the Group of Experts on trafficking in women, promoted awareness raising campaigns through seminars, meetings of experts and research studies, and drafted a model action plan.⁵² In 2006, the Council of Europe Campaign to Combat Trafficking in Human Beings was launched.⁵³ The campaign aims to raise awareness among Governments, parliamentarians, NGOs and civil society of the extent of the problem of trafficking in human beings in Europe today. It will highlight the different measures to prevent the practice, as well as measures to protect the human rights of victims and prosecute the traffickers. The campaign also aims to promote the widest possible signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

54. Alongside these activities, the Council of Europe has been active in developing a legal framework for member states to follow. Some of the early examples include Recommendation No. R(2000)11 on Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation, Recommendation 1545 (2002) on Campaign Against Trafficking in Women, and Recommendation 1610 (2003) on Migration Connected with Trafficking in Women and Prostitution. These instruments, however, were not legally binding.

55. The Council of Europe then saw the need to adopt a legally binding instrument which goes beyond recommendations.⁵⁴ While recognising the existing instruments which are applicable to trafficking such as the ECHR, the Council of Europe considered that an instrument with a stronger focus on protection of victims would supplement the current legal framework and promote a pan-European action against the practice.⁵⁵ The adoption of a new instrument was supported by various bodies including the OSCE and the United Nations.

56. The Committee of Ministers then approved a plan to draft a Convention in April 2003, and the Ad Hoc Committee on Action against Trafficking in Human Beings (CAHTEH) was established.⁵⁶ In September of the same year, the Council of Europe started negotiations on the Convention itself, and it was finalised in February 2005.

51 Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report* (2005) (henceforth Explanatory Report). For more information on the Council of Europe and Trafficking, visit http://www.coe.int/T/E/Human_Rights/Trafficking/

52 *Ibid.*, paras. 13-18.

53 Council of Europe website.

54 Explanatory Report, para. 29.

55 *Ibid.*, para. 30.

56 *Ibid.*, para. 33.

57. The Convention was finally adopted by the Committee of Ministers on 3 May 2005, and opened for signature on 16 May 2005 in Warsaw. As of September 2006, the Convention has been signed by 32 member states.⁵⁷ Under Article 42 of the Convention, 10 ratifications are necessary in order for the Convention to take effect. Only Moldova and Romania have so far ratified it. The UK has neither signed nor ratified the Convention.

58. The Government participated actively in the drafting and negotiation of the Convention, and says that it fully supports its key aims.⁵⁸ While it has not signed or ratified the Convention as yet, a decision has not been taken and the Government may do so in the future. The Government is exploring, with various NGOs and others working in the field, the potential benefits and disadvantages of the Convention.⁵⁹ A cross-government group of officials has been meeting on numerous occasions to analyse in detail all aspects of the Convention and continues to report progress at regular intervals.⁶⁰ Further, the Government claims that a significant amount of work has already been undertaken to look at potential changes to legislation and policies to minimise the impacts of abuses on immigration controls, should the Government adopt the Convention.⁶¹ However, there are still some areas of concerns surrounding the instrument, and the Government argues that it requires more time before reaching a final decision.

Overview of specific provisions

59. The Convention is a comprehensive treaty which recognises trafficking as a grave violation of human rights and focuses mainly on the protection of victims of trafficking and the safeguarding of their rights. It embodies the international human rights standards in this area and will strengthen the protection measures afforded by the Trafficking Protocol. It applies to all forms of trafficking, including sexual and labour exploitation.

60. The Convention is divided into 10 Chapters. For the purpose of this part of our Report, we will concentrate on Chapter III on protection of victims. As the Explanatory Report to the Convention acknowledges, Chapter III is an essential part of the Convention as it places the human rights of trafficked people at the centre of the anti-trafficking strategy.⁶²

Article 10 (Identification of the victims)

61. This Article places a clear obligation upon “competent authorities”, such as police and immigration authorities, to identify victims. Such identification is essential for victims to receive all the necessary protection measures. In order to facilitate effective identification, Article 10 obliges the authorities to co-operate with each other and other support groups, such as NGOs. However, it goes further than simply identifying the victims. For instance,

57 Albania, Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Sweden, FYR Macedonia, and Ukraine. One non-Member State (Montenegro) has also signed. See the Chart of Signature and Ratification at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=8/22/2006&CL=ENG>

58 Appendix 1, para. 65

59 *Ibid.*, para. 70.

60 *Ibid.*, para. 71.

61 *Ibid.*

62 Explanatory Report, para. 130.

the competent authorities are also obliged to have trained and qualified individuals to identify and protect victims and to issue residence permits in appropriate cases in accordance with Article 14 of the Convention.⁶³ If there are reasonable grounds to believe that a person is a victim of trafficking, the competent authorities are to refrain from removing or deporting that person until the identification process is complete and to afford the protection stipulated in Articles 12(1) and (2).⁶⁴ Articles 10(3) and (4) relate to protection of children. Under Article 10(3), if the age of the victim is uncertain and there is a reasonable ground to believe that he or she is a child, then the authorities must proceed on the basis that he or she is a child and afford special protection, in compliance with the CRC.⁶⁵ When a victim is an unaccompanied child, states are obliged to appoint a legal guardian who will act in the best interests of that child, take steps to ascertain his or her identity and nationality, and locate his or her family.⁶⁶

Article 11 (Protection of private life)

62. Under this Article, states must protect the privacy and identity of victims. Protection of privacy and identity is essential not only to protect the physical and mental safety of victims, but also to preserve their chance of integration into their destination states.⁶⁷

63. In order to protect victims' privacy and identities, various measures are provided for under Article 11. Article 11(1) stipulates that victims' personal data is to be stored and utilised in accordance with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.⁶⁸ This Convention provides, among other things, that personal data are to be stored and used for lawful purposes only, and that states must take steps to prevent unauthorised access, alteration and disclosure of such data.⁶⁹ Article 11(2) is designed to safeguard the privacy and identity of child victims of trafficking, as they are particularly vulnerable to exploitation and abuse. Finally, Article 11(3) places an obligation to encourage media to protect victims' privacy and identities through self-regulation or regulatory measures, while simultaneously respecting their right to freedom of expression under Article 10 of the ECHR.

Article 12 (Assistance to victims)

64. Article 12 is perhaps the most important as it provides for detailed measures of protection to be implemented by states. This Article applies to all victims, whether victims of trafficking within national borders or transnational trafficking.⁷⁰ Measures to be taken include, but are not limited to, secure accommodation, access to emergency medical assistance, translation and interpretation services, counselling and provision of information in the languages victims can understand, assistance during judicial

63 Article 10(1).

64 Article 10(2).

65 Explanatory Report, para. 136.

66 Article 10(4).

67 Explanatory Report, para. 138.

68 ETS No. 108. The UK has ratified this Convention on 26 August 1987.

69 Explanatory Report, para. 141.

70 *Ibid.*, para. 146

proceedings, and access to education for children.⁷¹ Victims lawfully residing in destination states can receive protection wider than those residing illegally. Those measures include additional medical assistance and access to employment, vocational training and education.⁷² If someone's status is not confirmed as a victim, he or she may receive protection under Articles 12(1) and (2) and not all Article 12 measures. Another important point on Article 12 is that it obliges states to co-operate closely with NGOs and other members of civil society, and to ensure that assistance to victims is not made conditional on their willingness to act as witnesses.⁷³

Article 13 (Recovery and reflection period)

65. Article 13 obliges states to provide a recovery and reflection period of at least 30 days where there are reasonable grounds to believe that a person is a victim of trafficking. The Explanatory Report states that "this minimum period constitutes an important guarantee for victims and serves a number of purposes."⁷⁴ Major purposes include recovering from violations of human rights and deciding whether or not to co-operate with authorities.⁷⁵ It is important to keep in mind that the grant of a recovery and reflection period "is not conditional on [victims] co-operating with investigative or prosecution authorities."⁷⁶

66. The competent authorities are not permitted to implement enforcement measures such as deportation during this period. Further, protection measures as stipulated in Articles 12 (1) and (2) are to be afforded to victims.⁷⁷ However, under Article 13(3), the competent authorities do not have to grant a recovery and reflection period on grounds of public security or if it is found that victim status is being claimed improperly. Many of those who submitted evidence argued that a period of 30 days was not long enough and recommended that the Government should grant a longer period, such as 3 months.⁷⁸

Article 14 (Residence permit)

67. Under this Article, victims of trafficking are to be issued renewable residence permits. This provision is designed to meet both victims' needs and also requirements for law enforcement.⁷⁹ The victims' personal circumstances to be taken into consideration include, but are not limited to, their safety, health and family situation. If a victim is a child, his or her best interests must be taken into consideration above all others.⁸⁰

71 Article 12(1).

72 Articles 12(3) and (4). The Explanatory Report (at para. 166), however, states that Article 12(4) does not create automatic right of access to labour market, vocational training and education. It is up to each State to consider granting such access.

73 Articles 12(5) and (6).

74 Para. 173.

75 *Ibid.*, paras. 173-174.

76 *Ibid.*, para. 175.

77 Article 13(2).

78 Q 75, Appendix 10, para. 51, and Appendix 25, para. 99

79 Article 14(1).

80 Article 14(2).

68. Article 14 does not specify the length of residence permits, nor does it oblige states to provide permanent residence permits. It allows a certain degree of discretion to states in this regard. Article 14(3) states that “the non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.” However, the Explanatory Report provides that states must set a length compatible with Article’s purpose, and that permits must be “renewable.”⁸¹

Article 15 (Compensation and legal redress)

69. The purpose of Article 15 is to ensure that victims of trafficking are compensated for damage suffered.⁸² This is in line with the obligation to compensate illustrated in Chapter 2. To begin with, Article 15(1) obliges competent authorities to provide information on judicial and administrative proceedings in languages victims understand so that they can obtain compensation from appropriate authorities or mechanisms. This obligation is closely interlinked with the grant of residence permits under Article 14, as victims cannot claim compensation without being able to remain in countries where proceedings take place.⁸³ Article 15(2) is designed to assist victims to go through often lengthy and complicated legal processes in obtaining compensation.⁸⁴ It should be noted, however, that this Article does not give victims an automatic right to free legal aid. It is up to each state to decide the requirements for obtaining such aid.⁸⁵ In so doing, however, states must take Article 6 of the ECHR and its jurisprudence into consideration, which may mean that legal aid must be provided in certain circumstances.⁸⁶

70. Article 15(3) establishes the right of victims to compensation. According to the Explanatory Report, the compensation is pecuniary and covers both material injury (cost of medical treatment) and non-material damage (suffering experienced).⁸⁷ The victims’ right to compensation under this paragraph involves a claim against traffickers and not against a state. However, in cases where traffickers are not found, disappear, or declare themselves bankrupt (and therefore compensation cannot be claimed from them), Article 15(4) requires states to take steps to secure compensation by other means. A certain degree of discretion is afforded to states in deciding what to do, but the establishment of the victim compensation fund and social integration programmes is among measures recommended. In any event, states are referred, among other things, to the European Convention on the Compensation of Victims of Violent Crimes (ETS No.116) in deciding compensation arrangements.⁸⁸

81 Explanatory Report, paras. 187 and 188.

82 *Ibid.*, para. 191.

83 *Ibid.*, para. 192.

84 *Ibid.*, para. 195.

85 *Ibid.*, para. 196.

86 *Ibid.* For the criteria in relation to legal aid, see, among others, *Airey v Ireland*, particularly paras. 24-26

87 *Ibid.*, para. 197.

88 *Ibid.*, para. 199. The UK ratified this instrument on 7 February 1990.

Article 16 (Repatriation and return of victims)

71. A victim has a right to return to his or her own country, and the applicable international human rights standards are illustrated in Chapter 2. Sending states should not forcibly repatriate victims of trafficking, and Article 16 strengthens this obligation to promote voluntary and safe return. When ECHR rights, such as Article 3, are involved, states must take the jurisprudence of the European Court of Human Rights into consideration before making a decision on victims' return.⁸⁹ Articles 16(3) and (4) are concerned with international co-operation between source and destination countries to facilitate voluntary and safe return.⁹⁰ Under Article 16(5), States must establish repatriation programmes, including reintegration, by working with relevant national or international institutions and NGOs. Article 16(6) further stipulates that states should provide information on the organisations and programmes available once victims return to their countries. In the case of child victims, states should not return them if it would not be in their best interests, in accordance with Article 3 of the CRC.⁹¹

Article 17 (Gender equality)

72. This Article obliges states to promote gender equality in developing, implementing and assessing protection measures to victims of trafficking. According to the Explanatory Report, the main aim of Article 17 is to draw attention to the fact that women are the main target group of trafficking of human beings and that they are marginalised and vulnerable even before being trafficked.⁹² Therefore, states must also take into account various causal factors which trigger the movement of women, and implement gender specific measures to meet the need of female victims.

Arguments for and against signature and ratification

Argument for

73. Nearly all of those who submitted evidence to our inquiry called upon the Government to sign and ratify the Convention. The following is a list of key reasons advanced for ratification:

- The Convention sets minimum standards for protection and would oblige the Government to protect the victims of trafficking. This has the effect of promoting a human rights approach to the practice. This is also beneficial from a criminal justice view point, as victims will be able to build a sense of trust towards authorities, making it easier to facilitate co-operation.⁹³

89 *Ibid.*, para. 203

90 *Ibid.*, para. 204.

91 *Ibid.*, para., 207.

92 *Ibid.*, para. 210.

93 Q 16 [Ms. Andrews]

- Signing and ratifying the Convention would signal regionally and internationally that the UK is taking a lead on trafficking and that it supports a human rights approach to the practice.⁹⁴
- The Convention applies to all trafficked persons (not just those trafficked for sexual exploitation), and therefore expands the scope of protection.⁹⁵
- In addition to prohibition of trafficking itself, the Convention also obliges states to prohibit sexual and labour exploitation, under Article 19. This is important as it will oblige them to adopt tougher legislative and other measures against slavery and forced labour.⁹⁶ In other words, the Convention would encourage the Government to adopt a holistic approach which addresses wider issues surrounding trafficking.
- Automatic reflection periods and residence permits as set out in the Convention were an effective way of protecting the human rights of victims and enhancing prosecution of traffickers.
- In countries which had introduced measure analogous to those set out in the Convention, there was no evidence of abuse of the humanitarian measures or evidence of a pull factor.

Argument against

74. On the other hand, the Government has expressed concerns about the Convention. For instance, it fears that the automatic granting of recovery and reflection periods and residence permits may act as a “pull factor” to the UK.⁹⁷ By this the Government means that they may provide incentives to those who are not victims of trafficking to make false claims of such status, circumvent immigration control, and obtain benefits deceptively.⁹⁸ In support of this argument the Government claims that whenever new schemes, laws and policies granting leave to remain have been introduced in the past, they have always been abused by some.⁹⁹

75. In addition, the Government states that abusive claims will have a negative impact on the limited resources available to investigate and prosecute traffickers and support victims.¹⁰⁰ The Government also argues that introduction of reflection periods may have the effect of causing delays in investigating crimes of trafficking while victims decide whether or not to co-operate, endangering others being exploited by traffickers or resulting in the loss of vital evidence.¹⁰¹

94 Q 48

95 Q 58 [Ms. Joshi]

96 Q 163

97 Appendix 1, para. 67

98 Q 141

99 *Ibid.*

100 Appendix 1, para. 75

101 *Ibid.*, para. 76.

76. Pointing out that a system of granting automatic reflection and recovery periods and residence permits is a relatively new initiative across Europe, the Government argues that there is no evidence to suggest that the case-by-case approach currently taken by the UK is in any way less effective at offering targeted support.¹⁰² In view of all these factors, the Government claims that it requires more time to assess the system before reaching a conclusion. Later in this Report, we go on to report on the experience of Italy as an example of a country that has provided for residence permits over a number of years.

¹⁰² *Ibid.*, para. 69.

4 The scale and nature of human trafficking in the UK

The UK as a destination and transit country

77. We received no evidence to suggest that the UK is a source state for human trafficking. While there are indications that the UK has been used as a transit country—Anti-Slavery International said that some unaccompanied asylum seeking children had been taken on to other EU member states after arrival in the UK¹⁰³—research conducted thus far into the scale and nature of trafficking in human beings indicates that, perhaps due to its geographical location on the edge of Europe, the UK is primarily a destination state for victims, rather than a transit country in trafficking routes.¹⁰⁴ This contrasts with Italy, for example, which is a significant entry point into the EU as well as a destination in its own right.¹⁰⁵ Evidence suggests that some people are brought directly to the UK. Meanwhile, others are brought to the UK in stages and exploited in transit states before ultimately arriving here. It is reported that the majority of people trafficked into the UK originate from Eastern Europe and the Balkans, or from the Far East, particularly China and Thailand.¹⁰⁶ Recently, the UK has also seen a growing trend in trafficking for sexual exploitation involving persons brought to the UK from within the EU, Lithuania and other newly-acceded Eastern European states in particular.

Scale and extent of the problem

78. The vast majority of the evidence submitted to this inquiry referred to the lack of reliable statistics on the scale of trafficking activity, be it locally, regionally or globally. Nonetheless, there was a consensus that, from the information available, trafficking into the UK occurs on a scale that merits serious attention by the authorities.¹⁰⁷ Home Office research from 2000 gave a widely varying estimate of between 142 and 1,420 women trafficked in to the UK in 1998.¹⁰⁸ The Home Office is currently conducting further research into UK organised crime markets. Though this has not yet been published, the Government told us that it showed that there were an estimated 4,000 victims of trafficking for prostitution in the UK during 2003 at any one time.¹⁰⁹ Because the research has not yet been published, we have not been able to judge the validity of this figure. We note that there are no reliable estimates for the numbers of children or adult men who have been trafficked into the UK for labour exploitation purposes.

79. In the absence of reliable statistics outlining the scale of the trafficking problem, a number of submissions sought to extrapolate estimates from other potentially relevant

103 Appendix 11

104 Q 85

105 Q 124

106 Q 85

107 Appendices 11, 14 and 21

108 Liz Kelly and Linda Regan, *Stopping Traffic: Exploring the Extent of, and responses to, trafficking in women for sexual exploitation in the UK*, Home Office Police Research Series Paper 125, 2000

109 Appendix 1, para. 11

data, e.g. relating to unaccompanied minors, private fostering, or non-UK sex workers. In addition, much of the oral evidence provided by witnesses was based on anecdote and extrapolated from estimates and statistics pertaining to related phenomenon, such as migration data (including both legal and illegal entry), visas granted for domestic work, or involvement in prostitution.¹¹⁰

80. Much of the oral evidence provided also focused on levels of demand as a measure of the sex industry, and thus of trafficking for sexual purposes:

“What we have tried to do is look at the scale of the sex industry and that gives you a reasonable picture of what is likely to happen in terms of women being trafficked in for that industry. Recently we did some work looking at the sex industry and we saw about 264,000 men spending at least £6.6 million per year on saunas, flats, et cetera. That was taken from some work through Punternet where men talk about their experience of buying sex. Certainly we are finding that the sex industry is expanding in lap dancing, limousine services, takeaway services, and as long as you have got that expansion you are likely to have women trafficked in to fulfil those services.”¹¹¹

81. Referrals from the Poppy Project in some ways provide the most reliable figures on the numbers of identified victims of trafficking for prostitution in the UK, since they relate to actual women who have been encountered. Between March 2003 and May 2006, 489 referrals were made to the scheme, 99 women were accepted for accommodation and support, and 25 women were provided with outreach services.¹¹² However, the scheme operates mainly in London, has tightly focused criteria, and depends upon self- or official referral. As a result, there is reason to suspect that the number of victims nationwide will be significantly higher, and indeed may well be higher than the estimated 4,000 provided by the Home Office.¹¹³ The suggestion that the number of women being trafficked for prostitution into the UK is on the increase seems to be corroborated by the fact that “whereas 10 years ago 85% of women in brothels were UK citizens, now 85% were from outside UK.”¹¹⁴

82. Deficiencies in information on the scale and nature of the problem of human trafficking have caused difficulties throughout our inquiry. While intelligence suggests that there has been an increase in the trafficking problem over the last two or three years, it remains difficult to make an accurate assessment of the scale of the problem. In part, this is due to a lack of co-ordination between the agencies involved in gathering intelligence of, and responding to, trafficking (both nationally and internationally).¹¹⁵ However, due to the clandestine and secretive nature of trafficking activity, it is also apparent that some of the difficulties with data gathering will persist, despite the potential for improvement offered by more coherent inter-agency cooperation.¹¹⁶ It is hoped that the establishment of the UK Human Trafficking Centre, together with the recent reforms generated by the

¹¹⁰ Qq 53, 65, 78, 89

¹¹¹ Q 3

¹¹² Appendix 23

¹¹³ *Ibid.*

¹¹⁴ Q 19

¹¹⁵ Appendices 14 and 21

¹¹⁶ Q 10

establishment of the Serious Organised Crime Agency, will assist in ensuring better procedures for co-ordinated intelligence gathering and sharing. As the Parliamentary Under Secretary of State at the Home Office, Vernon Coaker MP, told us:

“We know that we need to do more to find out the scale of the problem. We know anecdotally; from evidence that immigration officials pick up; from social services; from the work that Operation Pentameter has done; and we know from all the non-government organisations that there is an issue with respect to child trafficking. We are trying to find out the scale of the problem and what more we need to do, and that is why we have commissioned this piece of research.”¹¹⁷

We urge the Government to publish the research into organised crime markets currently being conducted by Home Office researchers, which may assist in providing a clearer picture of the scale and extent of human trafficking into the UK. We foresee however a probable need for further follow-up research to be conducted to scope the problem in relation to all forms of trafficking, and we urge the Government to give priority to such research in order to give a more solid basis for the development of anti-trafficking policy.

Types of trafficking

83. One way of analysing the problem of human trafficking is by examining the underlying purpose that the traffickers have for bringing a particular victim into the UK. The two themes of sexual and labour exploitation are particularly prominent here but it would be a mistake to conceive of the two as mutually exclusive: “we must note that children who are trafficked, no matter what purpose they are trafficked for, become extremely vulnerable to sexual exploitation even though they may not have been trafficked with that as the original intent.”¹¹⁸

84. Before turning to consider these in more detail, it is heartening to note that, despite including organ trafficking within our remit, no evidence suggesting that this occurs in the UK was provided to us during this inquiry. Deputy Chief Constable Grahame Maxwell, the Programme Director of Operation Pentameter, told us:

“During Operation Pentameter no information or intelligence came to light, or when we were doing Reflex operations, that there was organ farming taking place in the UK. There is information that it takes place in other parts of the world.”¹¹⁹

Labour exploitation

85. Labour exploitation takes place across a range of sectors, specifically agriculture, construction, contract cleaning, domestic work and the care sector.¹²⁰ The Chinese cockle-pickers who died at Morecambe Bay provide a vivid and tragic illustration of this phenomenon. The quality of information regarding trafficking of persons into the UK for

¹¹⁷ Q 89. See generally Qq 85-92.

¹¹⁸ Q 21

¹¹⁹ Q 93

¹²⁰ Q 53

labour exploitation is even less adequate than that relating to trafficking for sexual purposes.

86. Of particular concern to those who submitted evidence to this inquiry were domestic workers, the majority of whom are “brought in as live-in workers, so they are particularly vulnerable.”¹²¹ A typical picture involves a woman who has a family at home and has taken the decision to leave that family, travel to a different side of the world and, often, care for someone else's children.¹²² The issue arises when women arrive at their work and are treated unacceptably. Ms Kate Roberts, a community support worker with the NGO Kalayaan which assists migrant domestic workers in the UK, said that during August 2004 and August 2005:

“we registered 114 new migrant domestic workers at Kalayaan. Of these 114 individuals 65 of them - so well over half - had had their passports withheld by their employer ... I think the psychological abuse is really, really important because domestic workers are living in their employer's household and they are constantly being told they are an animal and they are stupid, and they cannot escape from that because they are living in the house, often for years. More than one-third were not allowed to leave the house, and over half, again, 57 per cent, did not have their own room within the house, which meant they were sleeping in a public space in the house - sometimes in the children's bedroom but we often register people who have been sleeping under the kitchen table or in the lounge, which means that they are working on call; they cannot shut the door and go home.”¹²³

Sexual exploitation

87. Notwithstanding the evidence available on the exploitation of migrant domestic workers, “the ILO has estimated that in developed countries the predominant form of forced labour is commercial sexual exploitation.”¹²⁴ It would certainly appear from the evidence provided to our inquiry that trafficking for forced prostitution is the dominant form in the UK. Despite some indications that traffickers are becoming more subtle, for example using ‘boyfriend’ type relationships to lure women rather than overt violence and coercion, it is clear that victims of sexual exploitation often suffer the most horrific and brutal treatment. The stories of women at the POPPY Project speak for themselves.¹²⁵ It is important to raise awareness of the fact that many of these women would not become involved in prostitution without coercion or duress:

“I think [the argument that women enter prostitution of their own volition] also shows a misunderstanding of the nature of prostitution. If you look at how

121 Q 193 [Ms Roberts]. It is important to keep in mind, however, that migrant domestic workers cannot be regarded as victims of trafficking in accordance with international definitions if they voluntarily come to the UK to perform domestic work, unless they are deceived as to the nature of their work and/or are forcibly transported to the UK to perform domestic work against their will. In the case of children, their transportation for the purpose of exploitation is itself to be regarded as trafficking even when it does not involve coercion or deception, in accordance with Article 3(c) of the Trafficking Protocol, Article 4 (c) of the Council of Europe Convention and Article 1(3) of the EU Framework Decision.

122 Q 165

123 Q 166

124 Q 53

125 Appendix 23

prostitution is organised, most of the Glasgow women and ordinary Belfast women will be involved in prostitution because they have a debt which is owed, so they are debt bonded quite often to the owner of the brothel. One sauna in Glasgow in particular advertised that on its website as a particular feature because it ensured confidentiality and it said all their staff were bonded. There is no explanation for that other than they were debt bonded. Those women would all say, if interviewed, "Yes, I am doing this freely, I am not being coerced" but we know that there is coercion and debt there."¹²⁶

88. Generally, prostitution takes place "off-street"¹²⁷ and evidence relating to brothel owners "sharing women and moving women from city to city" is extensive, but anecdotal.¹²⁸

Legal and illegal migration

89. The theme of indebtedness runs throughout the techniques used by traffickers to exploit people. This debt often arises under the guise of recouping the travel costs incurred in bringing them to the UK.¹²⁹ Initial estimates arising from the victims rescued during Operation Pentameter, an enforcement operation described further in Chapter 5 below, are that about 60% arrived in the UK illegally, which means that 40% found themselves in these terrible situations despite having arrived in the country legally.¹³⁰ Operation Pentameter discovered 84 people deemed to be victims of trafficking. Of these 25 were from European states, and mainly from EU member states.¹³¹ Acknowledging the reality that many victims of trafficking have entered the UK legally is important, not only in terms of ensuring an appropriate response that accords with their entitlements, but also in terms of preventing a misguided diversion into talk of illegal migration in the context of people trafficking. Where people enter the UK legally but find themselves working in the sex trade, which is, of course, not legal employment, they continue to experience considerable vulnerability.

Who are the traffickers?

90. There appears to be a strong relationship between people trafficking activity and organised criminal networks. Evidence submitted to us suggested, for example, that those involved in trafficking tend to be "split between people from the Far East, the Chinese gangs, and eastern European gangs".¹³² As a result, knowledge of criminal networks is becoming increasingly integral to understanding human trafficking.¹³³ The inauguration of the new Serious Organised Crime Agency will increase the prospect for success in this area, although it was noted in evidence that criminal gangs tend to be remarkably resilient. In

¹²⁶ Q 13 [Ms Hamilton]

¹²⁷ Q 4

¹²⁸ Q 6 [Ms Hamilton]

¹²⁹ See "Katerina's story", Appendix 23.

¹³⁰ Q 96

¹³¹ Q 95 [DCC Maxwell]

¹³² *Ibid.*

¹³³ Q 121

addition, there are also some indications of more informal instances of trafficking – in situations of sex trafficking, this can often involve a boyfriend or partner figure. In the case of trafficking in children for domestic service it can often involve a family member or community friend. The child may have been sold into debt bondage by their family, which raises serious problems with returning the child to their country of origin. In other cases there may be cultural practices under which a child lives with a relative and performs domestic duties in return for their education, or food being paid for.

91. The methods of recruitment used by traffickers are also considerably diverse, ranging from grooming and befriending, through deception about the nature or conditions of work in the country of destination, to outright coercion and violence. Often, it seems that a combination of these techniques will be deployed both to recruit and then to maintain control over victims of trafficking thereafter. While in some cases, those who have organised the person's transportation will continue to maintain direct control over that person on arrival, in other cases (usually where there is a more complex and organised network involved), they will be 'sold on' to another person who will exercise similar control strategies to exploit them.

Who is being trafficked?

92. ILO estimates confirm that trafficking into developed countries predominantly takes place for sexual exploitation, and that some 98% of those involved in prostitution as a result are women. Nonetheless, there is also evidence which suggests that trafficking in men and boys occurs for the purposes of sexual exploitation, albeit significantly less often. In addition, the TUC and the Centre for Migration Studies, having looked at forced labour across the construction, agricultural, contract cleaning and care sectors found that, certainly as far as construction was concerned, the victims involved were exclusively male. In agriculture, there was a mixture of men and women involved. As far as domestic and care sectors are concerned, it is predominantly women.¹³⁴

93. There was also considerable evidence presented to us of trafficking in children. While there is no doubt that girls are trafficked for sexual exploitation, NGOs and children's charities suggest that trafficking for the purposes of domestic servitude is more common. NGOs identify a particular problem with children coming from within African communities for this purpose,¹³⁵ and they also identify the trafficking in children from Eastern Europe and East Asia.¹³⁶ One issue which arises in regard to children relates to age disputes. Yet evidence provided to us during this inquiry suggests that this problem is not as intractable as it might seem: "there are psychological and social work assessments you can get to determine the age of the child ... We have got very experienced social workers ... it is not that onerous to establish the age of a child."¹³⁷

94. In addition, evidence emphasised the importance of not taking figures relating to adult trafficking at face value, since although "at the time of identification the woman was over

134 Q 53

135 Q 21

136 Appendix 14.

137 Q 35

18, they may well have been under 18 and signalling a trend in child trafficking much earlier on.”¹³⁸

Trafficking push and pull factors

95. Factors such as globalisation, poverty and humanitarian crises all impact on the problem of human trafficking. Ms Christine Beddoe, Director of ECPAT UK, said that the vulnerability of victims stems from “the much broader issue of poverty, lack of opportunity and gender inequality [in the country of origin] so we have to discuss prevention strategies among a much broader framework.”¹³⁹ Trafficked children often “come from countries where there is civil unrest so they are orphans and the issue of consent is problematic for our job but particularly for them.”¹⁴⁰ In addition, an example given by the TUC shows that structures of debt bondage ensure that problems relating to poverty can persist in the UK for some time:

“One example I can think of is 24 Polish citizens who were brought into this country on the basis that they would be working for £10 an hour, which in Polish terms is a tidy sum of money, and found themselves working supposedly on the minimum wage but, in fact, having unlawful deductions from that sum. As one of them said to me, the problem is they have to somehow make it work because what savings they had they actually spent in coming to this country, but they are constantly in a poverty trap and, because of linguistic problems as well, they are finding it very hard to break away from the employer.”¹⁴¹

96. With regard to trafficking for labour, one witness argued that restrictive immigration laws and policies within the UK cause a shortage of low-paid domestic workers, whereas “if those people were allowed to come in legally there would not be so much demand for traffickers to feed off”.¹⁴² While this may be true in some situations, there was also evidence submitted which indicated that the problem lay more with the demand rather than the supply side of the dynamic, and in particular with the demand amongst unscrupulous employers and ‘punters’ for trafficked women.¹⁴³ This was exemplified in the labour trafficking context by the following example also submitted by the TUC:

“We came across a group of Portuguese workers in Lincolnshire - so these are not even A8 entrants; they had had a legal right to live and work in this country for years, entirely unfettered - and they told us that they had had to buy fake Portuguese passports to pretend to their employers that they were illegal Brazilian immigrants pretending to be Portuguese, so that the employer would employ them knowing that they were illegal and therefore were more exploitable, rather than saying to the

138 Q 25 [Ms Beddoe]

139 Q 24

140 *Ibid.*

141 Q 162 [Mr Bamford]

142 Q 62

143 Q 97

employer: ‘I am a legal migrant; I have a perfect right to be here, just pay me my wages.’”¹⁴⁴

EU expansion and its possible implications

97. Of the 84 victims rescued during Operation Pentameter, “about 25 were from European countries. One or two were from the emerging European countries, but the vast majority were from member states or people already within the EU.”¹⁴⁵ While the impact of the impending accession to the EU of Romania and Bulgaria cannot be predicted, there is a concern that it will pose new challenges in the context of people trafficking :

“Obviously, if the EU enlarges and people migrate, it is a different situation than if they are coming outside of the EU. The important point to make is that when dealing with people in these situations, although legally there are differences we try to take a victim-centred approach to people who come before us ... This is a new area of work, something that five or ten years ago perhaps people very rarely talked of; but it is a major challenge for us, and we are determined to do what we can to meet it.”¹⁴⁶

On our visit to Italy we were told that Romania was one of the main source countries for women trafficked into Italy for sexual exploitation. During that visit two members of the Committee went out with night-time outreach teams and found that Romanian women made up a significant proportion of those on the streets. We are concerned that criminal gangs from Romania and Bulgaria could make use of the expansion of the EU and freedom of movement provisions to traffic girls and women into the UK from these countries with greater ease. **We urge the Government to work with these countries to inform and educate girls and women of the dangers that arise from accepting “job opportunities” without going through the proper channels.**

144 Q 181

145 Q 95 [DCC Maxwell]

146 *Ibid.*

5 Prohibition, prevention and law enforcement

Prevention activities

In source states

98. The Government funds and implements various programmes in source states for the purpose of prevention. For instance, DfID has provided £8.9 million to the ILO's International Programme for the Elimination of Child Labour (IPEC) to deal with child trafficking in South East Asia.¹⁴⁷ The fund was used for awareness-raising, reintegration of victims, education, and other activities. The FCO also communicates with source states such as Bangladesh and India to raise awareness of the danger of trafficking.¹⁴⁸ It has also funded anti-trafficking and capacity building programmes in such countries as Albania, Bosnia and Turkey.¹⁴⁹

99. For the future, the Government intends to carry out more awareness-raising campaigns and publicise successful UK prosecutions for trafficking offences in source and transit states to send out a clear message to traffickers.¹⁵⁰

100. While we welcome the efforts being made by the Government in relation to prevention, we consider that the current measures are not sufficient in light of the human rights framework we have described in previous parts of this Report. **We suggest the following measures for improvement:**

- **In relation to awareness raising programmes, it has been noted that although they address the process of trafficking, many of them do not cover the causes of trafficking, which are often extreme poverty and unemployment.¹⁵¹ In order to promote a holistic approach which addresses wider issues surrounding trafficking, these awareness-raising programmes should also aim to enhance people's opportunities, and encourage community action and education. In so doing, the Government should communicate with local authorities and community organisations in source states as far as possible, as they are better suited to assess the local needs. Further, the awareness-raising should also include information on how to migrate legally to the UK so that migrants are not exploited by traffickers, and on the rights of migrant workers in the UK.**
- **We recognise that UK embassies and consulates in source states have an important role to play in preventing people from being trafficked. They should be more proactive in providing information on the dangers of trafficking so that potential victims have a better idea of what to expect. In order for staff at embassies and**

¹⁴⁷ *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, op.cit., p. 8.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, p. 9.

¹⁵⁰ *Ibid.*, pp. 9-10.

¹⁵¹ *Tackling Human Trafficking – Summary of Responses*, op.cit. p. 20.

consulates to carry out preventive activities, appropriate training and awareness raising should be conducted more rigorously so that they are better able to identify potential and actual victims of trafficking and prevent traffickers from exploiting them.

- Further, the Government should provide greater technical assistance to law enforcement agencies in source and transit states so that they can detect and tackle trafficking and other organised crimes more effectively.

Tackling demand

101. The Government acknowledges that it has focused on supply reduction in the past. However, it has also expressed its commitment to tackle demand and implemented a number of initiatives. For instance, the Gangmasters Licensing Authority, created under the Gangmasters (Licensing) Act 2004, operates a licensing system to discourage employers from exploiting migrants for labour exploitation.¹⁵² In addition, the Immigration, Asylum and Nationality Act 2006 has introduced a civil penalty regime for employers of illegal migrants and an offence of knowingly employing illegal migrants to curb the demand for trafficked people.¹⁵³

102. The Government is aware of the need to change the attitudes and opinion of men who use prostitutes towards prostitutes who may have been trafficked and get the message across that trafficked women are not consenting to sexual activities.¹⁵⁴ In order to address this, it has distributed campaign letters and leaflets to men's magazines and other places under Operation Pentameter.¹⁵⁵ It also intends to publish recommendations for a co-ordinated strategy to deal with the harms caused by the prostitution market, on-street prostitution and exploitation of children, young people and women.¹⁵⁶ In Scotland, the Scottish Executive intends to introduce legislation on street prostitution to curb the demand.¹⁵⁷

103. Despite the various initiatives already taken by the Government, most of those who submitted evidence were of the view that the current strategy to reduce demand is inadequate. In relation to the reduction of demand for prostitution, for instance, the current strategy was considered to be inadequate as it only targets street prostitution and puts less focus on other forms of prostitution which take place in the UK.¹⁵⁸ The existence of small or "mini" brothels and other establishments such as strip or lap dancing clubs also serves as a pull factor.¹⁵⁹ It is also much easier for girls and women who have been trafficked to be hidden and remain isolated in these establishments. As to labour exploitation, strategies to curb demand will depend on greater understanding of the nature

¹⁵² *Ibid.*, p. 26.

¹⁵³ Q 109

¹⁵⁴ Q 97

¹⁵⁵ *Ibid.*

¹⁵⁶ *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, op.cit., p. 9.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Tackling Human Trafficking – Summary of responses*, op.cit., p. 11.

¹⁵⁹ *Ibid.*, pp. 26-27.

and extent of the problem. Furthermore, it has been argued that there is a culture that is negative towards migrants, making it easier for employers and others to exploit them.¹⁶⁰

104. Based on the evidence submitted to us, we propose the following measures to be taken by the Government to reduce the demand for trafficked people.

105. An understanding of what makes the UK an attractive destination for trafficking requires an in-depth analysis. **The Government must ensure that the research it is currently conducting and its future research effort contributes to a much clearer understanding of demand for trafficked people both for sexual and labour exploitation in the UK, including the reasons why individuals and businesses in the UK continue to seek trafficked people.**¹⁶¹

106. **The Government should also disseminate information obtained through research to those responsible for combating the practice both within and outside the UK so that they can use it as guidance to devise and implement policies to prevent people from falling into the hands of traffickers.**

107. There is a need to tackle the culture of exploitation and commercialisation of sex, and attitudes towards women.¹⁶² In this regard, **we commend the imaginative publicity techniques employed by Operation Pentameter to change the attitudes of men towards women and raise awareness of the phenomenon of trafficking. However, we recommend the authorities evaluate the effectiveness of these techniques. We recommend that the Government conduct further programmes and awareness-raising campaigns to change the attitudes of the general public towards migrants so that their rights and freedoms are protected.**

108. **Those who employ trafficking victims should be named publicly so as to prevent potential employers and others from doing the same. The Government should also engage in a dialogue with sectors of the business community which might be at risk of employing migrants illegally. A similar programme exists in Sweden and it has produced some positive results.**¹⁶³

109. **The minimum wage legislation, as well as measures against illegal employment, should be rigorously enforced to reduce the demand for trafficked workers.**¹⁶⁴ **The establishment of a single body (such as the Fair Employment Commission) to enforce workers' rights would be a desirable first step.**

110. We broadly accept the argument that restrictions on legal entry will not reduce the incidence of trafficking. It has been argued that such restrictions divert migration into illegal channels and therefore increase opportunities for traffickers.¹⁶⁵ As advocated by some,¹⁶⁶ and provided for by Article 5(4) of the Council of Europe Convention, we

¹⁶⁰ Qq 179 and 181

¹⁶¹ Q 6

¹⁶² *Tackling Human Trafficking – Summary of responses*, op.cit., p. 26

¹⁶³ *ibid.*

¹⁶⁴ Appendix 26

¹⁶⁵ *Tackling Human Trafficking – Summary of responses*, op.cit.p. 24.

¹⁶⁶ Appendices 18 and 26.

consider that the development of lawful and managed migration channels, which recognise the essential role that migrant labour plays in the British economy, is an essential part of a successful anti-trafficking strategy. This can prevent the involvement of traffickers and therefore violations of the human rights of victims.

UK legislation to prohibit trafficking

111. The UK has signed and ratified the Trafficking Protocol, and therefore is obliged by international law to implement legislative measures to prohibit trafficking of human beings. As already described, in relation to trafficking for sexual exploitation, the Sexual Offences Act 2003, which came into force on 1 May 2004, established wide-ranging offences of trafficking of people into, within or from the UK for sexual purposes, with a maximum penalty of 14 years' imprisonment. Equivalent Scottish provisions are contained in the Criminal Justice (Scotland) Act 2003. Legislative provision relating to trafficking for labour and organ exploitation is contained in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4 of which established offences also carrying a maximum of 14 years' imprisonment.

112. In addition to legislation specific to offences of trafficking for sexual and labour exploitation, there are other pertinent laws applicable to trafficking for both sexual and labour exploitation:

- The Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority (section 1). This body is responsible for setting up and operating a licensing scheme for labour providers in agriculture, shellfish gathering and associated processing and packaging sectors. This scheme opened in April 2006. The Act prohibits anyone from acting as a gangmaster in the specified area without a licence (sections 6 and 12). In addition, it makes it an offence to enter into an arrangement with an unlicensed gangmaster (section 13). The Act and the Gangmasters (Licensing Authority) Regulations 2005 apply to all parts of the UK.
- Under section 15 of the Immigration, Asylum and Nationality Act 2006, employers who employ illegal migrants are subject to a civil penalty. The penalty carries a maximum of £2,000 per illegal migrant worker. Further, section 21 of the same Act makes it an offence to knowingly employ illegal migrants with a maximum penalty of 2 years' imprisonment and unlimited fine.
- The Proceeds of Crime Act 2002 allows concerned authorities to confiscate criminal assets. This legislation applies across the UK, and trafficking of human beings is included as a lifestyle offence.¹⁶⁷
- Article 3 (prohibition on torture) and Article 4 (prohibition on slavery) of the ECHR can be invoked to address certain aspects of trafficking by virtue of the Human Rights Act 1998.

113. There are also several provisions in the Children Act 1989 which are relevant to the prohibition of trafficking, and the investigation, prosecution and punishment of traffickers. Section 47, for instance, obliges a local authority to investigate if it has a reasonable cause to

¹⁶⁷ Appendix 1, para. 19

believe that a child, who lives or is found in their area, is suffering from harm. Section 49 establishes an offence of knowingly and without lawful authority abducting children. In relation to private fostering, section 67 authorises a local authority to inspect premises used for private fostering, and section 69 grants them the power to prohibit private fostering under certain circumstances.

114. Under the Children (Private Arrangements for Fostering) Regulations 2005, those who plan to foster children privately must notify their local authorities of the arrangements, and local authorities in turn must visit the premises and speak to the foster carers and children. Further, the Children Act 1989 as amended by the Children Act 2004 obliges a local authority to raise awareness of the notification requirements with local communities and to ensure that staff or volunteers encourage notification.

Conclusions on prohibition of trafficking

115. The Government considers that the current legislative framework to prohibit trafficking for sexual and non-sexual purposes is in line with the Trafficking Protocol and the EU Framework Decision on Trafficking.¹⁶⁸ In analysing the evidence submitted, **we broadly agree that the current framework to prohibit and criminalise trafficking complies with the relevant human rights obligations to prohibit the practice.** In relation to sentencing, 14 years' imprisonment is longer than many European counterparts, and therefore the penalty goes further than the regional and international standards.

116. Some specific concerns were however raised in relation to the current legislative framework:

- Section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 makes it an offence to enter into the UK without valid passports and visas. This, it was claimed, is detrimental to trafficked victims as many of them use false documentation to enter.
- While the introduction of a new offence of knowingly employing illegal migrants is an important step forward, a concern was expressed that this could increase the likelihood that illegal migrants would be employed in ever more hidden forms of work.¹⁶⁹ Further, the Act is designed to punish the administrative failure to check documentation rather than labour exploitation.¹⁷⁰ This does not really address the core of the trafficking problem, which is exploitation.

We recommend that the Government should give urgent consideration to the extent to which these legislative provisions fail to address the specific circumstances of trafficking and its victims.

117. More generally and crucially, almost all of those who submitted evidence to us argued that, while adequate laws were in place to prohibit trafficking and prosecute traffickers, the current legislative framework lacked a human rights approach enforcing and promoting the rights of victims. A number of witnesses pointed out that anti-trafficking legislation

¹⁶⁸ *Ibid.*, para. 17

¹⁶⁹ Appendix 26 and Q 181

¹⁷⁰ Appendix 18

could not be considered in isolation from the Government's overall immigration legislation and policy, which presented a key obstacle to the promotion of a human rights approach taking into account the rights of victims. Victims may often find themselves treated as immigration offenders and face enforcement actions such as detention and removals. Further, restrictions are placed upon access to health care, public funds, accommodation and other relevant support.¹⁷¹ There is also variation in the support available to victims in different parts of the country, and between EU and non-EU nationals. Individuals and NGOs alike argued that all of this serves as a barrier to safeguarding their human rights.¹⁷²

118. We agree with those who argued that the legislative framework on trafficking must reflect a human rights approach. To begin with, the protection of victims of trafficking should be incorporated into, and placed at the heart of, the legislative framework. This will require the Government to review immigration laws and policies currently in place in the context of their impact on the victims of trafficking. The focus should be shifted from immigration control to the prevention of exploitation of migrants and workers, and care of victims. Promotion and protection of workers' rights through enforcement of laws on slavery, working hours and the minimum wage, for instance, can also reduce incentives for employers to exploit migrants and therefore reduce the demand for trafficked people. In this regard, the Government must have due regard to its obligations under Article 4 (prohibition on slavery) of the ECHR and Articles 6 (Right to Work) and 7 (Right to Just and Favourable Conditions of Work) of the International Covenant on Economic, Social and Cultural Rights 1966.

Investigation, Prosecution and Punishment of Traffickers

119. We now turn to consider the various agencies which are in the forefront of UK law enforcement in relation to human trafficking, and the operations they have undertaken.

Reflex

120. Reflex is a multi-agency taskforce on organised immigration crime established in 2000. Its remit is to co-ordinate operations against organised immigration crime, develop intelligence and strategic planning, and target the infrastructure which supports such criminality.¹⁷³ It is chaired by a representative of the Serious and Organised Crime Agency (SOCA) and includes representatives from the Home Office, the Immigration Service, the Security and Intelligence Agencies, the Foreign & Commonwealth Office, the Crown Prosecution Service (CPS) and UK police forces co-ordinated by the Association of Chief Police Officers (ACPO) and its Scottish equivalent.¹⁷⁴ Reflex receives £20 million annually from the Home Office for its activities.¹⁷⁵

121. While Reflex has focused on trafficking for sexual exploitation in the past, it now deals with other forms of exploitation simultaneously. In September 2005, for instance, a new

171 Q 58 [Ms. Joshi]

172 Q 26

173 *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, op.cit., p. 13.

174 *Ibid.*

175 Appendix 1, para. 24

Joint Workplace Enforcement Pilot was established in the West Midlands. It aims to explore the scope of co-ordination among different agencies on the use and exploitation of illegal migrant workers.¹⁷⁶ In addition to on-going intelligence and enforcement related activities, other initiatives under Reflex include national briefing and training of police, immigration and other agencies, and distributing information on trafficking at ports of entry for victims.¹⁷⁷

122. In addition to its domestic operations, Reflex has established a large network of liaison officers who work abroad to collect intelligence and prevent trafficking at source and transit.¹⁷⁸ It also provides funds to implement various anti-trafficking and capacity building activities. Some activities include advertising campaigns targeted at potential victims,¹⁷⁹ training of law enforcement agencies, and operational co-operation.¹⁸⁰

SOCA

123. The Serious Organised Crime and Police Act 2005 established the SOCA, which started its operations in April 2006 and now leads operations conducted under Reflex. Human trafficking is regarded by the agency as its second priority after drug trafficking.¹⁸¹ For the financial year 2006/2007, the SOCA will receive £416 million on resource funding and £41 million in capital provision.¹⁸² The SOCA Board has determined that approximately 25% of its entire resources and effort will be devoted to combating organised migration crimes (next to 40% for class A drugs).¹⁸³

124. In Scotland, the Scottish Drug Enforcement Agency has been dealing with the issue of human trafficking. The agency is to be renamed as Scottish Crime and Drug Enforcement Agency in April 2007 under the Police, Public Order and Criminal Justice (Scotland) Act 2006. This agency will be a key partner of the SOCA in the fight against trafficking of human beings.¹⁸⁴

UK Human Trafficking Centre

125. The newest initiative taken by the Government is the proposed establishment of the UK Human Trafficking Centre (UKHTC) in October 2006. The key function of the UKHTC will be to improve the UK's law enforcement response to trafficking of human beings for sexual, labour and organ exploitation by:

- developing an ACPO strategy on trafficking;

¹⁷⁶ Appendix 1, para. 35

¹⁷⁷ Q 129

¹⁷⁸ Appendix 1, paras. 32 and 33

¹⁷⁹ Q 113 [Mr. Bolt]

¹⁸⁰ Q 129

¹⁸¹ *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, op. cit., p. 14.

¹⁸² SOCA Annual Plan.

¹⁸³ *Ibid.*

¹⁸⁴ *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, op. cit., p. 12.

- becoming a central point for the development of police expertise and operational co-operation;
- delivering a victim-centred approach to trafficking; and
- promoting the UK as a world leader in the prevention and investigation of trafficking.¹⁸⁵

126. The UKHTC will be based in Sheffield and become operational from 2nd October 2006. It will be overseen by an ACPO/multi-agency group, chaired by Deputy Chief Constable Grahame Maxwell of South Yorkshire Police, and consist of 6 functional groups (Training, Law Enforcement and Partner's Education, Research, Victim Care, Intelligence, and Operations and Interventions). The UKHTC will be staffed by representatives of the police, SOCA, CPS, and Immigration Service.¹⁸⁶

Operation Pentameter

127. Operation Pentameter was a nationwide Reflex-funded enforcement operation launched in February 2006. Its main aim was to tackle trafficking for sexual exploitation, at the same time raising awareness of the problem across all police forces in the UK. Some of its activities included information campaigns in the media, distribution of leaflets and information in 19 languages at major ports of entry such as Victoria Coach Station and Dover, and training and education for police, immigration, and tour operators.¹⁸⁷ Even though only a small number of known massage parlours were targeted, in total 515 operations have been conducted, 232 people arrested with 134 charges laid, and 84 trafficking victims identified and rescued from sexual exploitation, 12 of whom were minors.¹⁸⁸ The Operation ended in June with the decision to establish the UKHTC.

Operation Maxim

128. Operation Maxim is an anti-trafficking initiative conducted by the Metropolitan Police. It provides a dedicated response to Reflex issues, working in partnership with the Immigration Service and Passport Service. It was established in response to the deaths of 58 Chinese people in a lorry truck in Dover. Between January 2005 and February 2006, Maxim officers made over 150 arrests and seized over 1200 illegal passports.¹⁸⁹ The Maxim team also co-ordinates intelligence and operational developments with other specialist departments, funded either wholly or in part through Reflex:

- the Human Smuggling Unit (HSU), based at Heathrow, provides both a reactive and proactive response to organised immigration crime.

¹⁸⁵ Appendix 5

¹⁸⁶ *Ibid.*

¹⁸⁷ Q 106 [DCC Maxwell] and Qq 107 and 115.

¹⁸⁸ Q 122 [DCC Maxwell]

¹⁸⁹ Website of the Metropolitan Police at http://www.met.police.uk/op_maxim/.

- the Metropolitan Police's Clubs and Vice Unit (CO14): as part of its remit, this unit deals with trafficking for prostitution, and conducts regular joint visits with the Immigration Service to premises frequented by sex industry workers in central London.

Operation Paladin Child

129. Operation Paladin Child was a three-month scoping initiative (August-November 2003), led by the Metropolitan Police in partnership with the Immigration Service, the NSPCC and Social Services. The main aim was to examine the impact of trafficking of minors into the UK via Heathrow Airport. The study identified 1,738 unaccompanied minors (mostly aged between 12-16) during that period, and found that the vast majority of them were not trafficked or exploited.¹⁹⁰ Nevertheless, as a result of this exercise, awareness has been raised across agencies dealing with unaccompanied minors, and the study has been able to identify the need to establish a multi-agency response to child protection.¹⁹¹

130. Following on from this operation, a number of initiatives have been undertaken. The Children's Taskforce of the Immigration and Nationality Directorate, for instance, has provided specialist training to identify and protect children, and co-ordinated activities with other agencies.¹⁹² Child Protection Officers are now based at Heathrow Airport and both Child Protection Officers and Social Service staff are based at the Croydon Asylum Screening Unit to ensure a more joined up approach.¹⁹³ The Immigration Service, along with the Department for Transport (DfT) is also setting up a voluntary code of practice to be followed by airlines when carrying children who are either unaccompanied or traveling with an adult who is not a family member.¹⁹⁴

131. In recent times, the Government also set up minor teams, which consist of specially-trained immigration officers who conduct interviews with children.¹⁹⁵ By September 2006, 600 staff will have received specialised training, and there will be a 24-hour, 7-day a week system in place to assist child victims.¹⁹⁶

Statistics on law enforcement in the UK

132. To illustrate the extent of law enforcement operations against trafficking and organised immigration crimes in the UK, between April 2004 and March 2005, there were 343 Reflex led operations, which resulted in 1,456 arrests, 149 disruptions and the seizure of over \$5.5 million in cash (across immigration crimes as a whole).¹⁹⁷ Figures for the numbers of these operations relating to trafficking crime are not available.¹⁹⁸ As of June

190 Metropolitan Police, *Paladin Child: A Partnership Study of Child Migration to the UK Via London Heathrow*, July 2004, pp. 7-8.

191 *Ibid.*

192 HC Deb, 6 April 2005, cols. 1503W -1504W

193 *Ibid.*

194 *Ibid.*

195 *Ibid.*

196 *Ibid.*

197 Appendix 1, para. 25

198 Q 119

2006, there have been 30 convictions for trafficking for sexual exploitation.¹⁹⁹ The length of sentences has varied depending on the degree and extent of the crimes, but some longer than the 14-year statutory maximum have been imposed in some serious cases when other counts were added to the indictment.²⁰⁰

Conclusions on investigation, prosecution and punishment in the UK

133. The Government argues that its overall anti-trafficking policy is based on a “twin-track” approach, which combines a victim-centred (or human rights) approach to protection of victims and a tough law enforcement approach to prosecute traffickers, and that this is the most effective way to combat trafficking.²⁰¹ **We acknowledge and applaud the ongoing effort of the Government to improve investigation, and the bringing to justice of traffickers, and agree that the second arm of the “twin-track” approach, the tough law enforcement approach, is now being pursued with some effectiveness. Operation Pentameter, in particular, has not only had success in bringing traffickers to justice, but has raised media and therefore public awareness of the evils of trafficking. We also warmly welcome the establishment of the UK Human Trafficking Centre to provide further co-ordination and focus to law enforcement efforts.**

134. Nevertheless, as we have already said in relation to the anti-trafficking legislative framework itself, the main criticism levelled against the Government’s approach by witnesses to our inquiry is that the first arm of the “twin-track” approach, the protection of victims, has not been promoted and implemented effectively. In this context **the UKHTC must ensure as a matter of urgency that its objective of developing a victim-centred approach to trafficking is articulated clearly and swiftly, that this objective remains a central one, informing all its law enforcement and other activities, and that policies are implemented consistently by the UK’s different police forces and enforcement authorities. Enforcement of the law against trafficking must always make the interests and the needs of the victims a primary consideration, and their protection should be at the heart of any law enforcement measures. In our view, this is necessary to ensure that the Government fully meets its human rights obligation to investigate, prosecute and punish traffickers fully.**

135. In addition, **the UKHTC and all other authorities will need to address the concerns expressed by many of those who submitted evidence that there is a lack of adequate knowledge, training, co-ordination/communication and resources on trafficking among law enforcement agencies, other concerned agencies, and NGOs at local and national levels.**²⁰² Once again, this makes it difficult to achieve the “twin-track” approach advocated by the Government.

136. **While the legislative framework to prohibit trafficking is clearly in place, we share the concerns of those who say that there have not been enough prosecutions under the existing laws on trafficking,**²⁰³ **compared to the number of victims arrested, detained**

199 Q 120

200 Appendix 1, para. 29.

201 Qq 94, 104, and 123 [Parliamentary Under Secretary of State for Policing, Security and Community Safety, Home Office, Vernon Coaker MP]

202 Q 9 [Ms. Hamilton], Q 65, and Qq 192 and 201 [Mr. Tudor]

203 Qq 7 and 26

and deported. Lack of awareness and training among law enforcement agencies may be contributing factors for this. Also, we recommend that the courts should be more proactive in issuing confiscation orders to seize assets from traffickers.

137. In the light of the scale of the problem, in terms of both victims and criminals, we recommend that the Government takes steps to identify best practice in other countries where the volume of both victims rescued and criminal convictions is higher.

6 Protection of victims

138. In this Chapter we consider the effectiveness of the policies and mechanisms established in the UK for the protection of the victims of trafficking, and how they can be improved. In our view this is the most important human rights question falling within the scope of our inquiry, and the protection of victims should be the starting point from which all other policies relating to trafficking, such as the legislative framework to prohibit trafficking and enforcement of the law against traffickers, which we have already discussed, should flow. A victim-centred approach, which the Government claims it is seeking to adopt,²⁰⁴ is not identical with an overall human rights compatible strategy against trafficking, which comprises a mixture of obligations. Protection of victims must nevertheless be firmly at the centre of any such strategy. This conclusion would appear to be borne out by the comparative example of the Italian approach to combating trafficking, which we also describe in this Chapter.

Identification and referral of victims

139. In the first instance it is clearly of vital importance, within a human rights approach to the issue of trafficking, that strategies are developed to ensure that those persons who have been the victims of human trafficking be properly identified. Identification, after all, is not only the first step towards generating better intelligence and securing the criminal prosecution of traffickers and exploiters, it is also essential to ensuring that victims' human rights are protected through the provision of appropriate social services and other support.

140. There are a number of reasons why victims of trafficking may not wish to identify themselves as such to officials – clearly fear of reprisal from their trafficker or exploiter is a significant factor. In addition, evidence suggests that in many cases, victims who are in the UK illegally are concerned that if they come forward, they will simply be returned to their source state, and potentially also charged and punished for a migration offence. Victims of trafficking who come from different cultural backgrounds may experience a distrust of police or other officials, stemming from the corruption of such organisations in their countries of origin. There is also, in many cases, a desire to avoid returning to their home country, which may involve both letting their family and friends know what has happened to them and being placed back in a position of poverty and increased vulnerability, including to re-trafficking. For some victims, moreover, the reason they may be reluctant to identify themselves to authorities as trafficked is because there is insufficient incentive in terms of the treatment afforded to them in the UK to render this worth pursuing, particularly in light of its attendant risks. Finally, it is perfectly possible that, even if stopped and questioned (especially when this occurs at the point of entry only), they may genuinely not yet be aware of what is happening to them.²⁰⁵ This is particularly so in cases where the victim is a child.

141. These obstacles to victim self-identification do not preclude strategies designed to provide information to vulnerable persons and to encourage victims to seek out sources of

204 Q 94

205 Q 52 [Ms Patel]

assistance directly. In addition, though, they enhance the need for training those officials most likely to encounter victims of trafficking in successfully identifying them, rather than waiting for self-referral. Dedicated training regimes have been implemented for police, immigration service and social services officers, and the Home Office Crime Prevention Unit has developed an anti-trafficking toolkit:

“Since 2005, all immigration officers have received awareness training on this subject in the identification of victims as part of their induction training. Guidance documents are available to them setting out who to contact and what services are available. Trafficking profiles are in use in all of our intelligence units up and down the country, and the Home Office has an online tool that is now available to immigration staff or to assist them in the process. In terms of the victim, they are always spoken to in their own language. Whatever the language, they will always be interviewed in that language. Social worker teams are in place at five ports and also screening units, basically to help with the way the person is handled, particularly the needs of unaccompanied children. We have set up minors teams, which are specially-trained teams of immigration officers in interviewing techniques of smaller children, unaccompanied children. Their training is very specialised and it tries to get them to recognise the triggers in the process. It will help them not just to identify the victims but also the perpetrators. By September this year, 600 staff will have received that specialised training so that there is a 24-hour, 7-day a week system in place by which they refer to local authorities for assistance in placing the child.”²⁰⁶

142. In addition, Operation Pentameter “did look at ports and ... had posters and training of immigration and police officers which gave them profiles of what a trafficking victim might look like.”²⁰⁷ Operation Paladin Child involved profiling nationalities and ages of children who were not met at ports and then asking social services to go and look into those children and see what was happening to them.²⁰⁸ These specific examples suggest recognition of the need for further training in the identification of victims of trafficking, as well as the creation of greater will to ensure that this training is provided and taken on board.

143. However, evidence provided to us suggests that the overall picture is one in which, despite many examples of localised good practice, there is a lack of a standardised response, little effective cooperation between agencies, and, crucially, no centralised data collection of numbers of victims, and no clearly defined policy statement on action to be taken to protect victims:

“There are a number of guidance documents, some of which are quite good. The Crime Prevention Unit of the Home Office has a good anti-trafficking toolkit. Anti-Slavery has produced a very good toolkit about how to spot a trafficked person, and actually, interestingly enough, the immigration services' recent “Children Arriving in the UK” document is very good at describing what trafficking is and which countries are likely to use trafficked children, but then there is a holding process, so at the

206 Q 113

207 Q 60

208 Q 62

moment if these children and adults get seen at the airport or at the port of entry they may well come into the category of trafficking but no-one is actually nationally collecting together a database of those people.”²⁰⁹

144. A variety of systemic, procedural and cultural issues arise with regard to the lack of multi-agency cooperation aimed at combating human trafficking. There seems widespread acceptance that “[t]here are a number of agencies that should be involved in the identification of victims - the police and immigration but also social services [and] health professionals, prison officers, probation, the CPS”.²¹⁰ Some steps have been taken towards better cooperation. However, despite these encouraging developments, it has been argued that such measures must take place “right across the country at points of entry” in order to be effective.²¹¹ Concerns have also been expressed that there seem to be no plans to continue nationwide monitoring now that Operation Pentameter has come to an end.²¹² One witness reflected the consensus, calling for a “UK-wide system of identification and referrals, which is what the OSCE recommends”.²¹³ Such a system should encompass authorities likely to come into contact with victims once they are in the country, such as social services and health authorities.

145. In addition, evidence suggests that there may be cultural obstacles to identification and referral within governmental agencies whose guiding imperatives tend not to revolve around victim protection. Of the 387 referrals to the POPPY Project last year, for example, “only 16 were made by immigration. The vast majority were by the police and NGOs.”²¹⁴ This suggests that, despite the initiation of training on identification, more work needs to be done to assist immigration officials in recognising trafficked persons as victims of crime and human rights abuse, rather than as migration offenders. In the absence of this training, evidence provided to us suggests that people who have been trafficked into the UK may not be asked appropriate questions by officials, and as a result will fail to be identified as victims. Various witnesses provided anecdotal evidence of trafficking victims having been sent immediately to detention facilities, to await expedited removal along with non-trafficked illegal migrants. Once in these removal centres, moreover, the likelihood of identifying persons as trafficked is significantly lessened: it is therefore essential that removal centre staff are fully trained in identification of victims.

146. Despite the improvements which have been made to enable trafficking victims to be identified, we agree with those who argued that further significant progress is required so that they can reliably receive protection and co-operate with law enforcement authorities. The law enforcement agencies must work closely with local authorities, NGOs, and other members of civil society in this regard, and further development of training, especially on a multi-agency basis, is required, including for the judiciary and the CPS. We also agree that a national identification and referral system should be established in line with OSCE recommendations. We believe the Government should fund a public outreach and awareness campaign through

209 Q 66 [Ms Finch]

210 Q 65

211 Q 36 [Ms Beddoe]

212 Q 65

213 Q 66 [Ms Joshi]

214 *ibid.*

advertising and the use of a freephone number for victims to self-refer and for those who use prostitutes to refer women whom they think may have been trafficked. Such measures would ensure that the UK was in line with the requirements of Article 10 of the Council of Europe Convention, which requires member states to establish an effective system of identification and referral and to implement training among law enforcement agencies.

147. There is, of course, one further way in which victims of trafficking may be identified, which is via referrals or ‘tip-offs’ from clients who purchase their sexual services, or who frequent establishments where others make such purchases. We were told at the Poppy Project that referrals have been made in this way.

148. This presents a dilemma since on the one hand police strategies to quash demand adopt a zero tolerance approach to those who purchase trafficked women’s sexual services (with rape being suggested as a possible charge) while on the other hand those who use prostitutes can provide a vital source of intelligence, as well as a route to rescuing trafficked women, and must be encouraged to come forward.²¹⁵ **While sexual intercourse without consent is clearly an offence, we consider that men who have used the services of trafficked prostitutes should not be discouraged from reporting to the authorities their suspicions that the women concerned may have been trafficked.** While we note and welcome Mr Coaker’s view that those who genuinely come forward to identify trafficking victims would not be prosecuted for rape,²¹⁶ it is clearly inconsistent for the authorities to suggest that men who use the services of a prostitute who has been trafficked will be prosecuted for rape, especially given the legal obstacles to successful prosecution, and at the same time urge such men to report such activity to the authorities or a helpline. While we understand and recognise the reasons why politicians of all parties have called for prosecution of such men for rape, it does appear that this may have been counter-productive. We would welcome further clarification of the Government’s position on this question in its response to this Report.

149. When identified, victims of trafficking should be promptly informed of their rights in the UK. Such information on rights under the ECHR and other instruments to which the UK is a party should also be disseminated as widely as possible, in co-operation with human rights organisations and other representatives of civil society, among sectors of the population which may include trafficking victims, to encourage them to report cases of human rights abuses with confidence and ease. In this respect we commend an initiative of the Home Office to distribute a document on workers’ rights, published by the TUC, to Accession 8 workers.²¹⁷

150. In relation to child victims of trafficking, we welcome the initiatives which have been taken so far to assist in identifying them, such as the Operation Paladin Child and the establishment of minor teams at Heathrow Airport. We recommend that consideration should be given to the extension of such initiatives to other major rail, air and sea ports of entry to the UK, so that the Government can properly monitor the

²¹⁵ Qq 101–102

²¹⁶ Q 102

²¹⁷ Q 185

flows of trafficked unaccompanied minors and better ensure that they are identified whenever possible on arrival in the UK.

Protection of victims' privacy and identity

151. Under Article 11 of the Council of Europe Convention, as already explained, member states must protect the privacy and identity of victims. In the UK, the Data Protection Act 1998 may be invoked for this purpose.²¹⁸ However, various instances have been reported where victims' privacy has been invaded during court proceedings and they have been traumatised as a result. Protective measures in court, for instance, are *ad hoc* and not used systematically and consistently.²¹⁹ The decision to employ them is a judicial one, and judges do not necessarily have adequate knowledge of the particular needs of trafficked victims. One of the trafficked women we met on our visit to the Poppy project had found her experience of giving evidence against her trafficker a highly traumatic one in the absence of measures to protect her identity. The Serious Organised Crime and Police Act 2005 contains provisions allowing for more sophisticated witness protection programmes to be established in the UK, though we did not receive evidence detailing how these provisions might be used in trafficking cases. **We urge the Government to address the question of protecting victims' identities in court proceedings, through judicial training if appropriate.**

152. Further, while the media has played, and continues to play, an important role in raising awareness of trafficking in the UK, some coverage has also been criticised as being prurient and showing little consideration for victims' on-going safety.²²⁰ Examples include reporters being notified in advance of police raids and the publishing of the names and whereabouts of the victims.²²¹ **In order to discourage media practices which may affect the safety of victims, the Press Complaints Commission should have, and use, wider powers to protect the privacy of victims, as breaches of its Code.**²²²

Initial and early treatment of victims

153. Once a victim of human trafficking has been identified by the UK authorities, a whole new range of problems arises—as a police officer said to one witness, “What do we do?”²²³ The evidence provided to this inquiry indicates that many services simply do not have the capacity to respond to the needs of victims:

“In many cases the police are having to go to their own budgets to accommodate and support women, which we say is an incorrect use of police resources, and trafficking is one of those crimes for which the police do not have performance indicators and

²¹⁸ Appendix 25, para. 40

²¹⁹ *Ibid.*

²²⁰ *Ibid.*, para. 41.

²²¹ *Ibid.*

²²² *Ibid.*, para. 44.

²²³ Q 61

are loath to divert the resources outside of the specialist anti-trafficking unit. They will just not have the time and the resources to make that identification.”²²⁴

154. At present in the UK there is no nationwide support and protection scheme in place for victims of trafficking but “if you do not have the support agencies to refer those women and children to you are in a bind as to exactly what to do.”²²⁵ The current level of support provision may be somewhat clearer when the results of Operation Pentameter are published later this year:

“One of the issues around Pentameter was that we asked for an assessment to be done by each force of what the social services provision was or specialist provision in their area, and if they did rescue a person where they would intend to put that person. There were a different range of agencies, some governmental, some non-governmental, and some social services. Some involved charitable organisations such as CHASTE, churches in Europe and the Salvation Army. There are different refuges in different parts of the country.”²²⁶

155. As things stand, the current approach to victim assistance relies to a large extent upon the Poppy Project. This project provides safe accommodation for trafficked women, run by Eaves Housing in London. It can cater for a maximum of 25 women at one time. Entry to the Poppy Project is determined on what many of those giving evidence to this inquiry considered to be overly narrow criteria – in particular only women who have been trafficked for sexual exploitation and who have been involved in prostitution within the last 30 days are eligible. That said, we heard on our visit to the Poppy Project that it does not find these criteria too problematic, particularly as it has the discretion to be flexible in some cases (15 of the 99 women accepted for accommodation under the scheme between 2003 and 2006 did not in fact meet all the criteria). But some eligible women have had to be turned away due to a lack of space. It was suggested to us on our visit that the Poppy Project is half the size it needs to be, properly to meet the demand for its services, and that similar projects need to be established in other cities. **We believe there is clearly insufficient capacity in the system to provide shelter and specialist support services for the women who need them, and we urge that capacity be expanded as a matter of priority.**

156. Once admitted to the Project, women have access to counselling and advice, as well as medical services and safe accommodation. They will be helped to purchase basic clothing, invited to social events and introduced to health, education and English language services. Bearing in mind that 85% of those involved in prostitution come from outside of the UK,²²⁷ trafficked women who come to the Poppy Project need and have the benefit of interpreters. The Project is also developing its use of cultural mediators to assist women from diverse cultural backgrounds to understand and deal with what is happening to them. While the Home Office has agreed to continue funding the Poppy Project until 2008, its funding position remains dependent upon regular review. Inevitably, this makes long-term planning difficult for those involved with the Project, and does little to create a feeling of

224 *Ibid.*

225 Q 66 [Ms Joshi]

226 Q 132 [DCC Maxwell]

227 Q 19

stability and security for the women involved in the scheme. **We believe it is essential that security of funding is provided for projects of this sort.**

157. Alongside the Poppy Project, there are also a number of other NGOs and voluntary organisations that seek to offer assistance to victims of trafficking (including, in Glasgow, a new centre working specifically with trafficked victims²²⁸). However, much like the Poppy Project, these organisations remain in an uncertain financial position and frequently report that they are not able to provide as much assistance as they would like, or as they believe is required. The importance of these organisations at all stages of the process should not be underestimated: they often “encounter [trafficking victims] first, whether they are community workers, NGOs, people in churches or in anti-racist groups”.²²⁹ And the task faced by these bodies is particularly difficult because “a lot of women from other countries do not have the same understanding of social work services and other NGOs that women have in the UK, so there is a bit of mistrust”.²³⁰

158. For women who do not secure access to the Poppy Project, avenues of less coordinated support remain available. Women who are from the EU are entitled to claim housing benefits, and women who are able to claim asylum may qualify for support and accommodation from the National Asylum Support Service. In both cases, however, this provision does not ensure safe accommodation.²³¹ In addition, they may be eligible for further support, depending on their migration status and their ability to lodge a compelling case for an asylum application. People trafficked into the sex industry may also benefit from the support of sex worker outreach projects, and may be able to access medical services through them. **Victims of sex trafficking must have specialist support.**

159. Beyond these issues of immediate housing, food and medical assistance, a further question arises regarding the level of legal assistance given to victims of trafficking. There are difficult questions relating to funding of legal assistance for victims who wish to make asylum claims upon their discovery. Evidence to our inquiry expressed concerns about the impact of legal aid restrictions, which have “resulted in many asylum applicants being unable to obtain access to good quality legal advice and representation at all stages in the asylum process.”²³² One witness, for example, was concerned that “if we cut off legal aid after a certain number of hours in investigating a woman's immigration claim that might also be discriminatory because the cases of trafficking tend to be more complicated and it takes longer to get the information from the individual.”²³³ There was also some concern expressed regarding the quality of the initial legal assistance that was being provided to victims of trafficking, the following being a situation described as typical by one witness:

“They were given access to legal representation but the information that we got from the POPPY Project who interviewed those women was that the duty solicitor was not really in a position to give them much advice or guidance. There was not any

228 Q 18

229 Q 6 [Ms Dudley]

230 Q 19 [Ms Hamilton]

231 Appendix 10, para. 55

232 *ibid.*, para. 68

233 Q 70

assessment of whether an appropriate adult might be needed for women who were clearly quite vulnerable and intimidated...”²³⁴

160. Given the trauma that is attendant upon the experience of being trafficked, many victims may not be in a position to assess whether they wish to pursue such prosecution, or to assist police in their investigations, immediately upon their rescue. While women who are admitted on to the Poppy Project are given 28 days within which to decide whether they wish to take part in the investigation, there is evidence that others are not given the benefit of a similar period of reflection delay, with many being removed from the UK within 24 to 48 hours, unless they are able to claim asylum.²³⁵ As noted above, there is a concern that many victims of trafficking are simply not recognised as such by the authorities and so are treated and removed as illegal migrants. What is more, even in those cases where it is recognised that a person has been a victim of trafficking, there are no automatic guarantees that removal proceedings will be held in abeyance pending their decision on whether or not to assist the authorities with further investigations. Decisions to allow victims who are not part of the Poppy Project to remain temporarily in the UK are generally taken by the authorities on a case-by-case basis. Witnesses expressed some concerns about this approach:

“if we were able to categorically say to women: ‘You are entitled to this assistance from us for this period of time’ it would allow women breathing space and they would not be concerned about their immediate future or whether they were going to be immediately deported back or remain in police custody. It would go some way towards offering reassurance which women need to have within that initial period of contact with the authorities...Even to offer them that level of support and that categorical reassurance for even just four weeks would be very important in building up women’s ability to trust workers and to begin to slowly disclose what has happened to them.”²³⁶

Victims of trafficking, upon discovery, should have the opportunity to report their experiences to the police and to ask that, where possible, steps be taken against their traffickers or exploiters.

161. In addition, witnesses also noted that there was some evidence to suggest that linking victim support to police co-operation could be counter-productive not only in terms of the victim’s recovery, but also in terms of securing convictions, since it can be attacked by defence lawyers as an incentive to testify.²³⁷

Specific issues relating to children

162. Children are not eligible for entry to the Poppy Project. In April 2004, a safe house for 16 and 17 year old girls who had been trafficked was opened in Sussex. It was, however, closed only a few weeks later, in part due to a lack of referrals from the local authority. No similar schemes have been undertaken since. As a result, the support of child victims of

234 Q 68

235 Appendix 10, para. 47

236 Q 16 [Ms Andrew]

237 Q 69 [Ms Biden]

trafficking falls to be dealt with under the general obligation imposed on local authorities by virtue of the Children Act 1989. This imposes a duty to safeguard and promote the welfare of children who are in need within its area and to provide services with a view to assisting these children.

163. In the context of trafficking, reliance on this general approach can, however, be problematic: “social services have to take these children on but do not really know what to do, so we have case material of trafficked children being put in semi-independent, inadequate accommodation without a lot of support.”²³⁸ We were told on our visit to the Poppy Project that, while there are some pockets of good practice, the support offered to trafficked minors is generally of a poor standard, with cases being encountered where young women disappear without receiving any support. In their evidence to the committee, both ECPAT UK and the NSPCC noted with concern that “most trafficked children are put through an immigration and asylum process without recognition of their special needs as victims of trafficking”.²³⁹

164. One suggested solution to at least some of the problems presented by initial and early treatment of child victims was “the appointment of some sort of guardian or advocate for that young person who has been trafficked, not by the voluntary sector but by the local authority.”²⁴⁰ It was also suggested by witnesses that greater consideration should be given to more “cultural and linguistic support for children who have been trafficked.”²⁴¹ This support should extend from first contact through to the long-term care of trafficked children:

“One of the things that strikes us about the children we work with is the absolute isolation that they feel ... it does take a long time to build a relationship with a child, for them to tell you his or her story and what has happened. We would ask for sustained funding for good services for those children who can offer a variety of needs in different areas: health, accommodation, a lot of befriending, a lot of emotional support, so they can relate the abuse they have experienced and start recovering.”²⁴²

165. The Government told us, in relation to the appointment of a guardian for trafficked children during court proceedings, that local authorities had various relevant responsibilities under the Children Act 1989, and expressed the hope that a situation in which there was no one in a position to communicate a child’s point of view to a court would be the exception. **We nevertheless consider that the question of the support available to trafficked children in legal proceedings, in dealings with other authorities, and in their daily lives, is a matter which needs to be reviewed urgently. We are not persuaded that, generally, local authorities have developed the necessary expertise to cater for the very special needs of trafficked children.**

238 Q 30

239 Appendices 14 and 21

240 Q 34

241 *Ibid.*

242 Q 37

Longer term treatment of victims

166. In the context of long-term care for victims of human trafficking, “[t]here is a range of psychological and physical health issues that may emerge as well as the need for counselling.”²⁴³ This support should be provided primarily as a response to the needs of the victims. However, there may be a secondary reason why it could be useful and “that would be to possibly present as a witness for the prosecution of traffickers and bring them to account.”²⁴⁴ This was recognised by several witnesses:

“Obviously, where victims are prepared to give evidence, we need to give appropriate levels of support. That involves supporting them in terms of emotional support but also practical support in terms of payment for travel back to the UK if they have returned home in the meantime, or providing them with support if they remain in the UK pending giving evidence.”²⁴⁵

167. For those who have been victimised, there may be a strong need to see justice done and to be involved in court proceedings against their traffickers, which should be facilitated while ensuring that only suitable cases are brought to court. We have already considered the question of witness protection for victims of trafficking. **In some cases it may also be necessary to liaise with police forces in the source state to ensure protection for the witness or his or her family (although we recognize that ensuring this kind of protection will not always be easy or possible).**

168. Separate from the question of victims participating in cases against traffickers are issues pertaining to legal proceedings that relate to the victims themselves. A number of those who gave evidence to this inquiry raised the issue of a right to compensation, which was felt to be particularly important in labour exploitation:

“I think, again, if somebody has been exploited, if they have not been paid any money, the idea of them accessing their employment rights is also a bit illusory. It is very difficult for domestic workers to present their argument in an employment tribunal: they do not have any evidence; they will not have any contracts and often they will not have had any tax and national insurance paid on their behalf, so their case might not even be eligible to go to an employment tribunal ... So, I think, in trying to obtain and trying to access the rights that they should have, technically it is very difficult in practice for them to do that.”²⁴⁶

169. However, the difficulties faced by employees in obtaining redress against employers who exploit labour migrants were also highlighted. Often, the immigration status of victims “is such that unless they are employed as a domestic worker they are in breach of the terms of their visas, so if they were to try and seek further support they need to be in employment for their visa still to be valid.”²⁴⁷ For this reason—and the fact that workers feel they must keep a constant stream of funds going back home to their families— it is not uncommon that “the same domestic worker [is] abused by a number of employers because

243 Q 16 [Ms Dudley]

244 *Ibid.*

245 Q 126 [Mr Bolt]

246 Q 175

247 Q 197

... they are a vulnerable person with a lot of responsibility back home.”²⁴⁸ It is important for the authorities to be especially vigilant in this area because often such people “are not recognised as having been exploited because they came here on a legal visa; they have rights in theory but these rights cannot be accessed in practice.”²⁴⁹ Charities expressed considerable disquiet about proposed changes to the domestic worker regime which require domestic workers to enter the country with a named employer, their visa becoming invalid if they leave their employ. **In our view this change would mean that domestic workers who are trying to flee a violent employer would be less likely to do so, and less likely to approach public authorities for help or to report their abuse. We urge the Government urgently to review these proposals and to ascertain their likely negative impact on victims of trafficking.**

170. The Government provides limited legal assistance to trafficking victims in the form of state funded “legal help” to cover their initial asylum or human rights claim and “merits based help” for any subsequent appeals against the Home Office.²⁵⁰

171. As for compensation to victims, the UK has a system of providing compensation to victims of crime. They may, for instance, benefit from the Criminal Injuries Compensation Scheme, established under the Criminal Justice Act 1988.²⁵¹ Under this scheme, victims suffering from criminal injuries are entitled to compensation. Criminal injuries include, but are not limited to, rape, assault, kidnapping, and abduction. In addition, section 130 of the Powers of Criminal Court (Sentencing) Act 2002 authorises the UK courts to make compensation orders against perpetrators of crimes. Further, under the Victims of Violent International Crime (Arrangements for Compensation) (European Communities) Regulations 2005 (in force as of 1 July 2006), the UK provides access to compensation in cross-border situations in EU Member States. Some of these crimes certainly are relevant to trafficking of human beings.

172. Despite these mechanisms being available, as of July 2006 no compensation has yet been awarded to a victim of trafficking.²⁵² When traffickers are in prison and in no position to pay, judges do not normally order compensation, and there is little point in them doing so.²⁵³ As one witness put it:

“The right to compensation is provided for in the Palermo Protocol which the UK has ratified and also in the UN Convention Against Transnational Organised Crime which the UK has ratified. It is also provided for by the Council of Europe Convention which we hope the UK will sign up to in the future. At the moment, the way the compensation mechanisms are working, there are no recorded examples and no support provided that we are aware of where compensation has been awarded either from the UK government or via traffickers where assets are seized as part of the prosecution process. The court does have powers to award compensation in

²⁴⁸ *Ibid.*

²⁴⁹ Q 165

²⁵⁰ Appendix 25, para. 132

²⁵¹ Followed by the Criminal Injuries Compensation Act 1995 (c. 53).

²⁵² Q 82 and Appendix 23

²⁵³ Appendix 25, para. 135

addition to custodial sentences. There is some scope for compensation to come from the proceeds of crime, not out of the general government, Treasury pool.”²⁵⁴

173. Taking into account the various international instruments bearing on obligations to provide compensation to trafficking victims which we have already set out in Chapter 2, and the obligations which would be incurred under Article 15 of the Council of Europe Convention if that were ratified, **we consider that, for the avoidance of doubt, the simplest way to achieve this would be to clarify the Criminal Injuries Compensation Scheme rules as to the entitlement of trafficking victims to claim under the Scheme. This could be dealt with as part of the current review of the Scheme.**

Asylum and removal

174. A further issue which arises in regard to the long-term protection and legal representation of victims of trafficking relates to their options in terms of residence within the UK. The difficulties with obtaining legal aid and proper representation for asylum claims discussed above clearly have a bearing in this context, since while the representation is required immediately, its impact is decidedly longer-term. Even where the applicant has been identified as a victim of trafficking, the asylum interviews and appeals hearings are interrogative, rather than investigative. According to Amnesty International, the Government does not always have procedures in place for protecting victims of trafficking, enabling them to give an account of their experiences and investigating risks in source states.²⁵⁵ Women who are admitted onto the Poppy Project are allowed to remain there for up to 12 weeks, so long as they are co-operating with the authorities and are in a position to be able to provide information that is relevant to any future prosecution of those who may have trafficked and exploited them. Thereafter, they must either return to their source states, or apply to remain in the UK via normal procedures. Under these procedures, the UK operates a case-by-case system, under which each application to remain is considered on its individual merits. Mr David Wilson of the Immigration and Nationality Directorate told us that the immigration service would only take a decision to remove and repatriate a victim of trafficking where it was appropriate to do so.²⁵⁶ In all cases, the option remains for the victim to be allowed to stay in the UK, either on a temporary or a permanent basis, most commonly because he or she was assisting in criminal proceedings or because it was deemed to be unsafe to return them to their country of origin. There is, however, no provision to conduct a formal risk assessment in all cases involving trafficking victims prior to their return.²⁵⁷ Without such an assessment it is not possible to be certain that removal or repatriation of a victim would be appropriate. **We recommend that such assessments be introduced.**

175. Evidence frequently noted the difficulties with securing asylum for victims of trafficking: “of the POPPY Project women who, of course, all were known to the Home Office, none were granted asylum when they first applied for it but many of them were granted it on appeal.”²⁵⁸ Of course, the fact that such leave was eventually obtained can be

254 Q 82

255 Appendix 10

256 Q 156 [Mr Wilson]

257 Appendix 2

258 Q 66 [Ms Finch]

read in a positive light, but evidence presented to us frequently indicated that such cases represented very much the exception, rather than the rule.

176. Mr Wilson also told us that most victims of trafficking are not deported and are not subject to deportation procedure: rather they may be subject to administrative removal.²⁵⁹ We were assured that whatever the nature of the removal process, immigration officers take the ECHR, particularly Articles 3 and 8, into consideration in making decisions.²⁶⁰ Mr Coaker emphasised that the Government would not knowingly return a trafficking victim to his or her country of origin if they were going to be re-trafficked,²⁶¹ and that the Government liaises with the governments, NGOs and others in source countries to make sure that people who are sent back are not re-trafficked.²⁶²

177. In practice, however, from other evidence we have received it would appear that trafficking victims who have entered the UK illegally may find themselves treated as immigration offenders rather than victims of human rights violations.²⁶³ Mr Coaker himself referred to six of the women rescued by the highly-publicised raid on the Cuddles massage parlour as “immigration offenders”,²⁶⁴ though he later said that not all people coming into contact with the authorities as a result of trafficking operations were treated as such.²⁶⁵ The immigration authorities are said to be under pressure to meet removal targets, and removal inevitably is going to be the priority for them.²⁶⁶ The process is speedy, and this, coupled with a lack of adequate knowledge and training, makes it difficult to identify victims properly, the first stage in assuring the protection of victims’ rights.²⁶⁷

178. Where victims of trafficking are removed and returned to their source states, it appears that the UK authorities are limited in the measures they can take to ensure that they receive sufficient care thereafter. The form of this work is primarily “through liaison with governments, through the work we try to do with non-government organisations in those countries, and with other groups.”²⁶⁸ While some respondents suggested that re-trafficking was not especially prevalent upon repatriation, other witnesses indicated that this simply reflected a lack of knowledge and monitoring.²⁶⁹ What is more, others suggested that the risk of re-trafficking once returned to a source state remained serious:

“In terms of people being returned from the UK we are aware from the POPPY Project that they have anecdotal evidence to suggest that there is a high vulnerability to re-trafficking when people are returned from the UK. Approximately 20 per cent of the women that they have been supporting they find are re-trafficked. In one case a person was resold by her family within three days of being returned so there is

259 Q 156 [Mr. Wilson]

260 *Ibid.*

261 Q 128

262 Q 136

263 Q 27 [Ms. Patel] Q 189, Appendix 16, para. 51, and Appendix 25, para. 27

264 Qq 127, 128

265 Q 154

266 Q 65

267 Appendix 16, para. 53. See also Qq 23 and 65, and Appendix 10, para. 31, and Appendix 23

268 Q 136

269 Q 78

certainly evidence emerging in returns specifically from the UK where re-trafficking is a big problem.”²⁷⁰

179. In addition, although witnesses often supported voluntary return, many expressed concerns about the ‘safe list’ of countries from which asylum claims are presumed to be unfounded (which includes key trafficking source states such as Moldova and Albania),²⁷¹ as well as the IND forced returns programme which is currently looking at Vietnam, the Democratic Republic of Congo and Angola:

“We are extremely concerned by this particular programme given the nature of information about children who we believe have been trafficked in from Vietnam at the moment, all of whom have been brought into the UK from Vietnam but who are in a very high risk situation. The risk to re-trafficking if they are not returned with a long-term and monitored durable situation is something that we should be avoiding. We should not be sending children back to a situation if we cannot guarantee and monitor a long-term response for each and every child. The risk to children in Vietnam of re-trafficking is extremely high and there is enough documented information about this because of the trafficking patterns from Vietnam to China to Hong Kong to Cambodia and there are very good organisations working on these issues.”²⁷²

180. In relation to child victims, evidence submitted to us emphasised the potential conflict between UK immigration and asylum policy and child protection principles, which dictate that the primary consideration is the best interests of the child. Calls were made for the Government to remove its reservation to the UN Convention on the Rights of the Child in relation to immigration control.²⁷³ **The previous JCHR pressed the Government to remove this reservation,²⁷⁴ and in our view the need for this to be done is further strengthened by its potential effect in relation to child trafficking victims if their best interests are not to be compromised. In their submissions, both the NSPCC and ECPAT UK emphasised the need for specialist support services and safe houses for child victims of trafficking, and suggested that such victims should automatically have a right of residence regardless of their willingness to take part in criminal proceedings.²⁷⁵ We agree with these recommendations.**

181. The Poppy Project said that a number of victims of trafficking are subjected to immigration detention and deportation once they have provided evidence to the police, and that deportations take place without any regard for the abuses that victims have suffered in the UK and in source states, and without risk assessments.²⁷⁶ Although unaccompanied minors are not returned to their source states as noted earlier, a concern was expressed over the forced returns programme in Vietnam and other countries

270 Q 77 [Ms Biden]

271 Appendix 10, para.88

272 Q 45

273 Q 27, 39 & 40

274 Tenth Report of Session 2002-03, *The UN Convention on the Rights of the Child*, HL Paper 117/HC 81, para. 87, and Seventeenth Report of Session 2004-05, *Review of International Human Rights Instruments*, HL Paper 99/HC 264, para. 49

275 Appendices 14 and 21

276 Appendix 23

currently being promoted by the Home Office, which can be applied to victims of trafficking.²⁷⁷

182. Such a practice can be seen as a violation of victims' human rights, and Article 16 of the Council of Europe Convention would oblige the UK to make sure that victims return to their source states voluntarily and safely. **The Government should conduct more rigorous research on source countries in order to make an accurate assessment on victims' return. In relation to voluntary repatriation, as we have already suggested, the Government must work closely with appropriate authorities and NGOs in source countries to ensure that victims are able to reintegrate into their societies.**

The Italian approach

183. Italy's approach to dealing with human trafficking was commended to us both in formal evidence and in informal discussions as one which unequivocally placed the interests and welfare of trafficking victims at its centre, and was an example which might be followed by the UK in devising a more human rights sensitive strategy in relation to trafficking. We therefore decided to visit Italy to see what we could learn from their practice. We held discussions in Rome and Venice, principally with officials from the Communes, or municipal authorities, of those two cities responsible for the social protection programmes provided for trafficking victims, as well as with representatives of NGOs who provided support services under those programmes. Our discussions related almost exclusively to the issue of trafficking for sexual exploitation, the predominant form of trafficking in Italy, as it appears to be in the UK.

184. The cornerstone of Italian legislation to afford assistance and protection to victims of trafficking is Article 18 of Legislative Decree 268/98 (henceforth "Article 18"). Enacted in 1998, this was described to us as the first specific anti-trafficking legislation adopted by a European country. The law provides a right to a six-month residence permit and social protection assistance to trafficking victims who co-operate with the authorities. Such co-operation could take two forms, either a formal denunciation made by the victim to police and then the giving of evidence against those accused of trafficking (the "judicial path"), or the less formal giving of a statement to police in association with an application for a permit made on behalf of the victim by social services or NGOs (the "social path").

185. In connection with Article 18 a national freephone telephone number has been instituted, which received nearly 500,000 calls from July 2000 to March 2006. Most of these came from ordinary Italian citizens, but about 47,000 came from trafficking victims and about 25,000 from the clients of victims, providing a major source of referrals for social protection.

186. The initial six-month residence permit may be extended for one year or for a longer period if required for judicial purposes. The underlying intention behind the system as described to us was that while benefiting from temporary residence permits trafficking victims can receive accommodation, and welfare, health and education services with a view to integrating them into Italian society. Residence permits can therefore be converted into work permits when victims obtain employment. No provision was made in Italy for

reflection periods as such. In a sense, the residence permit itself provides a reflection period. At the same time it was explained to us that it had been a conscious decision not to appear to be placing pressure on trafficking victims by giving a deadline for co-operation with the authorities.

187. The Italian authorities granted 851 residence permits under Article 18 in 2002. In 2003, they granted 848 permits, in 2004 436, in 2005 367, and in 2006 (up to the end of May), 349. The drop in numbers from 2004 onwards came as a result of a change in the law in that year, whereby integration of individuals into society was sought by encouraging the issue of work permits rather than by renewing residence permits. Overall, between 1999 and 2006, 448 Article 18 social protection projects were operational throughout Italy. Between 2000 and 2005, 9,398 women participated in projects, and 4,625 had been helped to find employment. Most of the women assisted (52%) were from Nigeria, with significant numbers also coming from Eastern European countries, mainly Romania, Moldova, Albania and Ukraine.

188. Co-ordination and oversight of Article 18 social protection projects is undertaken by the social services departments of local authorities, co-funded with central Government. Some services are provided directly by local authorities, others by religious or secular NGOs following submission of tenders to the local authority. In Rome the social protection project “Roxanne” cost the municipality €1,400,000 a year, with the central Government Department for Equal Opportunities contributing €120,000 in addition. This funded four outreach teams to contact people on the streets, teams to provide legal and social counselling, ten community shelters to house women who had escaped prostitution after being trafficked, providing 55 places in total at any one time, as well as health and educational provision. Approximately 5,000 women were contacted each year on the streets of Rome (a figure which includes non-trafficked women as well as those who have been trafficked), and, between 1999 and 2004, 328 women had been sheltered within communities under the project. In Venice, we were told that 172 people had begun Article 18 social protection programmes since 1999, of whom 158 had successfully concluded them. In both Rome and Venice an important role was played by so-called “cultural mediators”, people usually of the same nationality as the victim who could understand her experiences and explain to her the rights which she had within Italian society.

189. Aside from Article 18 social protection projects, Italy employs a variety of other mechanisms in its anti-trafficking strategy. A new definition of the offence of human trafficking was introduced into law in 2003, carrying a sentence of between 8 and 20 years imprisonment on conviction, with more severe sentences in the case of aggravating circumstances such as an offence involving a victim of less than 18 years of age. Italy also has an assisted repatriation programme, working with the International Organisation for Migration, for those victims who wish to return to source states. The programme seeks to repatriate people in total safety, with occupational training to enable them to secure employment in their home countries. Approximately 80 people a year were repatriated under the programme, and we were told that none had been re-trafficked. Alongside this, Italy also has a prevention programme involving aid for Eastern European countries: in its first year, this programme covered Moldova, Ukraine, Romania and Albania, with Bulgaria, Hungary, Bosnia-Herzegovina and Croatia also included in the second year, ending in March 2006. Activities run under the programme included meetings with local organisations and talks to schoolchildren, as well as involving the media and TV

advertising campaigns, to get across the message that trafficking ruined lives. Significant reductions had been achieved in the numbers of those trafficked from the four countries included in the first year of the programme.

190. Though it is not easy to assess the scale of trafficking into Italy in comparison with trafficking into the UK, we were highly impressed by the way in which the proactive victim-centred approach adopted in that country has allowed such high numbers of trafficking victims to be supported and ultimately integrated into Italian society. The Article 18 social protection process also appears to have had a significant effect in securing successful prosecutions of traffickers, by assuring victims that their security will not be jeopardised if they denounce or give evidence against those who have trafficked them. If victims feared they would be deported after co-operating with the authorities, we were told, they would not be motivated to give such co-operation. Notwithstanding the difficulties of unravelling the complex international criminal organisations involved in human trafficking, in 2004, in Italy, 3,266 people had been reported to the judiciary for trafficking offences, of whom 412 had been arrested. In 2005, 2,943 people had been reported, resulting in 356 arrests.

191. Successful prosecutions of traffickers, along with prevention programmes in source states, have reduced significantly numbers of women trafficked into Italy from Albania, Moldova and Ukraine. This did not necessarily mean an overall reduction in numbers trafficked, as new patterns of trafficking were emerging from other Eastern European countries and from countries such as Thailand. But Italian officials, rightly in our view, did not see this as an argument against taking action. Perhaps as significantly as the impact on numbers trafficked from individual states, we heard that the successes of Article 18 and associated policies had caused traffickers to moderate the previously brutal levels of violence and psychological coercion which they employed against the women they trafficked, both to make the women less likely to seek Article 18 protection and to reduce the likelihood of them being convicted of trafficking offences.

192. We were assured that safeguards were present against the abuse of Article 18 protection. The principal safeguard was that a precondition of social protection assistance was an investigation by the police into relevant offences, with the victim's co-operation taken into account. NGOs running social protection programmes had to be officially registered, with checks every 6 months into organisations and individuals being afforded protection. If people failed to follow the programmes provided for them, residence permits could be revoked, although this occurred in a minority of cases. In Venice, for example, we were told that 13% of those who had begun a social protection programme had failed to complete it.

193. Nor did the Italian authorities consider that an immigration "pull" factor was operating as a result of the support and assistance provided under Article 18. Claims for social protection have to be supported by evidence of victim status as a result of specific offences of trafficking, and residence permits are refused in the small percentage of cases where such evidence is not forthcoming.

194. The Italian system is not always perfect in practice. We heard of isolated instances where trafficking victims had been deported without being informed of their rights to Article 18 assistance, and of the police being unwilling to accept the validity of the social

path to claiming a residence permit. The condition for Article 18 assistance of co-operation with the authorities could also be criticised on the grounds that protection should be afforded on the basis of need, not contingent on other factors. However, this criterion did not appear to be applied in practice so stringently as to cause any noticeable deterrent effect.

195. Despite these flaws, the overall picture we encountered in Italy was one of a concerted and well-designed policy founded on the strong moral basis of the need to assist women to escape from the servitude of trafficking for sexual exploitation, to which all other considerations were secondary. This policy, applied energetically and with political and administrative will by central and local government and NGOs, has not only served its immediate purpose of reducing the suffering and misery of such women, but has also materially assisted in bringing traffickers to justice. The numbers of trafficking victims assisted in Italy, and the numbers of traffickers arrested, far exceed the comparable figures for the UK. One reason for this, we believe, is that in Italy street prostitution is not unlawful, which means that the victims themselves are both visible and accessible to the outreach teams. **While all elements of the Italian anti-trafficking approach may not be transferable to the UK context, the fundamental philosophy behind it is one which we found highly attractive and impressive. Its clear harmony with human rights principles has had a profound influence on our thinking about human trafficking policy within the UK, and we commend it as a model for our own Government in developing its strategy against human trafficking. We further urge the Government to conduct its own research into the effectiveness of the Italian approach.**

Conclusions on protection of victims

196. In the course of this Chapter so far we have considered current practice in the UK in relation to the protection of trafficking victims and found that, despite some welcome improvements, evidence shows that the human rights imperative to protect victims still takes second place in practice to other public policy demands, including in particular the desire to control immigration. This clearly compromises the Government's declared intention to promote a victim-centred approach.²⁷⁸ The various recommendations we have already made would all have the effect, in our view, of bringing the Government much more fully into line with the relevant provisions of the international human rights instruments to which the UK already subscribes, as well as going much of the way to making it possible for the Government to sign and ratify the Council of Europe Convention in good faith. We now summarise our principal conclusions and recommendations in relation to the protection of victims, and give our views on those Articles of the Convention which have been the focus of most attention and controversy, and which have been cited by the Government as the principal reason for their delay in deciding whether to sign the Convention, relating to recovery and reflection periods and residence permits.

197. As we have made clear, despite the legislation in place to criminalise trafficking, there is no specific legislation in the UK granting protection to the victims of trafficking. Protection is given on a discretionary case-by-case basis, and on the condition that victims co-operate with the authorities. **While many of those who submitted evidence agree that**

the Government has started taking some significant steps, and notwithstanding assurances given to us, we consider that the current level of protection provided to trafficking victims as a whole is still far from adequate. Either through legislation or other means, effective protection of trafficking victims must be put on a far more reliable basis in order to meet the UK's human rights obligations.

198. More specifically, the Government needs to—

- improve and develop training in the identification of victims, and ensure that those who are identified as victims of trafficking are not treated as criminals or immigration offenders
- ensure a more comprehensive approach to the provision of basic support and assistance to victims upon their discovery
- place finance for victim support and accommodation on a secure footing, although its provision will extensively involve the experience, assistance and resources of NGOs
- put adequate procedures in place to ensure that victims of trafficking are provided with appropriate support (including interpreters and legal advice) to pursue effectively an application for residence within the UK
- do more to assist those who are returned to their country of origin (or voluntarily repatriated) to re-integrate into their home society without increased vulnerability, particularly to re-trafficking.

Reflection periods and residence permits

199. We have carefully considered the concerns expressed by the Government about the potential for reflection periods and residence permits, as provided for in Articles 13 and 14 of the Council of Europe Convention, to act as an immigration pull factor. The Government has made no claim that they would create a pull factor in terms of actual victims of trafficking.²⁷⁹ Given that trafficking takes place under conditions of coercion or deception such a claim would not of course make sense. It is not credible to suggest that a woman would voluntarily submit to indeterminate sexual slavery of the most brutal kind for the purpose of obtaining UK residency. Instead the Government argues that a pull factor could be created for those who would be willing to make fraudulent claims of trafficking victim status.²⁸⁰

200. The bulk of the evidence submitted by NGOs in this inquiry suggests, however, that such concerns are largely, if not entirely, unfounded. Nor did we find any evidence of a pull factor resulting in fraudulent claims to have been trafficked arising from Italy's Article 18 procedure. Safeguards exist within the Convention itself, so that reflection periods do not have to be provided if fraudulent claims are made. **We therefore do not accept that there is any realistic likelihood that the Convention's provisions relating to reflection periods and residence permits would act as a pull factor for migration into the UK.**

279 Q 142 [Mr Coaker]

280 Q 141

201. On the other hand, evidence clearly suggests that these provisions would perform a vital role in ensuring that victims have appropriate access to basic information on what their rights might be in terms of immediate support and protection and health care, in terms of their right to claim asylum, and in terms of their right to legal assistance or to compensation.²⁸¹ The evidence also suggests the provisions would be helpful in ensuring the eventual prosecution of traffickers.

202. **We find the twin concepts of reflection periods and residence permits to be highly attractive as guarantors of the protection of the human rights of trafficking victims and of the provision of other protection and support measures to them. In Italy, as we have noted, there is no provision for reflection periods as such, although temporary residence permits provide *de facto* reflection periods, and have protected victims' human rights effectively. However, especially given the safeguards contained in the Convention, we consider that all the evidence supports the case for the UK to adopt these provisions.**

203. In the case of reflection periods, Article 13 of the Convention provides for them to be a minimum of 30 days. Given the depth of trauma and suffering that many victims of trafficking will have experienced, we share the view of those who consider that this period will not be long enough in a significant proportion of cases for victims to recover and decide whether to co-operate with the authorities. **We understand the point made by the Government that delays in co-operation with the authorities by victims may reduce the likelihood of successful apprehension and conviction of traffickers, but the welfare of the victim must be the paramount consideration. We consider that three months would be an appropriate standard length of time for reflection periods.**

204. We welcome the fact that renewable residence permits under Article 14 of the Convention are to be granted if either a victim's personal need makes it necessary or in order for them to co-operate with investigations or criminal proceedings. The Article does not specify the length of the temporary residence permits which must be granted under it. **Although we recognise that the UK is not bound by it, we recommend that the Government uses the Council Directive on Residence Permits as a model for residence permits for victims. This Directive obliges Member States of the EU to provide residence permits of six months.**

Signature and ratification of the Council of Europe Convention

205. We are firm in the belief that the UK should sign and ratify the Council of Europe Convention. We can see no convincing argument against this course of action. While it would be possible for the UK to construct a coherent human rights based approach to tackling human trafficking outside the Convention, adherence to it in concert with the other nations of the Council of Europe will in our view greatly strengthen the framework of anti-trafficking policy in the UK, notably in relation to the core matter of the protection of victims.

281 Q 58 [Ms Joshi]

7 Conclusions and recommendations

The Government's consultation on a UK Action Plan

1. We welcome the Government's consultation on its National Action Plan to combat human trafficking, and urge the Government to take the responses to that consultation on board in order to promote an effective human rights approach to combating trafficking. While this Report is not a formal response to the Government's consultation, many of our conclusions and recommendations mirror those submitted to the Government during that consultation. We expect the conclusions and recommendations contained in this Report to be given serious consideration by the Government when it decides the contents of that Action Plan. (Paragraph 10)

The scale and extent of the problem

2. We urge the Government to publish the research into organised crime markets currently being conducted by Home Office researchers, which may assist in providing a clearer picture of the scale and extent of human trafficking into the UK. We foresee however a probable need for further follow-up research to be conducted to scope the problem in relation to all forms of trafficking, and we urge the Government to give priority to such research in order to give a more solid basis for the development of anti-trafficking policy. (Paragraph 82)

Prevention measures in source countries

3. In light of the impending accession to the EU of Romania and Bulgaria, we urge the Government to work with these countries to inform and educate girls and women of the dangers that arise from accepting "job opportunities" without going through the proper channels. (Paragraph 97)
4. We suggest the following measures for improvement of the Government's actions for prevention of trafficking in source countries:
 - In relation to awareness raising programmes, it has been noted that although they address the process of trafficking, many of them do not cover the causes of trafficking, which are often extreme poverty and unemployment. In order to promote a holistic approach which addresses wider issues surrounding trafficking, these awareness-raising programmes should also aim to enhance people's opportunities, and encourage community action and education. In so doing, the Government should communicate with local authorities and community organisations in source states as far as possible, as they are better suited to assess the local needs. Further, the awareness-raising should also include information on how to migrate legally to the UK so that migrants are not exploited by traffickers, and on the rights of migrant workers in the UK.
 - We recognise that UK embassies and consulates in source states have an important role to play in preventing people from being trafficked. They should be more

proactive in providing information on the dangers of trafficking so that potential victims have a better idea of what to expect. In order for staff at embassies and consulates to carry out preventive activities, appropriate training and awareness raising should be conducted more rigorously so that they are better able to identify potential and actual victims of trafficking and prevent traffickers from exploiting them.

- Further, the Government should provide greater technical assistance to law enforcement agencies in source and transit states so that they can detect and tackle trafficking and other organised crimes more effectively. (Paragraph 100)

Tackling demand

5. The Government must ensure that the research it is currently conducting and its future research effort contributes to a much clearer understanding of demand for trafficked people both for sexual and labour exploitation in the UK, including the reasons why individuals and businesses in the UK continue to seek trafficked people. (Paragraph 105)
6. The Government should disseminate information obtained through research to those responsible for combating trafficking both within and outside the UK so that they can use it as guidance to devise and implement policies to prevent people from falling into the hands of traffickers. (Paragraph 106)
7. We commend the imaginative publicity techniques employed by Operation Pentameter to change the attitudes of men towards women and raise awareness of the phenomenon of trafficking. However, we recommend the authorities evaluate the effectiveness of these techniques. We recommend that the Government conduct further programmes and awareness-raising campaigns to change the attitudes of the general public towards migrants so that their rights and freedoms are protected. (Paragraph 107)
8. Those who employ trafficking victims should be named publicly so as to prevent potential employers and others from doing the same. The Government should also engage in a dialogue with sectors of the business community which might be at risk of employing migrants illegally. (Paragraph 108)
9. The minimum wage legislation, as well as measures against illegal employment, should be rigorously enforced to reduce the demand for trafficked workers. The establishment of a single body (such as the Fair Employment Commission) to enforce workers' rights would be a desirable first step. (Paragraph 109)
10. We consider that the development of lawful and managed migration channels, which recognise the essential role that migrant labour plays in the British economy, is an essential part of a successful anti-trafficking strategy. (Paragraph 110)

Prohibition of trafficking

11. We broadly agree that the current framework to prohibit and criminalise trafficking complies with the relevant human rights obligations to prohibit the practice. (Paragraph 115)
12. We recommend that the Government should give urgent consideration to the extent to which section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the provisions of the Immigration, Asylum and Nationality Act 2006 concerning employment of illegal migrants fail to address the specific circumstances of trafficking and its victims. (Paragraph 116)
13. We agree with those who argued that the legislative framework on trafficking must reflect a human rights approach. To begin with, the protection of victims of trafficking should be incorporated into, and placed at the heart of, the legislative framework. This will require the Government to review immigration laws and policies currently in place in the context of their impact on the victims of trafficking. The focus should be shifted from immigration control to the prevention of exploitation of migrants and workers, and care of victims. Promotion and protection of workers' rights through enforcement of laws on slavery, working hours and the minimum wage, for instance, can also reduce incentives for employers to exploit migrants and therefore reduce the demand for trafficked people. In this regard, the Government must have due regard to its obligations under Article 4 (prohibition on slavery) of the ECHR and Articles 6 (Right to Work) and 7 (Right to Just and Favourable Conditions of Work) of the International Covenant on Economic, Social and Cultural Rights 1966. (Paragraph 118)

Investigation, prosecution and punishment of traffickers

14. We acknowledge and applaud the ongoing effort of the Government to improve investigation, and the bringing to justice of traffickers, and agree that the second arm of the Government's "twin-track" approach, the tough law enforcement approach, is now being pursued with some effectiveness. (Paragraph 133)
15. We warmly welcome the establishment of the UK Human Trafficking Centre to provide further co-ordination and focus to law enforcement efforts. (Paragraph 133)
16. The UK Human Trafficking Centre must ensure as a matter of urgency that its objective of developing a victim-centred approach to trafficking is articulated clearly and swiftly, that this objective remains a central one, informing all its law enforcement and other activities, and that policies are implemented consistently by the UK's different police forces and enforcement authorities. Enforcement of the law against trafficking must always make the interests and the needs of the victims a primary consideration, and their protection should be at the heart of any law enforcement measures. In our view, this is necessary to ensure that the Government fully meets its human rights obligation to investigate, prosecute and punish traffickers fully. (Paragraph 134)
17. The UK Human Trafficking Centre and all other authorities will need to address the concerns expressed by many of those who submitted evidence that there is a lack of

adequate knowledge, training, co-ordination/communication and resources on trafficking among law enforcement agencies, other concerned agencies, and NGOs at local and national levels. (Paragraph 135)

18. While the legislative framework to prohibit trafficking is clearly in place, we share the concerns of those who say that there have not been enough prosecutions under the existing laws on trafficking, compared to the number of victims arrested, detained and deported. Lack of awareness and training among law enforcement agencies may be contributing factors for this. Also, we recommend that the courts should be more pro-active in issuing confiscation orders to seize assets from traffickers. (Paragraph 136)
19. In the light of the scale of the problem, in terms of both victims and criminals, we recommend that the Government takes steps to identify best practice in other countries where the volume of both victims rescued and criminal convictions is higher. (Paragraph 137)

Protection of victims

20. Despite the improvements which have been made to enable trafficking victims to be identified, we agree with those who argued that further significant progress is required so that they can reliably receive protection and co-operate with law enforcement authorities. The law enforcement agencies must work closely with local authorities, NGOs, and other members of civil society in this regard, and further development of training, especially on a multi-agency basis, is required, including for the judiciary and the CPS. We also agree that a national identification and referral system should be established in line with OSCE recommendations. We believe the Government should fund a public outreach and awareness campaign through advertising and the use of a freephone number for victims to self-refer and for those who use prostitutes to refer women whom they think may have been trafficked. Such measures would ensure that the UK was in line with the requirements of Article 10 of the Council of Europe Convention, which requires member states to establish an effective system of identification and referral and to implement training among law enforcement agencies. (Paragraph 146)
21. While sexual intercourse without consent is clearly an offence, we consider that men who have used the services of trafficked prostitutes should not be discouraged from reporting to the authorities their suspicions that the women concerned may have been trafficked. While we note and welcome Mr Coaker's view that those who genuinely come forward to identify trafficking victims would not be prosecuted for rape, it is clearly inconsistent for the authorities to suggest that men who use the services of a prostitute who has been trafficked will be prosecuted for rape, especially given the legal obstacles to successful prosecution, and at the same time urge such men to report such activity to the authorities or a helpline. While we understand and recognise the reasons why politicians of all parties have called for prosecution of such men for rape, it does appear that this may have been counter-productive. We would welcome further clarification of the Government's position on this question in its response to this Report. (Paragraph 148)

22. When identified, victims of trafficking should be promptly informed of their rights in the UK. Such information on rights under the ECHR and other instruments to which the UK is a party should also be disseminated as widely as possible, in co-operation with human rights organisations and other representatives of civil society, among sectors of the population which may include trafficking victims, to encourage them to report cases of human rights abuses with confidence and ease. In this respect we commend an initiative of the Home Office to distribute a document on workers' rights, published by the TUC, to Accession 8 workers. (Paragraph 149)
23. In relation to child victims of trafficking, we welcome the initiatives which have been taken so far to assist in identifying them, such as the Operation Paladin Child and the establishment of minor teams at Heathrow Airport. We recommend that consideration should be given to the extension of such initiatives to other major rail, air and sea ports of entry to the UK, so that the Government can properly monitor the flows of trafficked unaccompanied minors and better ensure that they are identified whenever possible on arrival in the UK. (Paragraph 150)
24. We urge the Government to address the question of protecting victims' identities in court proceedings, through judicial training if appropriate. (Paragraph 151)
25. In order to discourage media practices which may affect the safety of victims, the Press Complaints Commission should have, and use, wider powers to protect the privacy of victims, as breaches of its Code. (Paragraph 152)
26. We believe there is clearly insufficient capacity in the system to provide shelter and specialist support services for the women who need them, and we urge that capacity be expanded as a matter of priority. (Paragraph 155)
27. We believe it is essential that security of funding is provided for projects such as the Poppy Project. (Paragraph 156)
28. Victims of sex trafficking must have specialist support. (Paragraph 158)
29. Victims of trafficking, upon discovery, should have the opportunity to report their experiences to the police and to ask that, where possible, steps be taken against their traffickers or exploiters. (Paragraph 160)
30. We consider that the question of the support available to trafficked children in legal proceedings, in dealings with other authorities, and in their daily lives, is a matter which needs to be reviewed urgently. We are not persuaded that, generally, local authorities have developed the necessary expertise to cater for the very special needs of trafficked children. (Paragraph 165)
31. In relation to the involvement of victims in court proceedings against their traffickers, in some cases it may be necessary to liaise with police forces in the source state to ensure protection for the witness or his or her family (although we recognize that ensuring this kind of protection will not always be easy or possible). (Paragraph 167)
32. In our view proposed changes to the domestic worker regime would mean that domestic workers who are trying to flee a violent employer would be less likely to do,

and less likely to approach public authorities for help or to report their abuse. We urge the Government urgently to review these proposals and to ascertain their likely negative impact on victims of trafficking. (Paragraph 169)

33. We consider that, for the avoidance of doubt, the simplest way for the Government to meet obligations relating to the provision of compensation to trafficking victims would be to clarify the Criminal Injuries Compensation Scheme rules as to the entitlement of trafficking victims to claim under the Scheme. This could be dealt with as part of the current review of the Scheme. (Paragraph 173)
34. We recommend that risk assessments be introduced in relation to removal or repatriation of trafficking victims to their countries of origin. (Paragraph 174)
35. The previous JCHR pressed the Government to remove its reservation to the UN Convention on the Rights of the Child in relation to immigration control, and in our view the need for this to be done is further strengthened by its potential effect in relation to child trafficking victims if their best interests are not to be compromised. In their submissions, both the NSPCC and ECPAT UK emphasised the need for specialist support services and safe houses for child victims of trafficking, and suggested that such victims should automatically have a right of residence regardless of their willingness to take part in criminal proceedings. We agree with these recommendations. (Paragraph 180)
36. The Government should conduct more rigorous research on source countries in order to make an accurate assessment on victims' return. In relation to voluntary repatriation, as we have already suggested, the Government must work closely with appropriate authorities and NGOs in source countries to ensure that victims are able to reintegrate into their societies. (Paragraph 182)
37. While all elements of the Italian anti-trafficking approach may not be transferable to the UK context, the fundamental philosophy behind it is one which we found highly attractive and impressive. Its clear harmony with human rights principles has had a profound influence on our thinking about human trafficking policy within the UK, and we commend it as a model for our own Government in developing its strategy against human trafficking. We further urge the Government to conduct its own research into the effectiveness of the Italian approach. (Paragraph 195)
38. While many of those who submitted evidence agree that the Government has started taking some significant steps, and notwithstanding assurances given to us, we consider that the current level of protection provided to trafficking victims as a whole is still far from adequate. Either through legislation or other means, effective protection of trafficking victims must be put on a far more reliable basis in order to meet the UK's human rights obligations. (Paragraph 197)
39. More specifically, to improve protection of trafficking victims the Government needs to—
 - improve and develop training in the identification of victims, and ensure that those who are identified as victims of trafficking are not treated as criminals or immigration offenders

- ensure a more comprehensive approach to the provision of basic support and assistance to victims upon their discovery
 - place finance for victim support and accommodation on a secure footing, although its provision will extensively involve the experience, assistance and resources of NGOs
 - put adequate procedures in place to ensure that victims of trafficking are provided with appropriate support (including interpreters and legal advice) to pursue effectively an application for residence within the UK
 - do more to assist those who are returned to their country of origin (or voluntarily repatriated) to re-integrate into their home society without increased vulnerability, particularly to re-trafficking. (Paragraph 198)
40. We do not accept that there is any realistic likelihood that the Council of Europe Convention's provisions relating to reflection periods and residence permits would act as a pull factor for migration into the UK. (Paragraph 200)
 41. We find the twin concepts of reflection periods and residence permits to be highly attractive as guarantors of the protection of the human rights of trafficking victims and of the provision of other protection and support measures to them. In Italy, as we have noted, there is no provision for reflection periods as such, although temporary residence permits provide *de facto* reflection periods, and have protected victims' human rights effectively. However, especially given the safeguards contained in the Council of Europe Convention, we consider that all the evidence supports the case for the UK to adopt these provisions. (Paragraph 202)
 42. We understand the point made by the Government that delays in co-operation with the authorities by victims may reduce the likelihood of successful apprehension and conviction of traffickers, but the welfare of the victim must be the paramount consideration. We consider that three months would be an appropriate standard length of time for reflection periods. (Paragraph 203)
 43. Although we recognise that the UK is not bound by it, we recommend that the Government uses the Council Directive on Residence Permits as a model for residence permits for victims. This Directive obliges Member States of the EU to provide residence permits of six months. (Paragraph 204)
 44. We are firm in the belief that the UK should sign and ratify the Council of Europe Convention. We can see no convincing argument against this course of action. While it would be possible for the UK to construct a coherent human rights based approach to tackling human trafficking outside the Convention, adherence to it in concert with the other nations of the Council of Europe will in our view greatly strengthen the framework of anti-trafficking policy in the UK, notably in relation to the core matter of the protection of victims. (Paragraph 205)

Formal minutes

Friday 22 September 2006

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Judd
Baroness Stern

Dr Evan Harris MP

Draft Report [Human Trafficking], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 205 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Twenty-sixth Report of the Committee to each House.

Several papers were ordered to be appended to the Report.

Ordered, That the Chairman make the Report to the House of Commons and that Baroness Stern make the Report to the House of Lords.

Ordered, That the provisions of House of Commons Standing Order No. 134 (Select committees (reports)) be applied to the Report.

[Adjourned till Monday 9 October at 4.00 pm.]

Witnesses

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Monday 22 May 2006

Ms Annie Campbell, Director and **Ms Rebecca Dudley**, Women's Aid Volunteer, Women's Aid Federation Northern Ireland; **Ms Ann Hamilton**, Principal Officer, Glasgow City Council and Chair and **Ms Bronagh Andrew**, Counter Trafficking Development Officer, Glasgow Inter Agency Trafficking Working Group **Ev 1**

Ms Christine Beddoe, Director, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK) and **Ms Nasima Patel**, Area Children's Service Manager, London, NSPCC **Ev 6**

Monday 5 June 2006

Ms Nadine Finch, Barrister, Immigration Law Practitioners' Association, **Miss Stephanie Biden**, Committee Member, Solicitors' International Human Rights Group, and **Ms Poonam Joshi**, Gender Policy Adviser, Amnesty International UK **Ev 3**

Monday 26 June 2006

Mr Vernon Coaker, MP, Parliamentary Under Secretary of State, Home Office, **Deputy Chief Constable Grahame Maxwell**, South Yorkshire Police, Programme Director, Operation Pentameter, **Mr David Bolt**, Executive Director of Intelligence (SOCA) Chairman of Reflex and a representative from IND, and **Mr David Wilson**, Director, Immigration and Nationality Directorate Intelligence Service **Ev 25**

Thursday 29 June 2006

Ms Kate Roberts, Community Support Worker and **Ms Camilla Brown**, Health and Advice Worker, Kalayaan **Mr Owen Tudor**, Head of Department and **Mr Sean Bamford**, Policy Officer, European Union and International Relations Department, TUC **Ev 40**

List of Written Evidence

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1 Memorandum from the Home Office, dated 8 May 2006	Ev 3
2 Letter from the Chair to Rt Hon Dr John Reid MP, Secretary of State for the Home Department, dated 8 May 2006	Ev 62
3 Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, dated 6 June 2006	Ev 63
4 Letter from the Chair to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, dated 3 July 2006	Ev 3
5 Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, dated 18 July	Ev 64
6 Letter from the Chair to Rt Hon Margaret Beckett MP, Secretary of State for Foreign and Commonwealth Affairs, dated 8 May 2006	Ev 65
7 Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office, dated 31 May 2006	Ev 65
8 Letter from the Chair to Rt Hon Beverley Hughes MP, Minister of State for Children and Families, Department for Education and Skills, dated 12 June 2006	Ev 66
9 Letter from Parmjit Dhanda MP, Parliamentary Under Secretary of State for Children and Families, Department for Education and Skills, dated 19 July 2006	Ev 66
10 Memorandum from Amnesty International UK, dated 12 March 1996	Ev 67
11 Memorandum from Anti-Slavery International, dated 16 December 2005	Ev 88
12 Memorandum from Asylum Aid, dated 13 January 2006	Ev 92
13 Memorandum from CHASTE (Churches Alert to Sex Trafficking across Europe), dated 31 December 2005	Ev 94
14 Memorandum from ECPAT UK (End Child Prostitution, Pornography and Trafficking), dated 13 January 2006	Ev 97
15 Memorandum from Glasgow Inter Agency Trafficking Working Group, dated 13 January 2006	Ev 108
16 Memorandum from the Immigration Law Practitioners' Association (ILPA), dated 13 January 2006	Ev 110
17 Memorandum from the International Organisation for Migration (IOM), dated 6 June 2006	Ev 128
18 Memorandum from the Joint Council for the Welfare of Immigrants (JCWI), dated 13 January 2006	Ev 128
19 Memorandum from JUSTICE, dated 20 January 2006	Ev 131
20 Memorandum from Kalayaan	Ev 133
21 Memorandum from the National Society for the Prevention of Cruelty to Children (NSPCC), dated 12 January 2006	Ev 134
22 Memorandum from Oxford <i>Pro Bono Publico</i> , dated 15 January 2006	Ev 139
23 Memorandum from Eaves (POPPY Project), dated 31 May 2006	Ev 156
24 Memorandum from The Salvation Army, dated 13 January 2006	Ev 167
25 Memorandum from the Solicitors' International Human Rights Group (SIHRG)	Ev 168
26 Memorandum from the TUC, May 2006	Ev 194

- 27 Memorandum from Women's Aid Federation Northern Ireland Ev 201
- 28 Memorandum from West Sussex County Council, Children and Young People
Services, dated 8 June 2006 Ev 207
- 29 Memorandum by Professor Ryszard Piotrowicz, Department of Law, University of
Wales, Aberystwyth, dated 9 January 2006 Ev 207

Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888

Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915
Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 144/HC 989
Sixteenth Report	Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 154/HC 1022
Seventeenth Report	Legislative Scrutiny: Eighth Progress Report	HL Paper 164/HC 1062
Eighteenth Report	Legislative Scrutiny: Ninth Progress Report	HL Paper 177/ HC 1098
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes	HL Paper 185-I/ HC 701-I
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume II Oral and Written Evidence	HL Paper 185-II/ HC 701-II
Twentieth Report	Legislative Scrutiny: Tenth Progress Report	HL Paper 186/HC 1138
Twenty-first Report	Legislative Scrutiny: Eleventh Progress Report	HL Paper 201/HC 1216
Twenty-second Report	Legislative Scrutiny: Twelfth Progress Report	HL Paper 233/HC 1547
Twenty-third Report	The Committee's Future Working Practices	HL Paper 239/HC1575
Twenty-fourth Report	Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention	HL Paper 240/HC 1576
Twenty-fifth Report	Legislative Scrutiny: Thirteenth Progress Report	HL Paper 241/HC 1577