

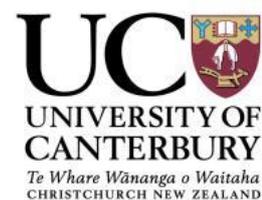
A Rights-Based Approach to Trafficking?

The Trafficking of Women for Forced Labour in
the European Union and the United Kingdom

A thesis in fulfilment of the requirements for the degree of Master of Arts in European
Studies

National Centre for Research on Europe
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Brittany Nolan
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Abstract

Human trafficking is a prominent human rights issue that on a regional and national level brings together elements of criminal justice, immigration affairs, and human rights. Trafficking for forced labour in particular is a form of exploitation that removes a victim's freedom and dignity, as they are used for their labour and not valued as a human being. The actual extent of human trafficking on its own is difficult to measure, however the ILO estimates there may be as many as 20.9 million people held in forced labour worldwide.

This research evaluates whether the European Union (EU) and United Kingdom (UK) implement a human rights-based approach (HRBA) in their policies and legislation covering human trafficking for forced labour. A HRBA is discussed as a human rights framework that includes the empowerment of the trafficking victim, adherence to normative trafficking conventions set by international organisations, and by the extend a criminal justice approach is lessened, in favour of a more human rights-based one. This thesis analyses EU policy, such as the 2002 and 2011 directives on trafficking in human beings, as well as UK government strategies and legislation.

The EU has made substantial progress in using a HRBA throughout their policies since 2002, notably in their 2011 and 2012 directives. They increasingly offer minimum standards and provisions of victim support and assistance, taking into consideration potential cross-cultural barriers. They increasingly use the term victim-centred in their reports on human rights, and overall have improved in using a HRBA.

The UK has also made progress in incorporating a HRBA in their policies, although they continue to focus heavily on trafficking as a crime that needs a stronger criminal justice response. The creation of a draft Modern Slavery Bill has given the UK a chance to incorporate a HRBA more strongly in their

legislation; however they did not use this opportunity fully. The UK also continues to focus on trafficking as an immigration issue, and is unwilling to align itself with all EU policy on trafficking if it has an obligation to provide residence permits to victims. Until the UK can move away from focusing on immigration and criminal aspects of human trafficking, the victim will remain a less prominent part of the trafficking story.

Acronyms and Abbreviations

2002 THB FD	Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings (2002/629/JHA)
2011 THB Directive	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA
AFSJ	Area of Freedom, Security and Justice
CEDAW	Convention to Eliminate all forms of Discrimination Against Women
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
DLR	Discretionary Leave to Remain
DMSB	Draft Modern Slavery Bill
EC	European Commission
ECJ	European Court of Justice
EHRC	Equality and Human Rights Commission
EP	European Parliament
EU	European Union
EU Strategy	EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016
GLA	Gangmasters Licensing Authority
GRETA	Group of Experts on Action against Trafficking in Human Beings
HRBA	Human Rights-Based Approach
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Right
IDMG	Inter-Departmental Ministerial Group
ILO	International Labour Organisation

JRF	Joseph Rowntree Foundation
NCA	National Crime Agency
NGO	Non-Government Organisation
NRM	National Referral Mechanism
OHCHR	Office of the High Commissioner for Human Rights
SOCA	Serious and Organised Crime Agency
SWG	Slavery Working Group
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in Human Beings
TIP	Trafficking in Persons
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKHTC	United Kingdom Human Trafficking Centre
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNIFEM	United Nations Development Fund for Women

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Introduction

Trafficking in human beings is a worldwide phenomenon gaining increasing visibility in the media and through the work of many active anti-trafficking organisations. Increasingly, people are becoming aware that trafficking is a problem that is not limited to developing or poorer countries, but is in fact found throughout the developed world. Estimating the number of people that are trafficked yearly, or at any one time, is difficult. The International Labour Organisation (ILO) estimates that 20.9 million people worldwide are victims of forced labour.¹ The ILO views this as a conservative estimate because of the hidden nature of exploitation, and includes human trafficking and sexual exploitation as falling under the category of forced labour.² Perhaps because of this, the number of people cited by anti-trafficking groups as being in slavery today is often as high as 27 million. The number of people who have been trafficked is even more difficult to estimate. To provide an idea of the migration aspect of forced labour, the ILO estimates that 11.8 million forced labour victims are exploited in their own home area, while 9.1 million have been moved either within a country or region, or across national borders, that is, internationally.³ The United Nations Office on Drugs and Crime (UNODC) estimates that in 2009 there was a large gender imbalance in those trafficked, with 76 per cent of trafficking victims that were detected were female, with the remaining 24 per cent consisting of men and boys.⁴

The European Union (EU) is a regional organisation of 28 Member States that attracts migrants from around the world. The European Commission Eurostat 2013 Working Paper on trafficking in human beings is a useful resource to gauge the patterns and trends in trafficking in the EU, as well as to grasp an idea of the scope of trafficking activities. Firstly, there is a definite gender element to trafficking, with 68% of those trafficked in the EU female, compared with 17% male, with children making up the remainder 15%.⁵ Sexual exploitation was the most common end result of trafficking at 62% of victims, with trafficking for forced labour equalling 25%.⁶ As well as gaining an idea of the gender and exploitation elements of trafficking in the EU, the Eurostat Working Paper also provides an idea of which countries trafficked persons are coming from, and whether trafficking is mainly occurring inside the EU, or from external sources. The Eurostat Working Paper reports the main nationality of trafficking victims within the UK were Romanians and Bulgarians, and from outside the

¹ International Labour Organisation, "ILO 2012 Global Estimate of Forced Labour Executive Summary," (Geneva: International Labour Organisation, 2012).

² Ibid.

³ Ibid.

⁴ United Nations Office on Drugs and Crime, "Global Report on Trafficking in Persons 2012," (2012), 10.

⁵ European Commission, "Trafficking in Human Beings," in *Eurostat Methodologies and Working Papers* (Luxembourg: European Commission, 2013), 13.

⁶ Ibid.

EU, people from Nigeria and China.⁷ The EU's Action Oriented Paper on trafficking reported that external trafficking flows originate from close neighbours, such as Eastern European countries, as well as further afield from Africa, Asia, and Latin America.⁸

The protection of human rights is one of the three core values of the EU, along with democracy and rule of law.⁹ Respect for human rights is a necessary part of any country's application to join the EU, and the EU also introduces human rights into external relations by requiring certain standards of human rights to be met by its trade partners. A 2006 report on trafficking in the world by UNODC provides a background for trafficking for forced labour in the EU and more specifically the UK. For example, across Europe, trafficking for sexual exploitation is reported as the purpose of trafficking five times more than forced labour.¹⁰ Many academic articles focus on trafficking for sexual exploitation as do NGOs working in trafficking. While it is very important to focus activities and research on stopping trafficking for the purpose of sexual exploitation and the harmful effects this type of exploitation has on its victims, it is also important to focus academic research, NGO efforts, and policy on forced labour and its victims. UNODC also reports women are the victims of trafficking at least twice as much as any other grouping, and sixteen times more often than men.¹¹ This in part is likely to be because of the higher number of trafficking cases reported that were for the purpose of sexual exploitation, but trafficking of women is also an issue in trafficking for forced labour, particularly in areas such as domestic servitude which involves house tasks which in many cultures a woman would traditionally carry out.

As mentioned above, one particular destination country of trafficked migrants is the United Kingdom (UK). The UK is an affluent western country, somewhat unintentionally boasting the promise of a better income and a better life. While both the EU and the UK have put in place laws and policies to prevent trafficking from occurring, in the past the focus of these laws and policies has been predominantly to apprehend the organised criminals who are doing the trafficking. There has been a noticeable gap in these policies for the consideration of the victim of the trafficking. This is where a human rights-based approach comes in, to bring an awareness of the victim, their rights, and how

⁷ Ibid., 10.

⁸ Council of the European Union, "Action-Oriented Paper on Strengthening the EU External Dimension on Action against Trafficking in Human Beings; Towards Global EU Action against Trafficking in Human Beings," (2009): 7.

⁹ European External Action Service, "The EU and Human Rights," http://eeas.europa.eu/human_rights/index_en.htm.

¹⁰ United Nations Office on Drugs and Crime (UNODC), "Trafficking in Persons Global Patterns," (Vienna: UNODC, 2006), 91, 93.

¹¹ Ibid.

these rights have been violated. This research intends to investigate how trafficking for the purpose of forced labour is treated by the EU and the UK through the lens of a human rights-based approach.

Definitions

Trafficking in Human Beings

An internationally accepted definition of trafficking in human beings is found in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 3 states trafficking is

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.¹²

This definition requires three elements in order for a case to constitute trafficking. The first is the recruitment, transportation, transfer, harbouring or receipt of persons; the second is the use of coercion, abduction, fraud, deception, force, threat, abuse of power, or payments; and the third is that the first two elements are for the purpose of exploitation. In the case of this research, the exploitation includes forced labour or services, slavery or practices similar to slavery, and servitude.

There is some discussion on the first element of this definition, insofar as whether it covers internal movement or even if trafficking includes all forced labour regardless of whether any movement occurs at all. The US chooses to focus on the enslavement aspect of trafficking, that is, the exploitation, and as long as that occurs they consider trafficking to have occurred.¹³ The occurrence of trafficking without a movement dimension is also supported by Bakirci, who acknowledges that the transportation of a person does not always occur, and by definition trafficking only requires there to be recruitment, harbouring or receipt of a person.¹⁴ With the US definition of trafficking, trafficking does not just focus on migrants, but also the possibility of nationals being trafficked into a position of slavery. The US definition certainly has the advantage of a broad scope of inclusiveness of the protections and opportunities for redress that a victim of trafficking has under the UN Protocol,

¹² United Nations, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto," ed. Office on Drugs and Crime (New York 2004), 42.

¹³ U.S. Department of State, "What Is Modern Slavery?," <http://www.state.gov/j/tip/what/index.htm>.

¹⁴ Kadriye Bakirci, "Human Trafficking and Forced Labour: A Criticism of the International Labour Organisation," *Journal of Financial Crime* 16, no. 2 (2009).

letting less trafficking victims slip through the gap because of technicalities. This is still valid on an international level, because recruitment, harbouring or receipt of a person can occur without movement, and in fact transfer could refer to a change of the person in possession or harbouring the victim, rather than physical movement over some distance.

Forced Labour

The exploitation of a trafficked individual is generally divided into two categories – the first of which is sexual exploitation, and the second being labour exploitation. Since this research is not considering cases of trafficking which result in sexual exploitation, the definition of exploitation is therefore that of forced labour. Thus, for the purpose of this research, forced labour is defined as labour or services that are required or compulsory from a person where that person does not voluntarily provide them, with the threat of penalty if they do not oblige.¹⁵ This definition is provided by the ILO, which is concerned with ensuring human and labour rights for all workers.

The ILO has two important conventions on forced labour, the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), which help define and govern forced labour. Some examples of forced labour include domestic work such as housekeeping or childcare; sweatshop or factory work; agricultural work; and restaurant and construction work. More specifically, domestic servitude is defined and characterised by low or absent wages, long hours of work, and sub-standard work conditions. In many cases of forced labour a person is told they have a significant debt they must pay back to their employer, before they can even consider leaving their job. The ILO defines domestic work as “work performed in or for a household or households”, and a domestic worker as “any person engaged in domestic work within an employment relationship”.¹⁶ Domestic servitude in particular has a significant gender dimension, with trafficked domestic workers predominantly being female.

The ILO’s approach to trafficking and forced labour has been discussed by academics, with Bakirci critiquing how the ILO defines forced labour. In particular, Bakirci believes that any labour that arises from being trafficked should be classified as forced labour,¹⁷ with a more useful distinction in types of trafficking to be labour trafficking and then “trafficking for purpose of criminal activities” which would include sex trafficking.¹⁸ In addition, when trafficking leads to criminal activities such as

¹⁵ International Labour Organisation, "CO29 - Forced Labour Convention 1930 (No. 29)," in *Convention concerning forced or compulsory labour* (Geneva 1930). Article 2

¹⁶ International Labour Organisation, "Domestic Workers Convention, 2011 (No. 189)," in *Convention concerning decent work for domestic workers (Entry into force: 05 Sep 2013)* (Geneva 2011).

¹⁷ Bakirci, "Human Trafficking and Forced Labour: A Criticism of the International Labour Organisation," 163.

¹⁸ *Ibid.*, 161.

begging or street crime, these workers should be seen as victims instead. This would then require a separate instrument to govern them.¹⁹

The Global Stage: International and EU Human Rights Treaties

The United Nations (UN) is a very important player in the field of human rights and in particular trafficking in human beings. A primary instrument for human rights globally is the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948, stating a number of rights that should be able to be exercised by all, on the premise they are a human being deserving dignity and certain freedoms. The UDHR was followed in 1966 by the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. More specifically for Europe, the 2000 Charter of Fundamental Rights of the European Union (European Charter) is basis for all human rights issues in the EU and underpins any decisions or directives that the EU institutions introduce to their Member States. The European Charter became legally binding in 2009, with the entry into force of the Lisbon Treaty. The UDHR and European Charter provide a basis for protecting the rights of all people, and a number of rights contained within these documents can be specifically related to trafficking, and trafficking for the purpose of forced labour.

Firstly, the UDHR has seven articles that address rights that relate to trafficking and forced labour. These rights are: everyone has the right to life, liberty and security of person (Article 3); no one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms (Article 4); no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5); everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (Article 8); Article 13 has two parts (1) Everyone has the right to freedom of movement and residence within the borders of each state, and (2) Everyone has the right to leave any country, including his own, and to return to his country; Article 23 has four components, (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, (2) Everyone, without any discrimination, has the right to equal pay for equal work, (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection, (4) Everyone has the right to form and to join trade unions for the protection of his interests; Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (Article 24).

¹⁹ Ibid., 64-65.

The European Charter includes six articles that address issues around trafficking and forced labour which include; the prohibition of torture and inhuman or degrading treatment or punishment (A4); prohibitions of slavery and forced labour (A5); freedom to choose an occupation and right to engage in work (A15); workers' right to information and consultation within the undertaking (A27); right of collective bargaining and action (A28); fair and just working conditions (A31). These articles clearly show the right of any legal worker in the EU to a healthy work environment that is free from the treatment and indicators that constitute a situation of forced labour. Article 5 explicitly states that "no one shall be held in slavery or servitude" or "be required to perform forced or compulsory labour" and that "trafficking in human beings is prohibited".²⁰ Important for migrant workers is article 15 where it states that working conditions are to be equal for both citizens and non-citizens legally working in a Member State.²¹

These documents clearly display a number of human rights that every person holds, and that are unfortunately violated when trafficking for forced labour occurs. The European Charter expressly states the prohibition of slavery and forced labour, including trafficking in human beings, providing a basis for human trafficking as a human rights issue. The UDHR is less specific on trafficking but prohibits the slave trade and slavery or servitude. Both of these documents cover workers' rights to fair working conditions and reasonable working hours, providing more broadly for workers' rights than just prohibiting slavery or slavery-like conditions. Using the UDHR and European Charter as a basis for what rights a person holds permits a discussion of circumstances that violate these rights and what should be done about it if this violation occurs. This introduces the concept of a human rights-based approach (further discussed in the following chapter) and how this approach affects how trafficking is seen and consequently dealt with by the EU and UK.

It is necessary to also include a mention of The Council of Europe (CoE), in a discussion on human trafficking and international and European human rights instruments. The CoE is a human rights organisation that European countries are able to join as member states. To date there are 47 member states, including all the member states of the EU. The CoE has a number of important conventions that cover trafficking and forced labour, which govern the minimum standards of EU and UK implementation of related policies and legislation. The most significant of these is the European Convention on Human Rights which all CoE member states have individually signed.²² More specifically on trafficking, the CoE adopted the Convention on Action against Trafficking in

²⁰ European Parliament, The Council of the European Union, and European Commission, "Charter of Fundamental Rights of the European Union," *Official Journal of the European Communities* (2000).

²¹ Ibid.

²² Council of Europe, "Who We Are,"

<http://www.coe.int/aboutCOE/index.asp?l=en&page=quiSommesNous&sp=videoVisit#>.

Human Beings on 3 May 2005, which entered into force on 1 February 2008. The implementation of this Convention is monitored by GRETA (Group of Experts on Action against Trafficking in Human Beings), which also produces country reports evaluating implementation progress. Importantly for addressing trafficking with a rights-based approach, the Convention states in article 5(3) that all parties to the Convention “shall promote a human rights-based approach” and mainstream gender into all policies and programmes addressing trafficking.²³ The CoE is therefore an important European instrument in evaluating whether the EU and UK are meeting their obligations on trafficking and whether they are respecting the human rights of trafficking victims at the same time.

Research Questions

This research aims to contribute to knowledge on trafficking for forced labour in the EU, and in particular the UK, to enable a more rights-based response to trafficking for forced labour. To achieve this, the following research questions are posed:

- How is the EU meeting the challenge of implementing a rights-based approach to the trafficking of women for forced labour?
- How does the UK comply with both EU and International frameworks for human trafficking for forced labour?
- How effective are governmental organisations in the UK at implementing a rights-based approach in the trafficking of women for forced labour?

Delimitations

This research is looking at trafficking in human beings, and for forced labour, as defined above and excluding for sexual exploitation. It is not looking at smuggling in persons, nor is it looking more broadly at the term ‘modern slavery’. It is specifically investigating trafficking of women only, not of men or children (defined as less than 18 years of age). Within the case study analysis of the UK, this research is only considering the policies and practices of the UK government, and not any other government.

Methodology

Human rights can be difficult to measure, and as such, deciding on the right human rights methodology can be difficult. Landman describes several different purposes of measuring human rights, with this research fitting most closely as an example of secondary analysis for impact assessment.²⁴ Landman identifies one of the challenges in measuring human rights as the need to

²³ "Council of Europe Convention on Action against Trafficking in Human Beings," (Warsaw2005).

²⁴ Todd Landman, "Measuring and Monitoring Human Rights," in *Human Rights: Politics and Practice*, ed. Michael Goodhart (Oxford: Oxford University Press, 2009), 365.

first define human rights theoretically.²⁵ This research uses the conceptual framework in the next chapter to define the aspects of a human rights-based approach that are being evaluated. It then uses policy analysis to investigate the progress made by the EU and UK in implementing a rights-based approach to their policies and strategies that address trafficking and forced labour. Landman discusses certain obligations (to respect, protect and fulfil) that come from international human rights norms that then require the state to fulfil them, forming the basis of social analyses of human rights.²⁶ The current research essentially builds an analysis on the state (the UK), by analysing how UK policy fulfils the criteria outlined in the definition of a HRBA described in chapter two.

Analysis of EU documents was based on Landman and Larizza's analysis in *EU Policy Discourse: Democracy, Governance, and Human Rights*, where they assess the inclusion of EU policy objectives in different EU papers, such as those by the European Commission.²⁷ In this research, rather than analysing other EU papers through identified EU policy objectives, EU policies themselves are analysed for inclusion of key terms in the research question – namely 'trafficking', 'women' and 'gender', 'forced' and 'labour', and 'domestic' and 'servitude' - to compare the use of these terms throughout EU policy since 2002, and evaluate whether their inclusion is increasing. Policy was also analysed on the strength of language used when addressing issues of human rights and victim protection and prevention, compared with the strength of language and frequency of mention of criminal justice issues. In addition, a word analysis on the terms 'prevent', 'prosecut', and 'protect' compared earlier and more recent EU policies on trafficking and compensation to crime victims. This provided a numerical comparison of any progress the EU has made.

The UK is used in this research as a case study, to provide a more in-depth study of human rights and the development of a rights-based approach within the EU. The UK was selected for a number of reasons. Firstly, it is a popular destination country for trafficking and is a long-standing member of the EU. Additionally, it has a strong opinion on various EU policies and whether it wants to fully participate in certain legislative acts. Of equal importance in the selection of the UK was the language, as this is the native language of the researcher, providing an ease of access and analysis of the necessary policy documents.

Literature Review

While there are numerous studies looking at different elements of trafficking for sexual exploitation, trafficking for forced labour is the less popular cousin. Particularly when including the element of

²⁵ Ibid., 366.

²⁶ Ibid., 367.

²⁷ Todd Landman and Marco Larizza, "EU Policy Discourse: Democracy, Governance, and Human Rights," (Stockholm: International Institute for Democracy and Electoral Assistance, 2010).

gender, both studies and trafficking discourse centre around women and girls trafficked and forced into brothels or other positions of sexual slavery. A study by Kaye, Winterdyk and Quarterman discussed trafficking for forced labour versus for sexual exploitation, and noted that international labour trafficking was possibly more prevalent, despite media coverage focusing on the sex trafficking.²⁸ This indicates a need for more study on the phenomenon of forced labour as well as increased awareness of this form of trafficking. Research on sex trafficking still contains some useful themes which are relevant to research on labour trafficking, such as the discord of different state departments viewing trafficked women as either victims of crime, or as illegal immigrants, depending on their agenda. This was discussed by Kelly and Regan in 2000 where they explored the response of the UK to trafficking in women for sexual exploitation, and recommended developing human rights policies to assist the protection of trafficked women.²⁹ This popular focus by scholars on sex trafficking is mirrored by how the countries themselves also focus on sex exploitation as the main trafficking problem, with other types of trafficking taking a backseat,³⁰ which is perhaps part of the reason why sex trafficking also gains more media coverage. While acknowledging the many studies on trafficking for the purpose of sexual exploitation, the following review of literature will focus on studies that address trafficking for forced labour, particularly in the EU and the UK.

Trafficking in the European Union

Human trafficking is a subject of interest for scholars focusing on the EU, and those studies focused on labour trafficking cover topics from EU policy, legislation and practice in general, to focusing on the problem of trafficking and the effectiveness of policy and practice in a particular country or region. In particular, a number of studies comment and critique the EU's early framework decisions and directives that are either specifically directed at trafficking or cover other aspects such as victim protection and the provision of temporary residence permits. Some, like Rijken and de Volder, approach this discussion from a rights-based position. In *The European Union's Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings*, they argue that, following the Council framework decision 2002/629/JHA, the EU still had progress to be made on a more victim centred approach to trafficking.³¹ More specifically, they argue that the EU had a criminal justice response to trafficking and that the victim had been a secondary issue to prosecuting traffickers. In their opinion,

²⁸ Julie Kaye, John Winterdyk, and Lara Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada," *Canadian Journal of Criminology and Criminal Justice* 56, no. 1 (2014).

²⁹ Liz Kelly, Linda Regan, and Great Britain, *Stopping Traffic: Exploring the Extent of, and Responses to Trafficking in Women for Sexual Exploitation in the UK*, vol. 36 (Home Office, Policing and Reducing Crime Unit, 2000), 34.

³⁰ Grace Chang and Kathleen Kim, "Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field (S)," *Stan. JCR & CL* 3 (2007).

³¹ C. R. J. J. Rijken and E. J. A. de Volder, "The European Union's Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings: A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law," *Connecticut Journal of International Law* 25, no. 49 (2010).

there needs to be an equal measure of protection, prevention and prosecution for a rights-based approach.³² In other words, in order to address trafficking more fully a more holistic approach is needed; one that includes labour and migration law among others, in addition to criminal law.³³

Alexandra Amiel also discusses the use of a HRBA in European anti-trafficking strategies, and the predominant approach of viewing THB as a problem of organised crime including illegal migration such as smuggling. Trafficking victims were given little attention and prosecution was the primary focus of anti-trafficking strategies.³⁴ This is a reoccurring theme of studies on the EU's earlier policies on trafficking, where researchers consider EU policy to lack consideration for the person who has been trafficked, instead focusing on the criminality of the issue. Sarah Krieg analysed the EU's approach to trafficking in 2009, looking at the three areas of border control, law enforcement, and human rights within the 2002 THB framework decision.³⁵ These are the three main issues that fight for prominence in trafficking policy, and that perhaps inhibit the development of more victim centred policies, both at EU level and nationally. Krieg discusses trafficking as two separate issues, the first of these being the frame that trafficking is viewed in, that is, if it is a human rights issue, and the second if this is the case, is deciding what approach should be used to combat it. The 2002 framework decision, in her view, uses human rights to explain why trafficking is a problem, but then addresses the problem using a criminal law.³⁶ This is a very useful thought to keep in mind if assessing why a response to a problem is not working. It needs to be addressing the issue with the same framework and approach as the issue itself has been categorised. Accordingly, a HRBA is clearly a useful response to human trafficking, when it is categorised as a human rights issue.

Jo Goodey is an author who is well published in areas of crime and victims, including human trafficking. While a number of these are based around sex trafficking in Europe,³⁷ she specifically looks at policy responses to trafficking in the EU and UK in *Human trafficking: Sketchy data and policy responses*. This was published in 2008 prior to the EU's most recent policy developments, such as the 2011 directive on human trafficking, and provides an analysis of the trafficking problem, gaps

³² Ibid., 49-50.

³³ Ibid., 50.

³⁴ Alexandra Amiel, "Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation," *Buffalo Human Rights Law Review* 12 (2006): 6.

³⁵ Sarah H Krieg, "Trafficking in Human Beings: The EU Approach between Border Control, Law Enforcement and Human Rights," *European Law Journal* 15, no. 6 (2009).

³⁶ Ibid., 784.

³⁷ See Jo Goodey, "Sex Trafficking in Women from Central and East European Countries: Promoting a 'Victim-Centred' and 'Woman-Centred' approach to Criminal Justice Intervention," *Feminist Review* 76, no. 1 (2004); "Migration, Crime and Victimhood Responses to Sex Trafficking in the EU," *Punishment & Society* 5, no. 4 (2003); "Promoting 'Good Practice' in Sex Trafficking Cases," *International Review of Victimology* 11, no. 1 (2004).

in research, and policy and legislative responses in the EU and UK.³⁸ Goodey mentions the migration-crime-security nexus from previous research in 2002, where she stated that policing and immigration policies were gradually merging together.³⁹ This merging places human trafficking in the immigration and criminal justice arena, rather than in the human rights arena when victims' rights and welfare are paramount. Goodey discusses policy responses including a victim-centred response which focuses on the two 'p's' – protection and prevention, and describes this as a method that is not dealing with the root causes of trafficking such as global inequality and conflict, but instead provides assistance to the victims which is much more tangible.⁴⁰

The four studies that have just been discussed all analysed EU policy prior to the 2011 directive on human trafficking. Chaudary contributes a more recent perspective to the discussion, with a legal-focused analysis which also includes the 2011 directive. She provides an analysis of European law and critiques specific trafficking cases in the EU, that involved trafficking and exploitation. She also discusses early EU directives and their limitations, such as the 2004 directive on temporary residence permits where this is tied to cooperation with officials.⁴¹ She also briefly discusses the progress made with the 2011 directive with expanded definitions and a less law focused approach.⁴²

Liz Kelly provides some interesting thoughts on the interpretation of data in trafficking research. She discusses domestic work in Europe and some of the limitations of current immigration policies that make this particular labour area more vulnerable to the exploitation of its workers. This includes it being an area of work that is carried out in a private household so employers can more easily exploit domestic workers.⁴³ Agricultural work is another area that Europe relies on migrant labour, which is sourced both legally and illegally, and Kelly details the issues relating to gangmasters in the UK and the problems with forced labour of undocumented migrants.⁴⁴ Monika Smit focuses on the trafficking for forced labour in the Netherlands. In her research she identifies the sectors most prone to forced labour as in catering, domestic work, working for private employment agencies, and

³⁸ "Human Trafficking: Sketchy Data and Policy Responses," *Criminology & Criminal Justice* 8, no. 4 (2008).

³⁹ "Whose Insecurity? Organised Crime, Its Victims and the EU," in *Crime and Insecurity: The Governance of Safety in Europe*, ed. A Crawford (New York: Willan Publishing, 2002), 139.

⁴⁰ "Human Trafficking: Sketchy Data and Policy Responses," 431.

⁴¹ Saadiya Chaudary, "Trafficking in Europe: An Analysis of the Effectiveness of European Law.(Successes and Failures in International Human Trafficking Law)," *Michigan Journal of International Law* 33, no. 1 (2011): 96-97.

⁴² *Ibid.*, 98-99.

⁴³ Liz Kelly, " "You Can Find Anything You Want" : A Critical Reflection on Research on Trafficking in Persons within and into Europe," *International Migration* 43, no. 1 - 2 (2005): 244.

⁴⁴ *Ibid.*, 245-46.

agriculture. The author remarks that these sectors are almost the same as those most prevalent in the UK, with the addition of commercial cleaning and construction also prevalent in the UK.⁴⁵

In her paper *States of Contradiction: Twelve ways to do nothing about trafficking while pretending to*, Carol Vance provides a cutting commentary on a State's efforts to combat human trafficking.⁴⁶ Vance highlights issues such as the contradiction between looking at trafficking as a human rights issue, then using criminal law to fight it, and additionally treating victims of trafficking as undocumented migrants or criminals.⁴⁷ This is a key issue to be discussed against UK policy and practice for dealing with human trafficking, and was also highlighted by Kreig. Another area that Vance highlights is the problem of creating dialogue through conventions, but not following through with making this binding.⁴⁸ Again, this is a point to be discussed in relation to EU policy that the UK has to implement. One big issue that Vance discusses is the attitudes of those dealing with trafficking victims, and the flow on effect of this towards a victim's ability to access services, and whether their claim is taken seriously or not.⁴⁹ Vance points out that framing victims as innocent also necessitates there being a guilty victim, which is unhelpful in ensuring the human rights of all victims are protected.⁵⁰ Importantly, Vance states that labour trafficking is as serious an issue as sexual trafficking, and can also involve sexual abuse.⁵¹ Vance's paper is important in pointing out some of the idiosyncrasies in a State's approach to dealing with human trafficking, and highlights a number of issues that will be discussed further in relation to the EU and UK and their policies. Perhaps a good way to sum up Vance's thoughts is by the following,

"The state is both a lumbering beast and an efficient missile with regard to trafficking; lumbering, unwilling, and unable to change the conditions it creates and that favour transnational trafficking, and surprisingly efficient in employing melodrama and high-profile but bogus human rights rhetoric to make most victims invisible."⁵²

Following on from these studies that look at trafficking for forced labour in the EU, the following section focuses more specifically on research that covers trafficking for forced labour in the UK.

⁴⁵ Monika Smit, "Trafficking in Human Beings for Labour Exploitation. The Case of the Netherlands," *Trends in Organized Crime* 14, no. 2 (2011): 188.

⁴⁶ Carole S. Vance, "States of Contradiction: Twelve Ways to Do Nothing About Trafficking While Pretending To," *Social Research: An International Quarterly* 78, no. 3 (2011).

⁴⁷ *Ibid.*, 936.

⁴⁸ *Ibid.*, 937.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, 938.

⁵¹ *Ibid.*, 939.

⁵² *Ibid.*, 942.

Trafficking in the United Kingdom

Trafficking in the UK is of interest to academics, think tanks and NGOs, and to the UK government, and as such, research comes from a number of different avenues. Research on trafficking for forced labour in the UK cover aspects such as the economics of trafficking, describing the specifics of forced labour experienced in the UK, as well as those analysing the UK government's response to trafficking.

In 2009, Wheaton, Schauer and Galli published an article on the Economics of Human Trafficking, which focused on the UK and looked at the economics of labour.⁵³ Their report evaluates where the UK stands on supply and demand of trafficking, with a particular focus on the 2007 UK Action Plan. The authors seek a "system of international cooperation" where it is more costly for traffickers to move people, and there is less benefit to those who exploit the victim's labour.⁵⁴ The UK's specific tools to achieve a decreased demand for forced labour are identified by Wheaton et al as the UK's Gangmaster Licensing Authority and the 2006 Immigration, Asylum and Nationality Act.⁵⁵

Taking another angle on aspects of human trafficking, Turner-Moss, Zimmerman, Howard and Oram published an article in 2013 discussing health implications of trafficking for forced labour, to contribute to the research gap in this area. This research focused on 35 cases in the UK and was a mixture of males and females.⁵⁶ The study aimed to better describe both the living and working conditions of victims as well as abuses suffered and resulting physical and mental health issues.⁵⁷ This study found that there was a "very high prevalence of violence and abuse" among the 35 cases of trafficking for forced labour, as well as living conditions that were detrimental to their physical and mental well-being.⁵⁸ This type of study is essential in painting a clearer picture of the experiences a trafficking victim goes through, and therefore the support they need to be provided with for successful rehabilitation. More studies of this type can build a solid literature base to inform the UK on funding requirements and levels of support needed for both physical and psychological trauma.

Kendra Strauss has researched the concept of unfree labour and in one study discusses different definitions of unfree and forced labour. She notes that much of the research on forced labour does come from a migration or trafficking angle, rather than forced labour more generally, and can

⁵³ Elizabeth M Wheaton, Edward J Schauer, and Thomas V Galli, "Economics of Human Trafficking," *International Migration* 48, no. 4 (2010).

⁵⁴ *Ibid.*, 132.

⁵⁵ *Ibid.*, 133.

⁵⁶ Eleanor Turner-Moss et al., "Labour Exploitation and Health: A Case Series of Men and Women Seeking Post-Trafficking Services," *Journal of Immigrant and Minority Health* 16, no. 3 (2014).

⁵⁷ *Ibid.*, 474.

⁵⁸ *Ibid.*, 477.

confuse the concepts.⁵⁹ In another study, she focuses more specifically on gang labour in the UK through a social reproductive lens.⁶⁰ Strauss approaches forced labour from the discipline of geography and separates labour from human rights issues such as trafficking, so while her research contributes to part of the discussion in this thesis, it does not do so fully.

Organisations in the UK such as the Joseph Rowntree Foundation (JRF) and some government departments produce research papers on trafficking or forced labour in the UK. The JRF in particular produces reports dealing with labour and poverty in the UK, and contributes a point of view to discussions on what the UK government is doing to deal with these issues. In 2013, the JRF's Modern Slavery Working Group produced a report on forced labour in the UK, "*It happens here*". This report highlighted the need to see trafficking as more than an immigration issue, noting the high involvement of the Minister for Immigration and UK Border Agency in dealing with human trafficking.⁶¹ The report strongly recommends a move of trafficking to the Minister of Policing and Criminal Justice's portfolio, to address trafficking as a crime instead of an immigration issue.⁶² While it is true that trafficking should not be considering too strongly as an immigration issue, it is a human rights issue as well as a crime, so it is important to not lean too far towards the other side, moving away for a human rights and victim-centred focus completely. This report does recommend a 'single Modern Slavery Act' with an Anti-Slavery Commissioner, which seems to be in line with the direction of the UK with their Modern Slavery Bill.

Earlier reports by the JRF focus predominantly on forced labour or contemporary slavery, with some reference to sexual trafficking. Often these are without, or not exclusively including, a trafficking element, but consider all migrants who are exploited into forced labour. In 2012, Emily Dugan wrote a report on behalf of the JRF on media coverage of human trafficking and forced labour. This report analysed media coverage over 2012 by carrying out a thorough search on LexisNexis for any articles that covered human trafficking and slavery, finding a total of 2770 articles. From this, the report hoped to provide some measure of scale, as well as spotlighting the problem as it exists in the UK.⁶³ The report found that there were 85 people reported in the media in 2012 that had been trafficked

⁵⁹ Kendra Strauss, "Coerced, Forced and Unfree Labour: Geographies of Exploitation in Contemporary Labour Markets," *Geography Compass* 6, no. 3 (2012).

⁶⁰ "Unfree Again: Social Reproduction, Flexible Labour Markets and the Resurgence of Gang Labour in the UK," *Antipode* 45, no. 1 (2013).

⁶¹ Slavery Working Group, "It Happens Here: Equipping the United Kingdom to Fight Modern Slavery," (London: The Centre for Social Justice, 2013), 12.

⁶² *Ibid.*, 18.

⁶³ Emily Dugan, "Forced Labour and Human Trafficking: Media Coverage in 2012," in *JRF Programme Paper Forced labour* (Joseph Rowntree Foundation, 2013), 5-6.

and exploited in forced labour (with 172 trafficked for sexual exploitation).⁶⁴ Reporting seemed to vary depending on novelty and sensationalism of the story, as well as whether there was any regulation in the work sector.⁶⁵

The Anti-Trafficking Monitoring Group has produced a number of reports over the last five years on trafficking in the UK, covering forced labour as well as looking at the effectiveness of the UK in dealing with trafficking. The Group was established in 2009 to monitor UK progress on implementing and complying with the Council of Europe Convention, and subsequently the EU 2011 directive. The 2010 and 2012 reports both look at the effectiveness of the UK in protecting victims of trafficking, one year and three years on from the Council of Europe Convention. The 2010 report *Wrong Kind of Victim* includes a focus on child victims of trafficking and provides an analysis of the National Referral Mechanism (NRM) which was designed and implemented to meet obligations under this Convention.⁶⁶ The report offers a comprehensive discussion on the NRM, from how it was developed in response to the CoE Convention, to what the NRM looks like in practice. Essentially, the report concludes that the UK was not meeting its obligations under the Convention and needed to review the mechanism.⁶⁷

A report in the Home Office Police Research Series (Paper 125) specifically looks at the amount of trafficking (for sexual exploitation) in the UK, and the police response and awareness of this. In this report the authors, Kelly and Regan, discuss the improvement of the UK police in using a pro-active approach, which involves actively searching for trafficked women rather than waiting for them to approach police, while also finding ways to prosecute trafficking offenders without having to rely on a trafficking victim to act as a witness to make their case.⁶⁸ They couple this with an awareness of women's rights, suggesting the development of a human rights policy framework which would offer more comprehensive support to trafficked women, including the potential of a temporary visa and for non-government agencies to provide support services (both of which have since been actioned, and are further discussed in chapter four).⁶⁹ This report recommends trafficking in women be considered as a human rights issue as well as a serious crime issue, with the UK government being aware of its responsibilities to fulfil obligations under various EU and international conventions and policies which is a signatory. One observation of note the authors make in this report is the

⁶⁴ Ibid., 22.

⁶⁵ Ibid., 22-23.

⁶⁶ The Anti Trafficking Monitoring Group, "Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons," (2010).

⁶⁷ Ibid., 34.

⁶⁸ Kelly, Regan, and Britain, *Stopping Traffic: Exploring the Extent of, and Responses to Trafficking in Women for Sexual Exploitation in the UK*, 36.

⁶⁹ Ibid., 34.

difference in how police officers and immigration officers, in general, view trafficked women. By the former it is as a victim of crime, but by the latter as illegal immigrants with potential for actions such as deportation.⁷⁰

These papers provide an example of the different research that has been done on trafficking for forced labour in the UK, as well as some areas that would benefit from further research. The UK has a number of groups committed to providing analysis and commentary on labour exploitation and trafficking which benefits the UK government as they continue to review their practice. There is scope for more academic research on trafficking for forced labour in the UK in addition to the different monitoring groups and organisations.

This research will build on the previous research on both the EU's approach to trafficking for forced labour, and the UK's. It will evaluate the progress the EU has made in developing a new directive on trafficking as well as other measures the EU has taken since 2002 to tackle trafficking of human beings for forced labour within its borders, beginning with a discussion on the concept of a human rights-based approach.

Chapter Outline

To answer the research questions posed, this thesis first introduces the issue of trafficking for forced labour, with the literature providing an overview of some of the research done on trafficking for forced labour in the EU and UK. Next, this thesis investigates the concept of a human rights-based approach. The development of the concept in the work of the UN is discussed, as well scholars' contributions to the approach. A human rights-based approach is broken down into three elements – empowerment, the normative value of rights-based approach, and the move away from a criminal justice approach. This concept is then further refined in relation to women and trafficking, providing the framework to evaluate the EU and UK.

Chapter three on the EU takes a look at EU policy and legislation from 2002, specifically applying policy analysis to their two main trafficking policies from 2002 and 2011. Other EU policies are also analysed for their inclusion of rights-based approaches and also forced labour and gender, bringing in these aspects of the research question. The EU strategy on human trafficking is also discussed for its inclusion of rights-based approaches to trafficking, and the discussion concludes with a brief analysis of the EU's annual human rights reports.

Chapter four brings in the case study of the UK, and looks at the relationship between the UK and EU and how this affects the UK's opt-ins to EU policy. It looks closely at the UK's government strategy

⁷⁰ Ibid.

paper on human trafficking and evaluates this for its inclusion of a rights-based approach, also noting areas where forced labour and gender are specifically included. This chapter also analyses UK legislative acts that are used when prosecuting trafficking for forced labour, and the draft Modern Slavery Bill.

The final chapter takes a closer look at the UK's National Crime Agency, Human Trafficking Centre, National Referral Mechanism, as well as the role of the Gangmasters Licensing Authority and the issues with the current Tied Domestic Workers Visa. This chapter rounds out analysis of to what extent the UK is using a rights-based approach to trafficking of women for forced labour in policy, leading into conclusions based on the three research questions posed in the introduction.

A Conceptual Framework – Human Rights-Based Approach to Trafficking

Human trafficking is an important human rights issue, with international and non-government organisations dedicating themselves to its cause – combating a modern form of slavery, and defending the human rights of those who find themselves victims in the trafficking and exploitation cycle. Increasingly in discourse surrounding human trafficking, the term “a human rights-based approach” (HRBA) is used to describe a way of approaching human trafficking, which can be used by international organisations such as the UN, or a national government such as the UK government. While human rights organisations are perhaps more likely or obviously going to take a HRBA to trafficking and forced labour (although how they actually represent a HRBA is a subject for another discussion), the EU and UK have other competing interests and policy areas that may draw them away from a human rights focus. This chapter will discuss the concept of a HRBA, and its development in different fields and organisations, narrowing into how a HRBA has been used in trafficking for forced labour. This concept will then be discussed as a framework for analysis of EU and UK policy, legislation and strategy, to combat trafficking for forced labour within their borders.

The Beginning of a Human Rights-Based Approach

Since the 1990s and especially in the 2000s, human rights have increasingly become an important part of different policy areas, especially in development.⁷¹ The term ‘mainstreaming’ is increasingly used to describe using rights, and a HRBA, across all policy areas. Discourse about human rights soon

⁷¹ Peter Uvin, "From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development," *Development in Practice* 17, no. 4 (2007); Varun Gauri and Siri Gloppen, "Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy," *Polity* 44, no. 4 (2012): 486.

developed into what is now recognised as a HRBA.⁷² This can be seen throughout the UN system, where from 2002 human rights began to be integrated or mainstreamed through the different programmes and agencies of the UN.⁷³ In particular in the area of development, where a HRBA has been predominantly used, a shift from a right to development to then focus on human rights and good governance in general in the 1990s,⁷⁴ resulted in the current expression of human rights in the form a HRBA. In fact, the literature on a HRBA is predominantly focused on the development sector, both in theory and in practice, and perhaps consequently this is where the idea of a HRBA and what it actually means seems to be most discussed and developed.

So what can a HRBA be understood as? In a recent paper by the Office of the High Commissioner for Human Rights (OHCHR), Youla Haddadin (OHCHR trafficking advisor) and Ilona Klímová-Alexander (OHCHR Human Rights Officer) discuss what a HRBA is in relation to trafficking, the human rights that are relevant to this, and State responsibility. Within this article, they tailor the general HRBA in development definition to trafficking, which states:

“A human rights-based approach is a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. It requires an analysis of the human rights violations that occur during trafficking as well as of States' obligations under international human rights law. It seeks to identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims of trafficking.”⁷⁵

This definition is an adapted version of the development definition of a HRBA which can be found on the UN's HRBA Portal. This is a portal available to practitioners which offers a platform for learning how to better mainstream human rights into development and programming at a country level.⁷⁶ Some of the important aspects to extract from this definition are the ideas of norms taken from international human rights standards, and States' obligations under international human rights law. It also highlights unequal distribution of power and the lack of justice victims may find themselves

⁷² H. M. Hintjens, "UNIFEM, CEDAW and the Human Rights-Based Approach," *Development and Change* 39, no. 6 (2008): 1184; Alisa Clarke, "The Potential of the Human Rights-Based Approach for the Evolution of the United Nations as a System," *Human Rights Review* 13, no. 2 (2012): 230.

⁷³ "The Potential of the Human Rights-Based Approach for the Evolution of the United Nations as a System," 230-31; Hans Peter Schmitz, "A Human Rights-Based Approach in Practice: Evaluating NGO Development Efforts," *Polity* 44, no. 4 (2012): 524.

⁷⁴ Uvin, "From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development," 600.

⁷⁵ Youla Haddadin and Ilona Klímová-Alexander, "Human Rights-Based Approach to Trafficking: The Work of the United Nations Office of the High Commissioner for Human Rights," *Judges' Journal* 52, no. 1 (2013): 22.

⁷⁶ The definition of a HRBA in development is available at <http://hrbaportal.org/faq#sthash.QwJBoql1.dpuf>

experiencing. Indeed, human rights are taken from internationally agreed declarations and covenants, such as the 1948 Universal Declaration of Human Rights, and the subsequent International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights. These documents form a basis for what human rights an individual is entitled to and therefore need to be respected, and inform what a State's responsibility is in the area of respect for human rights.

While trafficking for forced labour is not a development issue per se, there is a relationship with development when looking at push and pull factors of trafficking and its relationship to poverty. A HRBA in development can be described as one which ultimately focuses on the root cause of why there is poverty and therefore the need for development, looking at rights and duties, rather than needs and charity.⁷⁷ Kevin Bales outlines some of the root causes, or push factors, of trafficking, which include economic pressures such as poverty and seeking a better life or economic opportunities elsewhere; political instability, internal conflict, war, and civil unrest; or social and cultural factors such as the practice of entrusting children to wealthier relatives, or the devaluation of women.⁷⁸ A lack of, or minimal, education can also lead to trafficking and is an important right in the development agenda. These root causes can all be found in different countries where development aid is offered, and as such, addressing poverty from a development perspective may also help prevent trafficking. Both development and trafficking can be seen as a violation of rights, needing an approach which can bring about remedies to rights violations. Uvin also identifies the role of the political sphere, rather than the legal, in areas where marginalised groups need empowering, oppression and exclusion need challenging, and the balance of power often needs to be changed.⁷⁹ The idea of empowerment and stopping oppression and exclusion are equally as important in trafficking as in development. This includes hearing the voice of the victim, as well as preventing, and protecting the victims from, oppression in the form of threats, abuse, coercion, and exploitation. Gauri and Gloppen describe a HRBA as targeting both the "duty-bearers by raising moral pressure" and the "rights-holders by instilling the dignity and self-respect necessary for political, social, and legal mobilization" to "reduce poverty and inequality".⁸⁰ This offers a perspective on both sides of a HRBA – that of States towards the rights holder, and also by the rights holder themselves, knowing what they are entitled to and therefore being able to claim their rights.

⁷⁷ Uvin, "From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development," 602.

⁷⁸ Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley and Los Angeles: University of California Press, 2005), 138-39.

⁷⁹ Uvin, "From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development," 604.

⁸⁰ Gauri and Gloppen, "Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy," 486.

In trafficking, this involves equipping victims with knowledge of their rights and providing ways in which they can actively claim them.

Gauri and Gloppen also offer four types of a HRBA, two of which are more relevant when extrapolating these outside of the development arena and into trafficking discourse and practice. The first of these is the 'global compliance approach' which involves compliance with international and regional treaties,⁸¹ in this case such as UN and EU treaties. Gauri and Gloppen note that a HRBA is best achieved by national implementation of these treaties rather than relying on international or regional enforcement.⁸² This would put the focus on the UK to implement and enforce human rights for trafficking victims. Bales considers that as a transnational crime, human trafficking is best targeted from the EU as a multi-country approach.⁸³ These ideas work best together then, when human trafficking is regulated with regional and or global standards or laws, paired with national accountability to ensure human rights are respected and appropriate laws and mechanisms are put into place. The other approach is that of 'rights talk' where those who have had their rights violated become more aware of the rights that they hold. The role of civil society organisations is important in this, to put pressure on governments as well as to help the poor.⁸⁴ In the case of trafficking, this provides the rights holder with the ability to claim their rights, especially with the assistance of civil society or non-government organisations.

The Normative Value of a Human Rights-Based Approach

The role of international human rights law in setting a normative basis for national anti-trafficking policy is important in a HRBA. This normative perspective is discussed by a number of scholars. Bettio and Nandi describe a HRBA as a normative perspective on a set of rights, where the compliance or lack of compliance to these rights can be measured or analysed.⁸⁵ This would indicate international human rights law as a basis for a measurement of compliance, although regional, such as EU or CoE, human rights law are also a standard against which compliance can be measured. Amiel agrees with the concept of a normative value of a HRBA when it is used in anti-trafficking documents. International human rights norms need to be transposed into laws, policies and programmes, so victims of trafficking are seeing their human rights protected and respected.⁸⁶ Rassam describes international human rights law as the normative or "norm-setting" framework for

⁸¹ Ibid., 487.

⁸² Ibid., 492.

⁸³ Bales, *Understanding Global Slavery: A Reader*.

⁸⁴ Gauri and Gloppen, "Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy," 494.

⁸⁵ Francesca Bettio and Tushar K Nandi, "Evidence on Women Trafficked for Sexual Exploitation: A Rights Based Analysis," *European Journal of Law and Economics* 29, no. 1 (2010): 16.

⁸⁶ Amiel, "Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation," 39.

a national strategy to tackle modern day slavery, and suggests these should be incorporated into national development policies and these policies then measured against slavery.⁸⁷ These development policies relate to trafficking in that they are to address socio-economic factors that contribute to allowing slavery and forced labour to be present, and with the thought that socio-economic rights are important rights in a HRBA.

These scholars' ideas are important, because human rights are arguably universal in nature and for human rights to be utilised in anti-trafficking, it needs to be an agreed norm that, firstly, trafficking is a violation of human rights, and secondly, that the exploitative aspect of trafficking, in this case forced labour, is a continuation of this violation of rights. If the human rights in international law are not recognised as a global norm, it becomes difficult to measure compliance, and there will be a problem with transposing these rights consistently into national laws and policies. What is considered as forced labour and a violation of worker rights in one country could be very different from another, resulting in very different protections and remedies offered to citizens of those two countries if found in the same exploitative condition. Juanita Elias offers a slightly different opinion, commenting that a rights based approach does appear to mean subscribing to minimum standards from international norms which will result in female (domestic) workers finding themselves freed and in a better position. However, Elias argues that in actuality, a HRBA only references these conventions and the actual effectiveness of taking these norms and applying them generically to female workers is under analysed and not a part of applying a HRBA.⁸⁸ Elias makes a valid point, and while a key part of a HRBA is referencing and meeting an agreed international norm, it is very important to go further than this and actually assess the needs of the women a HRBA is aimed to be impacting. Elias also questions the use of the terms trafficking and forced labour when looking at migrant domestic workers, as these are terms that provoke more of a moral response, than framing these as seeking socio-economic equality or fair and equal wages.⁸⁹

Rassam perhaps addresses this by going further in her discussion of socio-economic rights to say that a HRBA "recognizes the indivisibility of civil and political rights and economic and social rights for the enslaved".⁹⁰ This approach encompasses the spectrum of rights that a person can hold and attempts to go to the root of the issues causing slavery (including trafficking and forced labour) such as poverty, where the provision of basic needs such as food and shelter is not met, while also

⁸⁷ A Yasmine Rassam, "International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach," *Penn St. Int'l L. Rev.* 23 (2004): 842-43.

⁸⁸ Juanita Elias, "Making Migrant Domestic Work Visible: The Rights Based Approach to Migration and the "Challenges of Social Reproduction", " *Review of international political economy* 17, no. 5 (2010): 845-46.

⁸⁹ *Ibid.*, 846-47.

⁹⁰ Rassam, "International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach," 843.

addressing lack of education, healthcare, social security and work as socio-economic rights which affect a person's susceptibility to enslavement (and trafficking). Placing socio-economic rights at the centre of this, Rassam wants to see empowerment stem from these rights, rather than focusing on abolition of modern day slavery (again including trafficking and forced labour).⁹¹ Rassam's support for this shift from abolition to empowerment stems from examples from the United States' history where abolitionism focused on the victimisation of slaves instead of providing support to help them start their lives again once freed.⁹² This idea of empowerment is an important one, as it provides tools for trafficking victims to claim their rights, and for states to have policies that provide support to victims to re-establish their lives and not fall prey to traffickers again. Within the development sphere this idea of a HRBA as a tool for empowerment is echoed, with impoverished aid recipients becoming "empowered rights-holders".⁹³ Building on this, Bruch offers a definition of a HRBA as one that "centers on the individual affected and offers the possibility of reconceptualizing that person as a rights holder rather than as a mere "victim"" (Bruch, 32).⁹⁴ Throughout both development and trafficking discussions on a HRBA is the idea of empowering a rights-holder in their rights, rather than framing them as a victim (or aid recipient) that is powerless.

It is important to consider what empowerment might actually look like in trafficking cases. Empowerment of the rights holder is about enabling a person to claim their rights; it is educating a victim on what they are entitled to and providing access to that, as well as promoting justice, and providing compensation. It is acknowledging that a victim of trafficking has had their basic humanity, freedom and rights violated and also acknowledging the trauma they have experienced, and allowing the victims voice to be heard. It is acknowledging that every victim has a different experience that affects them in a different way, requiring flexibility in rehabilitation approaches. It is also recognising the importance of rehabilitation to restore a victim's sense of worth, value and well-being, so they can move on and reclaim their life without their trafficking and forced labour experience shadowing them for the rest of their life. Empowerment allows the victim to feel like they can take control of their own life again, which may include lending their voice to prosecute those responsible for their exploitation.

It is also important to shift the balance of power out of the hands of the traffickers, and instead to the victim. This needs to include supporting victims so they are able to stand up for themselves and not let this experience define them, as well as preventing victims from being re-trafficked which can

⁹¹ Ibid., 844-45.

⁹² Ibid., 850.

⁹³ Schmitz, "A Human Rights-Based Approach in Practice: Evaluating NGO Development Efforts," 525.

⁹⁴ Elizabeth M Bruch, "Models Wanted: The Search for an Effective Response to Human Trafficking," *Stanford Journal of International Law* 40 (2004): 32.

occur when repatriating victims without considering the situation they are going back into and their risk of being re-trafficked.

Tom Campbell defines a rights-based approach as one where “an act is judged in terms of its effect on the interests identified by individual rights”.⁹⁵ This means a person is valued as an individual and they are not a means to an end for another person to use. Likewise, one person’s wellbeing is just as important as another’s, and should therefore not be sacrificed for that. For this purpose, rights are given to ensure that this individual value is upheld and a person is essentially not exploited for another’s benefit. This individual right holding is more important than the general good of the group, in Campbell’s definition. In the case of trafficking, individual rights are essential, because it is the exploitation and abuse of an individual that occurs, and therefore an individual’s rights that need protecting, and an individual that needs empowering in order to assert these rights.

Moving Away From Criminal Justice

Human trafficking is often seen as a criminal justice issue with a strong focus on effective law enforcement strategies, increasing prosecution of traffickers, and ensuring convictions for their crimes, thereby bringing down organised crime networks. This framing of trafficking is seen in many early policies and legislative tools in the early 2000s, including in EU documents (which is discussed in chapter three). A criminal justice approach to human trafficking has its benefits, as discussed by Elizabeth Bruch, because there are likely already domestic laws in place to deal with violations that take place in the trafficking process (for example kidnapping or abuse of trafficking victims) which can then be directly prosecuted under these domestic laws. It also targets related criminal activity, such as organised crime and provides a warning to traffickers.⁹⁶ An additional benefit highlighted by Bruch is by the monetary and human resources that are more readily available in the law enforcement arena than would be for human rights issues. A criminal justice approach to human trafficking has, however, been criticised for its disregard of the human rights violations that occur as a consequence of trafficking, and how the well-being and protection of these victims is ignored. For example, Amiel argues that states are violating their international human rights obligations when they do not protect victims of trafficking and provide remedies.⁹⁷ Amiel also describes trafficking as a human rights issue because “it denies its victims virtually all rights protected by international human rights law”.⁹⁸ A key aspect of a HRBA is this victim focus, protecting the target of the crime as a victim. Instead, the matter can be confused with immigration or border control issues, treating the

⁹⁵ Tom Campbell, *Rights: A Critical Introduction* (New York: Routledge, 2006), 40.

⁹⁶ Bruch, "Models Wanted: The Search for an Effective Response to Human Trafficking," 17.

⁹⁷ Amiel, "Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation," 6.

⁹⁸ *Ibid.*

victim as a criminal, or ignoring their needs while focusing on building a case for prosecution. Bruch also acknowledges the lack of attention that is paid to human rights within a law enforcement or criminal justice approach to trafficking, with the potential for immigration concerns to become more important than victim protection and legitimate trafficking victims not be identified.⁹⁹

What can be seen with a number of these authors using a HRBA is their reference to international human rights law, conventions or treaties, and how this is an important basis for recognising the human rights of the victim, knowing how their rights have been violated, and how to empower them to again hold or claim these rights. Just as importantly, these international human rights laws provide a basis for regional (e.g. EU) or national (e.g. UK) laws and policies to combat trafficking and to respect the rights of trafficking victims.

A Human Rights-Based Approach in the UK

Around the same time as international dialogue around development began to include a HRBA, the UK also began to utilise a HRBA in government policy within the Department for International Development (2003, 4). Piron, on behalf of the Overseas Development Institute, discusses this approach being adopted in from 1997 but particularly in 2000, with development policy focusing on empowering those in poverty to claim their rights. The UK's 2000 Strategy Paper, Realising Human Rights for Poor People, had three pillars of participation, inclusion, and fulfilling state obligations.

Women, Trafficking and Forced Labour

A HRBA has now been discussed as a normative concept from international human rights laws and treaties that empowers the rights-holder, and moves away from focusing solely on criminal justice. To explore this concept further in relation to the trafficking and forced labour of women, it is useful to consider the voice of the UN as an international organisation that is also an advocate for women's rights, and what this adds to the concept of a HRBA.

In 2002, Noeleen Heyzer on behalf of UNIFEM gave a plenary address on 'The Human Rights Challenge of Globalization'. She presents the idea of empowerment and rights, as discussed early, when she states that rights must be "actively claimed" by the rights-holder, and therefore the empowerment of women is important for a rights-based approach in trafficking.¹⁰⁰ For this empowerment enabling women to claim their rights, individuals and groups need to be equipped as well as there being appropriate legal, policy and institutional structures in place. Anti-trafficking interventions are also a key part of addressing the issue, in particular when women are not in a

⁹⁹ Bruch, "Models Wanted: The Search for an Effective Response to Human Trafficking," 21-22.

¹⁰⁰ Noeleen Heyzer, "Combating Trafficking in Women and Children: A Gender and Human Rights Framework" (paper presented at the Plenary address at the Conference on the Human Rights Challenge of Globalization: Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children. Honolulu, 2002), 11.

position to claim their rights. UNIFEM also recognises that trafficked women may be unable to claim their rights because of the position they are in, requiring support from the community and institutions by recognising the rights these women hold. When looking at how to include a rights-based approach to addressing trafficking, UNIFEM focuses on prevention, and highlights the importance of not only addressing supply but also demand.¹⁰¹ This is of particular importance in the case of the UK, as it is a country of destination for traffickers, due to its economic stability and the perception of the improved job opportunities available in developed countries. Prevention of trafficking requires a multi-factorial approach and part of this is improving the life of women in their home state, reducing the pull factors associated with trafficking, and providing economic opportunities at home. This means women are less vulnerable to being trafficked as they are not looking at options to improve their standard of living. Women are some of the most vulnerable to trafficking, and as mentioned earlier, the devaluation of women in some societies can lead to their increased vulnerability. Some examples provided by UNIFEM of reducing gender equality and thereby reducing trafficking include; improving a women's economic position by improving ownership of and access to resources, access to markets, increasing promotions, improving business opportunities in all sectors, and assessing the impact of economic policy on women.¹⁰² In addition to improving the economic position of women in source countries or those vulnerable to being trafficked, UNIFEM also discusses the importance of both individual and collective empowerment. This empowerment allows women to help themselves to a position of decreasing vulnerability and of greater gender equality. Although this plenary address deals with trafficking in an Asia-Pacific context, the general themes of how the UN is dealing with trafficking are able to be extrapolated to the situation in Europe, since trafficking is a global phenomenon. More recently, in an address in New York, UN Women Deputy Executive Director Lakshmi Puri described one of the root causes of trafficking in women being "gender-based inequalities and discrimination".¹⁰³ Her comments on women and trafficking show a consistency within the organisation to focus on prevention of trafficking by improving gender equality, including education and access to decent work. In addition to this, she highlights the importance of a "victim-oriented perspective" to trafficking, which is at the heart of a rights-based approach.¹⁰⁴ On the receiving or destination end of trafficking, access to justice and ensuring victims' rights are respected is crucial, as are the creation of labour and

¹⁰¹ Ibid.

¹⁰² Ibid., 12.

¹⁰³ UN Women, "Remarks by Lakshmi Puri at a Csw58 Side Event on Trafficking in Human Beings," <http://www.unwomen.org/en/news/stories/2014/3/remarks-by-lakshmi-puri-at-a-csw58-side-event-on-trafficking-in-human-beings>.

¹⁰⁴ Ibid.

migration policies that adequately incorporate gender and migrant workers.¹⁰⁵ Protection of female migrants can offer protection against potential trafficking by reducing their vulnerability in a foreign country.

A Human Rights-based Approach in the EU and UK

At perhaps the essence of a HRBA is not about having human rights at solely a legal or policy level, but about the practical outcomes of this approach on the people it impacts. Although discussing gender equality rather than human trafficking, Helen Hintjens in her article *UNIFEM, CEDAW and the Human Rights-based Approach*, discusses a report by Lee Waldorf for UNIFEM on UNIFEM and CEDAW, and the idea that a legal approach will not produce the aimed for equality between men and women, nor is it an appropriate measure of having achieved equality. In this vein, Hintjens elaborates that this overarching idea of law versus practice and the need for measuring effectiveness at an individual level is the central theme of UNIFEM and CEDAW's use of a HRBA.¹⁰⁶ This idea can be further explored in relation to trafficking for forced labour. For example, while it is important for governments and also regional bodies such as the EU, to have clear legal structures supporting a HRBA to trafficking, with supporting policies and procedures, the effectiveness of these can only really be measured by assessing how effective these are in actual cases, with actual victims of trafficking who need to have their rights protected and be provided with support. Carol Vance also highlights this variance between the text of a piece of law and the actual implementation and effect of it, with the need to study both aspects (law or policy as well as implementation) to understand the effectiveness of a state in its efforts to combat human trafficking.¹⁰⁷

Ann Jordan's perspective of women and trafficking emphasises that victims of trafficking are not necessarily the "vulnerable and passive" women governments assume they are. In fact, trafficked women can be "strong" and "risk-taking", with strong motivations that drove them to leave home, but that unfortunately resulted in them being trafficked.¹⁰⁸ There is also the common misjudgement of categorising victims of trafficking as illegal migrants, a label that can result in deportation, further harming women who have suffered already at the hand of their traffickers, or in slavery. This is discussed in more depth later on in this thesis, as well as the overall issue of trafficking being seen as a migratory and criminal problem, not as a human rights violation.¹⁰⁹

¹⁰⁵ Ibid.

¹⁰⁶ Hintjens, "UNIFEM, CEDAW and the Human Rights-Based Approach," 1187.

¹⁰⁷ Vance, "States of Contradiction: Twelve Ways to Do Nothing About Trafficking While Pretending To," 934.

¹⁰⁸ Ann D Jordan, "Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings," *Gender & Development* 10, no. 1 (2002): 30.

¹⁰⁹ Ibid., 29.

There are many different ways that a trafficked person has their rights taken from them, or finds themselves in a position where their rights are not being respected. For a HRBA to trafficking, it is essential to identify these rights and evaluate where they are being violated, and how the EU and UK can better ensure these rights are protected. It is essential that the EU and UK, as well as NGOs and other civil society groups take action on behalf of trafficking victims, and enforce the rights that they cannot enforce themselves.

To evaluate the success of the EU and the UK in implementing a HRBA in their policies, strategies and legislation, this thesis will take the idea of a HRBA constituting the empowerment the rights holder, and assess what is being done by the EU and UK to protect the rights of the rights holder, in relation to the rights a person holds, and how these rights are being violated in trafficking for forced labour. To protect these rights requires more than just rehabilitation and support after the person has been removed from a situation of exploitation or earlier in the process of trafficking, but also the prevention of trafficking occurring through addressing demand, providing adequate training to those likely to come in contact with trafficked women, and raising awareness of the issue.

The three main elements of a HRBA that have been discussed – a normative basis from international human rights standards, the empowering of the rights holder, and moving away from focusing predominantly on criminal justice in trafficking cases – provide a framework which can be used to evaluate EU and UK policies and build on prior literature. In the following chapters, EU and UK policies will be discussed and evaluated on whether they are meeting the challenge of implementing a HRBA to human trafficking, by assessing their policies against these three elements, with a particular focus on empowerment.

The European Union

Over the last 12 years, the EU has introduced a number of policies, strategies and positions designed to address human rights violations, and a number of these have been focused on trafficking. These have been building the EU's portfolio in combating trafficking and filling in the many gaps that existed. In particular, the EU has increasingly been looking at trafficking from a HRBA, with policies that begin to acknowledge the position of the victim, rather than just seeking criminal justice for the traffickers themselves. A HRBA can be simply described as the empowerment of the rights holder, and this chapter analyses whether the EU is enabling this empowerment through their policies on human trafficking. This chapter begins by contrasting the 2002 council decision on combating trafficking in human beings with the 2011 framework directive on preventing and combating trafficking in human beings. Then, the EU's 2012-2016 Strategy towards the eradication of trafficking

is discussed against the concept of a HRBA, as well as other policies around the issue of trafficking such as the standing of victims in criminal proceedings, and compensation to crime victims. Following this, the annual EU human rights reports are analysed to see what actions the EU is taking to stop trafficking, and whether their actions are in line with a HRBA.

From 2002 to 2011: Combatting Trafficking in Human Beings

The EU has an increasing number of policies and legislation covering different aspects of trafficking and victims of crime. Two of the main tools the EU uses to legislate to its Member States are framework decisions and directives. Framework decisions were introduced in the area of Police and Judicial Cooperation in Criminal Matters in the Treaty of Amsterdam in 1999. A framework decision is a binding document for Member States that are party to it. It requires an end goal to be met but allows individual Member States to decide for themselves how to reach that goal. There is also no direct effect of a framework decision.¹¹⁰ The European Court of Justice (ECJ) has jurisdiction over these framework decisions on what measures the Member States have used to achieve the goals set out in it, as well as on the legality of the framework decision itself.¹¹¹ With the entry into force of the Lisbon Treaty in 2009, framework decisions were no longer used, and the legal instruments used in the different EU pillars were streamlined to five types of acts. These included directives, regulations and decisions as the legally binding instruments. Directives are similar to framework decisions, in that they lay out an end goal that Member States must achieve, but they allow Member States flexibility in deciding how they will go about achieving that goal, or in other words, what laws they wish to implement to achieve it. The Lisbon Treaty, under the area of Judicial Cooperation in Criminal Matters, specifies that directives may be adopted in order to establish minimum rules in criminal issues with a cross-border aspect, including the rights of victims of crime, and in trafficking in human beings as a type of crime.¹¹² Directives are legally binding in their entirety for Member States, excepting those who have opt-out provisions, as stated in the directive, for example the UK and Ireland, and Denmark. When these Member States decide to opt-in, however, they must opt-in to the whole directive, not just parts of it. Directives also specify a date by which a Member State must have implemented whatever measures they are taking to reach the end-goals in the directive. If the Member States have not done this, the European Commission may take a case to the European Court of Justice for a ruling against the Member State that has not satisfied the goal of the directive.

¹¹⁰ European Community, "Treaty of Amsterdam," 18.

¹¹¹ *Ibid.*, 19-20.

¹¹² European Union, "Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community," *Official Journal of the European Union* (2007): 64-65.

With this in mind, Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings (2002/629/JHA) (2002 THB FD) is the EU’s preliminary legislation addressing trafficking in human beings. It firstly defines what trafficking offences are, including trafficking for both sexual and labour exploitation, and then predominantly addresses the criminal aspects of trafficking, with only Article 7 being devoted to the protection of and assistance to victims.¹¹³ In 2011, post Lisbon Treaty, new legislation was introduced replacing the previous framework decision. This was Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA (2011 THB Directive). A quick glance at the title of these policies already shows a difference in how the EU views and is addressing trafficking. From simply ‘combating’ trafficking, the EU is now ‘preventing’ as well as ‘protecting its victims’.

To look further into the EU’s use of the terms ‘preventing’, ‘protecting’ and the third ‘p’ ‘prosecuting’ (which is often used in the EU’s discourse around trafficking), a simple analysis of the 2002 THB FD was carried out by word search. The search on the inclusion of the partial terms “protect”, “prosecut”, and “prevent” showed that these terms were used infrequently. The 2011 THB Directive is much more comprehensive in size, and perhaps reflecting both this and the EU’s shifting approach to tackling the issue of human trafficking, includes the partial term “protect” 34 times (compared with once in 2002), the partial term “prosecut” 23 times (compared with three), and “prevent” was used 17 times (compared with three), as seen in table 3.1.

Table 1. Frequency of inclusion of the terms ‘protect’, ‘prosecut’ and ‘prevent’ in the 2002 and 2011 EU policies on trafficking in human beings.

	‘Protect’	‘Prosecut’	‘Prevent’
2002 THB FD	1	3	3
2011 THB Directive	34	23	17

The 2002 THB FD, as stated earlier, has only one article that addresses the victim of human trafficking. The first part of this article (7.1) simply states that the victim does not need to be part of the reporting or accusation of an offence occurring for an investigation or a prosecution to occur. The other two parts of article 7 regard child victims and their increased vulnerability and the provision of assistance to the victim’s family.¹¹⁴ This is a very poor attempt at any sort of protection

¹¹³ Council of the European Union, "Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings (2002/629/JHA)," (Official Journal of the European Communities 2002), 3.

¹¹⁴ Ibid.

or assistance to victims. If the victim is not a child, there is no actual support or protection offered. The provision allowing investigations to occur regardless of the accusation of the victim benefits the authorities more than the victim, as it allows more prosecutions to take place but does not really protect the victim at all. As far as empowerment of the rights holder goes, there is none in this framework decision.

The 2011 THB Directive progresses by leaps and bounds from the 2002 THB FD in terms of actual protections and support offered to victims of trafficking. It widens what is considered trafficking, including more forms of exploitation, such as forced begging and removal of organs,¹¹⁵ while also explicitly stating that victims need “to be able to exercise their rights effectively”.¹¹⁶ The EU is clearly demonstrating a greater consideration of the rights of victims, and identifying victims as rights-holders. The question is then how closely the EU ties rights to criminal proceedings and if a victim is legally entitled to these rights regardless of their cooperation in criminal matters. In the same paragraph as the statement of victims exercising their rights, it goes on to describe when assistance and support should be provided. Unfortunately this is still positioned in reference to criminal proceedings, and not independent of them. However, from here the paragraph goes on to state that “irrespective of his or her willingness to act as a witness” a victim needs to be provided with support and assistance for at least a reflection period once there is suspicion that they may have been trafficked.¹¹⁷ This is a positive development from previous legislation, providing some rehabilitation all victims. It unties the victims right to freedom from trafficking and exploitation, from whether or not they feel safe or comfortable testifying in court against their trafficker(s). In the operational text of the directive in Article 11.3, Member States are obliged to “ensure” that there is no conditionality of assistance upon cooperation in criminal proceedings.¹¹⁸

This directive also considers important aspects of vulnerability such as language and cultural differences of the victim, and also the need for support including medical care and psychological rehabilitation. These are particularly important when the victim has suffered psychological abuse, physical abuse, or if they have been trafficked and exploited over a long duration. The directive also addresses secondary victimisation where a victim is re-exposed to their trauma, for example by repeated interviews.¹¹⁹ This is mentioned in Article 12 on protecting victims during criminal

¹¹⁵ European Parliament and Council of the European Union, "Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA," (Official Journal of the European Union 2011), 2.

¹¹⁶ Ibid., 3. Para 17

¹¹⁷ Ibid., 4.

¹¹⁸ Ibid., 8.

¹¹⁹ Ibid., 4.

proceedings, and it is acknowledged that seeing their trafficker or having to answer repeated questions about their experience or their private life can re-victimise the trafficking victim. This attention to how a victim is affected by different aspects of a prosecution case is an important consideration in utilising a rights-based approach. Inclusion of this within the directive shows the EU to be considering the victim's wellbeing as well as the criminal outcome of the situation.

One potential problem with assisting victims of trafficking and forced labour is cultural and language barriers. Article 11.5 of the directive gives provisions for translation and interpretation where needed which is likely to be necessary for victims of trafficking from either outside the EU or from a different member state.¹²⁰ This, along with providing accommodation, food, and any medical treatment needed including for psychological damage, demonstrates an improvement in EU's concern for victims, especially when coupled with the non-conditionality of support and assistance to the victim's participation in the prosecution of her traffickers. Another important development in this directive is the inclusion of non-liability of victims for any criminal acts they were forced to do while being trafficked and exploited, addressed in Article 8. The wording of this describes the competent authorities as "entitled not to prosecute",¹²¹ which indicates that while they are now able to not prosecute or penalise the victim, there is still the ability to prosecute if they see it as appropriate. The primary way to protect a victim is to not treat them as a criminal but as someone who has been exploited and who is a victim of crime. This means that the victim does not need to fear the authorities and getting into trouble for actions that were beyond their control. It is hoped that this article is enough to protect victims from being treated as criminals. This directive also adds another layer of support in the form of compensation. Victims of intentional violent crimes are already able to receive compensation by the State, and in Article 17 of this directive the availability of this compensation is extended to trafficking victims also.

In addition to taking note of the inclusion of victim compensation and the protection of victims, the prevention of trafficking is also an important part of combatting trafficking, and is included in the title of this directive. However, when observing the actual terminology used in the binding text, Article 18 has the weakest text. It is all very well to address issues of trafficking and forced labour and aim to reduce demand, increase awareness, and provide the victim with appropriate compensation, but does the directive actually have strong enough wording to ensure the member states *are* working to prevent trafficking? For example, paragraph one states that "member states shall take appropriate measures...to discourage and reduce the demand".¹²² Firstly, this is a vague

¹²⁰ Ibid., 8.

¹²¹ Ibid., 7.

¹²² Ibid., 10.

statement. What constitutes an appropriate measure is left to each member state to decide, with a suggestion that education and training might be one of them. This leaves open a broad interpretation of what amount of education and training would fulfil the Member States legal obligation. What a Member State chooses to do comes down to the value they place on this issue and what finances they choose to spend on this aspect of trafficking. Paragraph 18.1 allows for a diverse response from different Member States across the EU. Article 18.2 is perhaps slightly stronger with the word “action” substituted for “measures”, and more specific examples given as to what the EU expects Member States to do to try to raise awareness and reduce the risk of trafficking. Article 18.3 in particular uses very weak terminology where the Member States only have to “*promote regular training*” (emphasis added).¹²³ Here there is no binding obligation to actually train police officers, border guards, or immigration officers, but only to promote the training, which may or may not actually result in such training. One could argue that these officials are the most important in identifying and rescuing victims of trafficking as they come into a country, or when police are called to a crime scene. Therefore, the EU is not doing itself any favours by accepting such weak wording for this paragraph, allowing Member States to have ignorant or untrained officials dealing with trafficked persons and either not recognising them when they come through the borders, or not being trained to know how to appropriately and tactfully identify and speak to them. Paragraph 4 of Article 18 is also weak in its chosen terminology, with Member States only required to “consider taking measures” to make using the services of a trafficked person a criminal offence when the user knows that the person has been trafficked and/or exploited..¹²⁴ While this is a more concrete way of reducing demand than 18.1, it still is only a suggestion with no real requirement for Member States other than spending five minutes thinking about whether or not they want to make the use of services a criminal offence, with no obligation to actually do anything about it. Those knowingly using the services of a trafficked person need to face appropriate consequences for their actions, and the role they are playing in encouraging trafficking to continue and to be a profitable venture.

In addition to the inclusion of provisions to protect victims of trafficking and to prevent it from occurring, the remaining articles address different criminal aspects of trafficking. These address what an offence is, aiding and abetting, penalties, liability, sanctions, investigation and prosecution, and jurisdiction. The language used in these articles predominantly requires Member States to “ensure” that they carry out the subject of the article, for example in Article 4.1 where it states a Member State must to take steps to ensure that the maximum penalty is at least five years imprisonment.

¹²³ Ibid.

¹²⁴ Ibid.

Throughout most of the text, the language used is reasonably strong, using “to ensure” something happens such as providing support and assistance to victims, compensation, and other forms of protection, and also in the criminal aspects of trafficking mentioned above. It is Article 18 on prevention that has the weakest text and needs improvement to ensure Member States put in place the appropriate measures to address demand, awareness and training of officials. Article 4 contains strong paragraphs setting out the punishments for traffickers, building on the EU’s criminal justice approach to trafficking, but this approach is clearly missing when dealing with prevention.

One of the final developments in this directive is the introduction of the role of the anti-trafficking coordinator. This new role shows a commitment by the EU to have a more effective anti-trafficking strategy and to streamline efforts of different member states with the EU. The role of the anti-trafficking coordinator was first suggested in the Stockholm Programme in 2010, to improve the EU’s approach to trafficking in human beings to be coordinated and to bring together all current legislation, policy and procedure into a cohesive approach.¹²⁵ This position has been held by Myria Vassiliadou since March 2011, is placed under the DG Home Affairs within the European Commission.¹²⁶ Aside from noting the comprehensive website with links to many of the important EU anti-trafficking documents, it is difficult to assess the effectiveness of this role since its implementation in 2011.

To further analyse the differences between the 2002 THB FD and 2011 THB Directive, Table 2 shows the difference in inclusion of gender and forced labour within these policies. In 2002 there was reference to gender or women only in relation to violence against women and when referring to the UN trafficking protocol. Forced labour was only included in the list of type of exploitation. In contrast, the 2011 THB Directive went into much more detail on the subject of gender. Firstly, it acknowledged that gender specific support is needed as men and women are often trafficked for different purposes, and there can be different motivations behind their trafficking, even if they are both trafficked for forced labour.¹²⁷ Gender is also considered as an important factor in vulnerability assessments, and the inclusion of a gender perspective is seen as important in strategies to prevent human trafficking.¹²⁸ Finally, the directive also includes forced labour to a greater degree by specifying different areas of labour exploitation and including forced begging and domestic servitude.

¹²⁵ European Union, "The Stockholm Programme," *Official Journal of the European Union* (2010): 22.

¹²⁶ See https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en

¹²⁷ European Parliament and Union, "Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA," 1.

¹²⁸ *Ibid.*, 3,5.

It also mentions prevention of forced labour by the use of labour inspectors.¹²⁹ The inclusion of gender and forced labour to a greater degree in the 2011 THB Directive demonstrates that the EU is broadening its view on trafficking, and the scope of how it addresses it. It is no longer just a problem of sexual exploitation, but also labour exploitation. Additionally, it is increasingly recognised that gender does need to be considered in responses to trafficking, as even within forced labour there are areas of exploitation that are more likely to be one particular gender, and accordingly a gender-sensitive approach is needed.

Table 2. Inclusion of trafficking, gender, forced labour and domestic servitude in seven key EU policies from 2001.

Policy	Trafficking	Gender/Women	Forced Labour	Domestic Servitude
2001 FD on standing of victims in criminal proceedings	No	No	No	No
2002 FD on combating THB	Yes	Yes – violence against women; UN protocol	Yes – in definition of exploitation	No
2002 Directive defining facilitation of unauthorised entry	Yes – as supplement to other instruments against THB	No	No	No
2004 Directive on compensation to crime victims	Yes	No	No	No
2004 Directive on residence permits to third-country nationals	Yes	Yes - ref protocol, medical assistance to pregnant women (in special needs category)	No	No
2011 Directive on preventing and combating THB	Yes	Yes - gender specific support as men and women often trafficked for different purposes, with different push and pull factors; UN protocol; gender as a factor	Yes - specifies some different areas of labour exploitation; includes forced begging as a type of forced labour; prevention incl. with labour inspectors.	Yes – as an example of exploitation

¹²⁹ Ibid., 5.

		to considering in vulnerability assessments; using gender perspective in strategies to prevent THB		
2012 Directive on minimum standards for victims of crime	Yes	Yes - violence against women; gender-based violence; equality between men and women; discrimination based on gender; gender sensitive training to be provided; and poss need for special support, risk of repeat victimisation	No	No

While the EU is certainly making progress from the 2002 THB FD to the 2011 THB Directive, with the inclusion of the victim’s rights as a much more focal point, it does need to work on the strength of the terminology in some sections, in order to ensure Member States across the EU are more aligned in their action and policies against trafficking. Paragraph 32 of the preamble refers to trafficking as a problem that is best tackled at EU level rather than Member State level because it is such a vast, far reaching and cross-border problem.¹³⁰ If the EU wants to tackle this problem predominantly at a Union level, then most certainly it needs to ensure its terminology is appropriate to direct Member States on an approach that is unified and cohesive, providing a larger scale fight against trafficking than if each Member State came up with its own methods for tackling trafficking. Trafficking is a real issue affecting the lives of vulnerable people, both within and from outside the EU, and while allowing Member States sovereignty over decisions is important, the directive would benefit from stronger terminology to strengthen the minimum standards required from Member States.

Supplementary Legislation

In addition to the specific trafficking legislation from 2002 and 2011 on combatting human trafficking, there are a number of other framework decisions and directives that address issues related to trafficking. These include compensation to crime victims, the standing of victims in criminal proceedings, and the issuing of residence permits to trafficking victims.

¹³⁰ Ibid., 6.

In 2001, the Council of the EU's framework decision on the standing of victims in criminal proceedings provided some common minimum standards across the EU that address victims of crime and their subsequent rights, including their right to compensation, access to justice, as well as their protection.¹³¹ Victims are defined in Article 1 (a) as persons who have "suffered harm, including physical or mental injury, emotional suffering or economic loss" that is in consequence of someone else's criminal actions.¹³² This definition clearly fits that of a victim of trafficking, including the element of economic loss, which is found, for example, in cases where a victim is exploited for their labour and not adequately compensated for this, resulting in loss of earnings. Article 2.1 specifies that the victim's rights shall be recognised and that they are treated with respect and dignity. More generally, this framework decision considers the needs of a victim and aims to prevent secondary victimisation, to support them before, during and after criminal proceedings, and to ensure they have all the information they need, including on reporting an offence and on support available to them. Article 8 covers the victim's right to protection in relation to criminal proceedings, both in safely testifying and also in their protection from the perpetrator of the crime. This framework decision also addresses training for people involved in supporting the victim or in the criminal proceedings, on dealing with vulnerable groups. It also offers preliminary support to victims, with some important provisions in the areas of compensation and preventing secondary trauma or victimisation. It recognises victims as rights-holders and that training is needed to appropriately support victims of crime.

In 2012 this framework decision was replaced with Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA. This directive took a slightly different angle, covering not only a victim's standing during criminal proceedings, but extending this to a victim of crime's rights, support and protection.¹³³ This directive acknowledges the rights a victim holds, and that these can be violated with crime. In Article 7 it allows for translation and interpretation services that are needed for a victim to exercise their rights, and a victim's right to protection does not hinge on their residency or lack of, in a Member State.¹³⁴ Importantly, this directive acknowledges the role gender can play in

¹³¹ Council of the European Union, "Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA)," *Official Journal of the European Communities*, (2001).

¹³² *Ibid.*, 2.

¹³³ European Parliament and Council of the European Union, "Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA," (Official Journal of the European Union 2012).

¹³⁴ *Ibid.*, 58. Para 10

being a victim of violence, including in human trafficking,¹³⁵ and it clarifies also clarifies that a victim is still a victim even if the perpetrator is not found.¹³⁶ This directive contains a broader perspective on what victim support can actually entail, including referrals to more specialist services where required, and access to restorative justice where appropriate and in a safe environment. Victims of trafficking are recognised as likely to require special protection due to their increased risk of secondary or re-victimisation.¹³⁷ This directive shows a consideration of victims, their rights, and potential harm they may experience throughout the criminal proceedings, either through contact with the offender or if their vulnerability is not respected and they are not assisted in recovery.

Undertaking the same analysis as earlier, the number of times the terms ‘protect’, ‘prevent’, and ‘prosecut’ appeared in these two documents was word searched, and is shown in table 3.2. This showed ‘protect’ appearing nine times in 2001 compared with 54 in 2012; ‘prevent’ appeared zero times in 2001 and three times in 2012; and ‘prosecut’ appeared once in both 2001 and 2012. This again appears to reflect the greater size of the updated directive, and the increased focus on the protection of crime victims.

Table 3. Frequency of inclusion of the terms ‘protect’, ‘prosecut’ and ‘prevent’ in the 2001 and 2012 EU policies on support and standing of victims of crime.

	‘Protect’	‘Prosecut’	‘Prevent’
2001 Framework Decision	9	1	0
2012 Directive	54	1	3

Referring again to Table 2 above, it is clearly seen that the 2001 framework decision does not include any mention of trafficking, gender or women, forced labour, or domestic servitude. In contrast, the 2012 directive does reference trafficking, and it contains multiple references to gender. More specifically, it addresses violence against women and gender-based violence,¹³⁸ and it states that there should be equality between men and women and no discrimination based on gender.¹³⁹ It also suggests the provision of gender sensitive training to any officials dealing with victims in

¹³⁵ Ibid., 59. Para 17

¹³⁶ Ibid. Para 19

¹³⁷ Ibid., 63. Para 57

¹³⁸ Ibid., 57.

¹³⁹ Ibid., 58,65.

criminal proceedings.¹⁴⁰ From this, we can again see the vast improvement the EU has made in policy since 2002.

Council directive 2002/90/EC provides a definition of the facilitation of unauthorised entry, transit and residence which includes traffickers. Within this directive, the facilitation of unauthorised entry or transit is defined in Article 1 as by a “person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State”,¹⁴¹ breaking state laws. Likewise, if a person intentionally helps a person reside illegally in a Member State for financial gain, this also constitutes a breach of this directive, which can result in sanctions on that person, and aids in Member States prosecuting traffickers.

2004 brought advancement in the area of victim support, namely through Council Directive 2004/80/EC on compensation for crime victims. The EU recognises in this directive that part of a victims of crime’s protection includes the need compensation for legal costs, as well as for any damages occurring from the crime against them. This is particularly relevant for victims of trafficking where the victim can suffer many abuses and trauma. The cross border approach the EU is aiming for within the directive is important in the case of trafficking, where the crime against the victim often, but not always, involves movement across borders. The system put in place from this directive needs to allow victims to be able to talk to the authorities without barriers to access and information, for example with language.¹⁴² What is important to note in this directive, is the EU’s commitment to compensate the victim regardless of whether the perpetrator of the crime is able to pay or not. The Member State where the crime was committed is required to compensate the victim.¹⁴³ The directive is also careful to separate the duties of the assisting authorities, helping the victim with a compensation application, and the deciding authorities. This provides a transparent and accountable system for victims to access compensation.¹⁴⁴

In 2004, the Council of the EU also introduced a directive 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

¹⁴⁰ Ibid., 64.

¹⁴¹ Council of the European Union, "Council Directive 2002/90/EC of 28 November 2002 Defining the Facilitation of Unauthorised Entry, Transit and Residence," *Official Journal of the European Communities*, (2002): 17.

¹⁴² "Council Directive 2004/80/EC of 29 April 2004 Relating to Compensation to Crime Victims," (Official Journal of the European Union 2004), 15. Para 12

¹⁴³ Ibid., 16.

¹⁴⁴ Ibid., 16. Refer articles 3 and 5.

action to facilitate illegal immigration, who cooperate with the competent authorities.¹⁴⁵ This is part of the EU's strategy to stop illegal immigration, where the offering of residence permits is an incentive for victims of trafficking, and of some other types of facilitated illegal immigration, to cooperate with the competent authorities in whichever member state they were in, helping the authorities catch and prosecute the criminals responsible. The directive includes the wish to protect the rights of victims whilst "concentrat[ing] their efforts on detecting and dismantling criminal networks".¹⁴⁶ As trafficking can occur from third countries outside the EU into the EU, or within the EU borders between or within Member States, it is important to have provisions to cover all victims, regardless of their nationality. This makes the existence of a directive like this important, as it shows the EU is thinking about or considering the victim after they have been rescued from trafficking. The question is then, therefore, whether it is appropriate to only offer a residence permit to those willing to cooperate with competent authorities, and whether this directive has a predominantly criminal justice focus? Firstly, what does the directive mean by cooperation with competent authorities? Paragraph 11 of the preamble gives examples of competent authorities, which may be the police, a prosecution authority, or a judicial authority. It seems by cooperation, the directive means with "the fight against trafficking in human beings". It seems reasonable to hope that victims of trafficking would like to cooperate with stopping human traffickers, thereby preventing what happened to them happen to someone else. However, there are valid reasons why they may not feel comfortable doing this and possibly the most vulnerable and therefore in need of protection and support (in the form of a residence permit) may be those who feel emotionally or physically unable to cooperate with competent authorities. Also, if the victim cooperates with the authorities and is partway through their residence permit but changes their mind and no longer wishes to be a part of any proceedings, their residence can be withdrawn. Understandably, a victim may choose to cooperate just to receive a residence permit and then once they have this no longer want to cooperate, if there is not this provision in the text. However, trauma suffered cannot be ignored when considering reasons why a victim may not wish to cooperate, and this should not penalise them from protection. Another important point to note under Article 14 on withdrawal is if the competent authorities decide to no longer go ahead with a case, then the victim can also have their residence permit withdrawn. While the opportunity to remain legally in the country of destination is important for victims of trafficking in their recovery, the conditionality of the residence permit and the ease in which its issue can be withdrawn does not provide the victim with a secure knowledge of their safety,

¹⁴⁵ "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," *Official Journal of the European Union* (2004).

¹⁴⁶ *Ibid.*, 19.

and can interrupt their rehabilitation. It may also put unnecessary stress on the victim through forcing them to cooperate in proceedings, and not allowing them to safely withdraw if they feel uncomfortable, instead placing them under threat of deportation. Issuing a six month residence permit that cannot be revoked for reasons d) and e) of Article 14 (a lack of cooperation from the victim or from authorities stopping proceedings) would allow security to trafficking victims to recover from their experiences while allowing them to cooperate voluntarily without further pressure of possible withdrawal of their residence permit.

Article 12 of this directive provides for access to programmes that help trafficking victims regain their normal social life, as well as assisting in preparing the victim for return to their country of origin. The Member State may make these programmes compulsory for those issued a residence permit. Programmes that are aimed at helping the victim reclaim their normal life are an important part of protection and rehabilitation of victims. This directive also introduces a reflection period of safety during which the victim cannot be deported, and is able to consider whether they wish to cooperate with the competent authorities or not, while also having access to medical treatment and a minimum standard of living.¹⁴⁷ A weakness of this directive is under Article 7 regarding the treatment granted before the issue of the residence permit. In this section, three out of four of the provisions are only “in accordance with national law”, “if provided by national law”, or “if established and under the condition set by national law”.¹⁴⁸ This initial stage after a victim is discovered is one of the most important in their care and protection, and needs more direction than just referring to national law which may or may not exist. ‘In accordance with national law’ at least alludes to a law existing, but the provision of psychological assistance and free legal aid is completely left to what a Member State already has in its national law, which may be nothing. In addition, referencing in the same sentence that a Member State should “attend to the special needs of the most vulnerable” and then only including psychological assistance ‘if provided by national law’ seems contradictory. Psychological counselling following abuse and trauma is fundamental in recovery.

These seven EU framework decisions and directives offer some common standards for Member States to implement into their national law. There is a clear improvement in the inclusion of human rights for victims in the more recent directives, compared with the earlier directives and framework decisions; however, the EU could still strengthen its language in areas of protection of victims and prevention, to an equal level that is used in the language for criminal justice aspects of the policies.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., 21.

2012 and Beyond: An EU Strategy

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 is a comprehensive document with which the European Commission has sought input from many different actors, including utilising what victims of trafficking have to say.¹⁴⁹ It has five priority areas for the scope of the EU Strategy, which involve identifying, protecting and assisting victims; improving prevention; increasing prosecution; improving coordination and cooperation; and increasing knowledge and responses to trafficking concerns.¹⁵⁰ The EU Strategy paper recognises the need for a multi-disciplinary approach to combatting trafficking across sectors such as policing; immigration and border security; lawyers and judiciary; housing; labour, trade unions and recruitment agencies; health; civil society; and victim support services, among others.¹⁵¹ A victim-centred approach is specifically mentioned in reference to an EU Transnational Referral Mechanism which is to be developed in order to ensure there is better coherence across EU Member States as they identify victims, refer them, and offer assistance and protection. The Commission aims to do this by 2015.¹⁵² Throughout the document victims are extensively mentioned, showing an improvement in EU awareness of the importance of focusing on the victim and their needs when addressing trafficking. Within the EU Strategy, the Commission recognises the need for victims to be provided with information on their rights, as well as making access to appropriate authorities easier for victims.¹⁵³

The EU Strategy illuminates some differences in priorities between the European Commission and the European Parliament (EP) and Council. In the trafficking directive, prevention was the weakest focus of anti-trafficking efforts. There were suggestions of what could be done to prevent trafficking from occurring throughout the EU, but it lacked the language to ensure Member States were accountable to making sure this actually happens. For example, when discussing training for those officers who come into contact with victims or potential victims of trafficking in their work, the trafficking directive only stipulates that member states should promote this training. In comparison, the Commission's EU Strategy makes it clear that training is a high priority for those working in the field of trafficking.¹⁵⁴ In addition to providing training, the Commission would like this to be very specialised as well as 'uniform and consistent' between Member States.¹⁵⁵ The EU Strategy also states that a report will be produced to "assess the impact of national laws establishing as a criminal

¹⁴⁹ European Commission, "The EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-2016," (Brussels 2012), 5.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 5-6.

¹⁵² *Ibid.*, 6.

¹⁵³ *Ibid.*, 7.

¹⁵⁴ *Ibid.*, 13.

¹⁵⁵ *Ibid.*

offence the use of services” which are from trafficked individuals.¹⁵⁶ Article 18.4 of 2011 THB Directive only stipulates that Member States should consider doing this. With this in mind, the Commission report may be difficult to collect data for, when Member States were not actually obliged to make the use of services a criminal offence. If the Commission finds those Member States who have created this law are seeing positive results from it, and an improvement in their aim to decrease trafficking, then a report may encourage other Member States to implement laws to make the use of services a criminal offence, and encourage the EP and Council to use stronger language in a future directive. Therefore, while follow up is beneficial, it would be more beneficial to have a more assertive legislative directive on this area to start with, to ensure all Member States are implementing these changes. Otherwise, a likely finding of the Commission’s report is simply that those motivated Member States may have introduced national legislation on this, and those that are less concerned with trafficking as an issue will not do anything about it, as they are not obligated to do so.

The 2012 Strategy is designed to support the implementation of the 2011 THB Directive, and support Member States as they take primary responsibility for combatting trafficking. Unfortunately, when the document designed to inform Member States of their obligations (that is, the directive) has weak language, it is not providing a strong enough legal basis for Member States to action changes to address prevention of trafficking and actually implement necessary changes to their national legislation. Overall, the EU Strategy does show motivation to address the issue of trafficking in human beings, but there needs to be stronger support from EP and Council legislation to support this and align the EU institutions in their anti-trafficking efforts.

Year by Year: The EU’s Annual Reports on Human Rights

To finish analysis of the EU’s implementation of a HRBA in their trafficking policy and legislation, the EU’s annual human rights reports offer a timeline of the EU’s human rights activities, and more importantly, where human trafficking fits in with their human rights priorities. For the purpose of this research, the annual reports being considered start from 2002 in order to correspond to other EU documents that are being analysed.

The EU’s early annual reports on human rights had a definite focus on the criminal justice and organised crime aspects of human trafficking. In 2002, victim assistance was one of 12 commitments the EU had for fighting human trafficking. This is the same year as the first EU legislation specifically on trafficking, the 2002 THB FD, entered into force. The annual report reflected the legislative proposal for this framework decision by discussing the requirement for victims of trafficking to

¹⁵⁶ Ibid., 16.

cooperate in criminal investigations against their traffickers, in order to be granted a short-term residence permit.¹⁵⁷ Only then could their protection as a victim be realised.

An important factor during this report was the upcoming enlargement of the EU and the impact this might have on human trafficking. Thus, there was a conference at the EP in 2002 to discuss trafficking policy in light of this. Trafficking was also a topic for discussion at the European Forum on Prevention of Organised Crime held in 2001, with prevention, law enforcement, and NGO cooperation some of the topics discussed.

Discussion around trafficking occurred during conferences and workshops on organised crime, and law enforcement was mentioned frequently. Even workshops organised for prevention of human trafficking were based around organised crime, for example the Second Workshop of the European Forum on the Prevention of Organised Crime. In 2002, the EU Police Chiefs Operational Task Force invited Europol to have an Experts' Meeting. While it is not a hindrance to the issue of trafficking to focus on prosecuting the criminals responsible for this act, this early approach by the EU showed a narrow focus.

The 2003 annual report used the terms "prevent, punish and eliminate" in regards to human trafficking, which are very strong words that indicate a criminal justice perspective.¹⁵⁸ In this report, the new EU legislation in the form of the 2002 THB FD was described as "underpin[ning] the EU's commitment to intensify efforts to prevent, punish and eliminate" trafficking.¹⁵⁹ The Brussels declaration was also an outcome of the European conference on preventing and combatting trafficking in human beings – Global Challenge for the 21st Century. The Commission also decided to set up an experts group to advise the Commission on trafficking.

By 2004, the annual report describes the EU's trafficking efforts as multi-disciplinary, with prevention and protection of victims and witnesses, as well as offering assistance to victims, as key parts. Human trafficking was discussed at the EU Forum for the Prevention of Organised Crime, with a focus this time on public-private cooperation. Women were highlighted as a group vulnerable to trafficking, and the EU involved Member States in taking responsibility for their part in action against trafficking. For example, the EU hoped Member States would engage in awareness-raising campaigns and cooperate with each other across borders to protect victims and prevent trafficking

¹⁵⁷ Council of the European Union, "European Union Annual Report on Human Rights 2002," ed. General Secretariat (Luxembourg: Office for Official Publications of the European Communities, 2002).

¹⁵⁸ "EU Annual Report on Human Rights 2003," ed. General Secretariat (Luxembourg: Office for Official Publications of the European Communities, 2003), 23.

¹⁵⁹ Ibid. Para 3.1.5

from occurring.¹⁶⁰ Much is still according to national law, however, and the EU had not yet produced compelling legislation for Member States to implement in some areas of protection.

In 2005 the Commission's Group of Experts on Human Trafficking submitted their report with recommendations for prevention, protection of victims, and effective law enforcement. Notably, within this report human rights are seen as a "guiding principle".¹⁶¹ The increased inclusion of human rights in trafficking reports is a positive development. In addition to respecting human rights, the report also highlights the importance of considering trafficking as a global issue.

2006 was the first year the EU explicitly mentioned a rights-based approach and placing the rights of the victim at the centre of policies addressing trafficking in human beings.¹⁶² This coincided with human trafficking being placed "on the top of the EU agenda" for the period of the annual report.¹⁶³ For this reporting period, it seems different elements of trafficking came together in a positive way to promote a HRBA. For example, the previous year's Group of Experts report on resulted in a Communication (entitled Fighting trafficking in human beings – an integrated approach and proposals for an action plan)¹⁶⁴ which suggests the EU taking a greater stand on human rights by including this within their political dialogue with other countries. This annual report also introduces the idea of common standards across the EU especially in coordinating anti-trafficking actions. The 2006 annual report also introduced the 2005 EU Action Plan on combating and preventing trafficking. Therefore, at this point the guiding strategies on trafficking are the 2005 EU Action Plan (for external dimensions of trafficking) and the Commission communication on fighting trafficking in human beings.

In 2007 the EU organised its first Anti-Trafficking Day, raising awareness of the issue EU wide. The multidisciplinary approach to combating trafficking is again emphasised, with law enforcement and criminal justice mixed with human rights, prevention, and victim support. The issue of collecting reliable and comparable data is answered with some steps taken towards creating common guidelines and indicators. However, this is discussed in regards to crime and considering trafficking as a crime area.¹⁶⁵

¹⁶⁰ "EU Annual Report on Human Rights 2004," ed. General Secretariat (Luxembourg: Office for Official Publications of the European Communities, 2004), 29.

¹⁶¹ "EU Annual Report on Human Rights 2005," ed. General Secretariat (Luxembourg: Office for Official Publications of the European Communities, 2005), 83.

¹⁶² Council of Ministers and European Commission, "EU Annual Report on Human Rights 2006," (2006), 38.

¹⁶³ *Ibid.*, 37.

¹⁶⁴ This Communication was launched from a conference organised by the UK during their Council presidency.

¹⁶⁵ Council of the European Union and European Commission, "EU Annual Report on Human Rights 2007," ed. General Secretariat (Luxembourg: Office for Official Publications of the European Communities, 2007).

In 2008 the annual report restates the discourse the EU is increasingly using to discuss human trafficking. They emphasise the multidisciplinary nature of their approach, and that human rights (or more specifically a HRBA) underpin their strategies, with a clear focus on victim rights at the centre. Labour exploitation as a focus in the new Group of Experts was a new development, which is of particular importance for the focus of this research, especially as it has not explicitly been discussed in prior EU policy. The EU continued in its efforts to create common guidelines for data collection on criminal aspects of human trafficking.¹⁶⁶

In 2009, the future role of an anti-trafficking coordinator was introduced. This year the Commission also sought to bring EU trafficking legislation up to date with a new framework decision to replace the 2002 one.¹⁶⁷ Perhaps due to the Lisbon Treaty entering into force this year, the EU continued with new things, adopting a new Action Paper on the external dimensions of human trafficking.¹⁶⁸ The EU is also increasingly including human trafficking in agreements and action plans with neighbouring countries, as well as in Strategy Papers with third countries.

In 2010 the new trafficking directive was being prepared, integrating a more holistic and HRBA within it. Trafficking was addressed from a gender perspective in the Strategy for Equality between Men and Women 2010 – 2015 and the Strategy on Gender Equality and Women's Empowerment. An anti-trafficking coordinator was appointed in December of 2010, with the goal to work on the coordination and coherence of trafficking policy between Member States and EU institutions and agencies. Alongside this, a website dedicated to anti-trafficking was established. Trafficking was increasingly included in agreements and action plans with third countries, increasing the EU's external action on human trafficking.¹⁶⁹

In 2011, the new directive on combatting trafficking and protecting its victims (discussed in detail earlier in this chapter) entered into force. This directive showed a strengthening and continuation of focus on including human rights throughout trafficking policy and legislation, as well as a gender dimension. The third Group of Experts was appointed in 2011 with experts on gender and human rights. Also highlighted in the 2011 annual report, the EU's Global Approach to Migration and Mobility was adopted in 2011, providing a framework for migration policy with third countries, with

¹⁶⁶ Council of the European Union, "EU Annual Report on Human Rights 2008," (Luxembourg: Office for Official Publications of the European Communities, 2008).

¹⁶⁷ "Human Rights and Democracy in the World: Report on EU Action - July 2008 to December 2009," (2010).

¹⁶⁸ Entitled "Action-Oriented Paper on Strengthening the EU External Dimension on Action against Trafficking in Human Beings: Towards Global EU Action against Trafficking in Human Beings".

¹⁶⁹ European External Action Service, "EU Annual Report on Human Rights and Democracy in the World in 2010," (European External Action Service, 2011).

the inclusion of trafficking.¹⁷⁰ This report illustrated the EU's increased commitment to anti-trafficking work with a human rights perspective. The EU increasingly produces strategies and policies with a HRBA and shows an awareness of different policy areas it may affect. The Commission is also showing a commitment to collecting reliable data on trafficking, by establishing an initiative at EU-level to better collect information on the details of trafficking that is occurring.

In 2012, the EU's annual report was divided into countries and themes, which also resulted in treating trafficking under different headings, in accordance with the priorities and structure of the Action Plan. One of the main discussions on human trafficking in the 2012 report involves civil society as a key group to participate in anti-trafficking work and help implement the 2012-2016 EU Strategy. The EU sees civil society as important to help provide victim protection and assistance, as well as being involved in national and transnational referral mechanisms.¹⁷¹

What we can see throughout these annual reports is a progression of how the EU has perceived trafficking, and how they have implemented new initiatives, from groups of experts and conferences to directives, to tackle trafficking, and increasingly considers victim protection and also prevention of trafficking. Importantly, this is not just with the purpose of eliminating a form of organised crime, but also to prevent more people being trafficked and suffering the abuse that goes hand in hand with it. It is also positive to see an increase of awareness in these reports of the role gender can play in trafficking.

Conclusion

The EU has made significant progress in their victim focus in the last decade. They could still use stronger terminology and promote higher minimum standards for EU Member States through their legislation; however they have incorporated rights-based approaches focusing on the victim more and more in policy. Some examples of this are by offering more comprehensive support and compensation to victims, untying support to cooperating in criminal proceedings, and enabling victims to exercise their rights, which is in part achieved by breaking down cultural barriers by providing appropriate translation and interpretation services to improve access to information and understanding.

Part of the analysis of the success of the EU in promoting a HRBA in their anti-trafficking policy and legislation is by analysing how a Member State has translated their EU obligations into national policy. To do this, the following two chapters evaluate the UK on their use of a HRBA, including their

¹⁷⁰ "Human Rights and Democracy in the World Report on EU Action in 2011," (2012).

¹⁷¹ Council of the European Union, "EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)" (Brussels 2013), 33,67.

implementation of EU directives, as well as their own initiatives to combat trafficking. The UK is a special case, as they have negotiated to have the ability to opt out of several EU directives and framework decisions and this is further discussed in the following chapter.

The United Kingdom in Policy

Trafficking in human beings in the UK is a subject of much discussion, particularly in recent years as there has been more and more debate in this area, and the government has had to respond to International and European conventions and minimum standards that they have signed and ratified (as discussed in the previous chapter). The UK has been ranked as 'high' as a destination country for trafficking by a UNODC report on global patterns of trafficking, reinforcing the need for the UK to take action.¹⁷² The European Commission's 2014 Edition of the Eurostat Working Paper reports the number of registered victims of human trafficking that come into contact with authorities in the UK as 331 in 2010, 1998 in 2011, and 2145 in 2012.¹⁷³ The First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking reports 946 referrals of potential trafficking victims to the NRM in 2011, of which 634 were female.¹⁷⁴ The 2013 US Trafficking in Persons (TIP) report describes forced labour occurring in the UK in the areas of agriculture, construction, food processing, food service, domestic service, and in nail salons.¹⁷⁵ In response to external requirements from the EU and international organisations, and perhaps also due to a greater awareness of the number of people that are being trafficked, UK has implemented and developed various mechanisms to address trafficking, forced labour and domestic servitude, ranging from strategy papers, to government agencies, to legislation. Some of these are more effective than others, while some are repeatedly criticised by the non-government sector. The following chapter goes on to discuss the UK's unique position in the EU regarding inclusion in policies, as well as the UK's specific strategies, policies and legislative acts that guide and govern their response to human trafficking. Most importantly, the discussion also evaluates how effectively the UK has incorporated a HRBA within these policies, and if it is achieving a focus that is moving away from criminal justice and immigration concerns, and instead looking at the victim and their rights.

¹⁷² United Nations Office on Drugs and Crime (UNODC), "Trafficking in Persons Global Patterns," 64.

¹⁷³ European Commission, "Trafficking in Human Beings," in *Eurostat Statistical Working Papers* (Luxembourg 2014), 23.

¹⁷⁴ HM Government, The Scottish Government, and Department of Justice, "First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking," (UK: The Stationary Office Limited, 2012), 7.

¹⁷⁵ U.S. Department of State, "Trafficking in Persons Report: Country Narratives: T-Z and Special Case," (U.S. Department of State, 2013), 378.

Cooperation with EU Policy: UK Opt-outs

The UK is not a typical European example of anti-trafficking provisions, due to its special position regarding the Area of Freedom, Security and Justice (AFSJ). This is due to provisions made in the Treaty on the Functioning of the European Union (TFEU). Protocol 21 in the treaties annex makes the position of the UK and Ireland clear – it is not obligated to adopt any measures of the Council that fall under Part Three, Title V of the Treaty (which covers the AFSJ). However, if the UK decides to take part in a proposed measure, it has three months from the presentation of the proposal to the Council to indicate this in writing. Once the UK has opted to take part in a proposed measure, it is then eligible to vote on the relevant Council decision. The UK is bound to any measures that it adopts, following this procedure. The UK is also able to adopt a measure already adopted by the Council (although this means it misses out on the opportunity to vote on it).¹⁷⁶ The impact of this choice on the UK is that it can pick and choose which EU legislation suits its national political agenda and implement those ones only. By opting out of the AFSJ of the TFEU, the UK is not bound to any directives addressing minimum provisions for the rights of victims of crime, of individuals in criminal procedures, or the mutual admissibility of evidence between Member States.¹⁷⁷

Article 83(1) of the TFEU specifically addresses trafficking in human beings as a cross-border crime, and allows the EP and Council to legislate common minimum rules to govern Member States.

Articles 82 and 83 are both referenced in the 2011 EP and Council directive on trafficking in human beings. The 2011 anti-trafficking directive was effective from 5 April 2011, with an acknowledgement of the UK's exclusion from the adoption of the directive, as per the Treaty on the Functioning of the EU. On 12 October 2011 the UK had its request to accept the directive 2011/36/EU accepted by the Commission, bringing the UK in line with the rest of the EU on combating trafficking and protecting its victims.¹⁷⁸

Considering the ability of the UK to opt out of many of the EU framework decisions and directives, it is important to consider which ones it is actually bound by (see Table 4.1 below). Of the relevant EU directives and framework decisions on trafficking in human beings and its victims, the UK had the option to opt-out on some of these. While it did opt-in to the 2011 directive, it did not opt-into the 2004 directive on the residence permit issued to third-country nationals who are victims of human

¹⁷⁶ European Union, "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union," *Official Journal of the European Union* 55 (2012).

¹⁷⁷ *Ibid.*, 80. Article 82(2).

¹⁷⁸ European Commission, "Commission Decision of 14 October 2011 on the Request by the United Kingdom to Accept Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA," *ibid.* (2011).

trafficking or who have been the subject of an action to facilitate illegal immigration, who cooperate with competent authorities.

The Commission's report on 2002 THB FD shows the UK's cooperation with the directive, with the UK completing its reporting on the implementation of this framework decision into national law by February 2005 (due by August 2004). The UK seems to adequately comply with the provisions in the framework decision, with a special mention under Article 6 on extra-territorial jurisdiction, as an example of a Member State who has implemented the provision.¹⁷⁹ The report by the Commission notes that not all Member States have provided the Commission with an adequate amount of the information required to accurately evaluate the implementation of this framework decision. This makes the report of limited value for assessing Member State compliance, especially because the Commission is solely relying on submissions by those Member States, without investigating compliance themselves.

The UK opted into 2012/29/EU directive establishing minimum standards on the rights, support and protection of victims of crime, replacing 2001/220/JHA, and also 2002/90/EC directive defining the facilitation of unauthorised entry, transit and residence directly. Notwithstanding the comments made on these directives in the previous chapter, tentative conclusions can be drawn on the UK's choice of opt-ins. The UK has opted into the trafficking directives, the directive defining what unauthorised entry to the UK is, and the directive establishing minimum rights to crime victims. Unsurprisingly, it has avoided the directive that would potentially require giving out residence permits to trafficking victims. This shows that the UK is still concerned with immigration issues over providing support and stability to victims.

Table 4. The UK opt-in to EU directives relating to trafficking for forced labour and victims of crime¹⁸⁰

Opted In	Opted Out
Council Directive defining the facilitation of unauthorised entry, transit and residence (2002/90/EC)	Council Directive 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 (2004/81/EC)
Directive of EP and Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011/36/EU)	
Council Directive relating to compensation to	

¹⁷⁹ Commission of the European Communities, "Report from the Commission to the Council and the European Parliament Based on Article 10 of the Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings," (Brussels 2006), 7-8.

¹⁸⁰ This table excludes the two framework decisions that have since been replaced (2001/220/JHA and 2002/629/JHA).

crime victims (2004/80/EC)	
Directive of EP and Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing CFD 2001/220/JHA (2012/29/EU)	

The UK has also made an attempt to opt-out of the EU Charter of Fundamental Rights, or at least aspects of it. The Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom is the means by which they do this. Steve Peers published an article discussing this 'opt-out' and academic and Court of Justice perspectives on the validity of UK claims that it is not bound by certain aspects of the Charter. He concluded that the UK was still "bound in principle" to the Charter and that there is not clear opt-out language like in other official UK opt-outs (for example the single currency), meaning the UK has not, in fact, opted out of this Charter.¹⁸¹ Regarding the impact of the Protocol on the implementation of the Charter, Peers concludes that the general principles of the EU included in the Charter are binding regardless of the impact of the Protocol, and can only be non-binding if the Charter extends human rights which are not general principles of the EU.¹⁸²

Some of the potential problems with the UK opting out of these directives and framework decisions are in failing to create a unified EU that is dealing with this issue cohesively. Human trafficking is acknowledged to be a problem that is too big of one Member State to tackle on its own, and there is a need for the EU Member States to work together and share resources to effectively make an impact both on a criminal justice level as well as to provide support to victims. This is especially the case if victims are EU nationals being trafficked across a border, thereby allowing both countries to play a role in their rehabilitation and the provision of on-going support services. The UK opting out of important victim-related EU policy demonstrates a go-it-alone attitude, which is unhelpful in an often transnational crime, and even if the UK believes it has equivalent or better policy in place already, buying in to the common EU policies enables a clearer understanding of what the expectations are for those unfamiliar with the specifics of UK policy. The focus needs to be on making it as easy as possible for victims to know what support they are entitled to, how to seek help, and to provide those services, rather than picking and choosing what is conveniently nationally or not.

¹⁸¹ Steve Peers, "The 'Opt-out' That Fell to Earth: The British and Polish Protocol Concerning the EU Charter of Fundamental Rights," *Human Rights Law Review* (2012).

¹⁸² Ibid.

Keeping in mind UK obligations to establish certain protection and prevention measures, according to EU directives, the remainder of this chapter will discuss UK legislative and policy initiatives and efforts to address trafficking. Specifically, the UK's 2011 Government Strategy Paper; the UK's two legislative acts which include elements of slavery and trafficking, the Asylum and Immigration Act 2004 and the Justice and Coroners and Justice Act 2009; the current draft Modern Slavery Bill; and the Report on the Internal Review of Human trafficking Legislation, which follows on from the government Strategy Paper, will be discussed. The analysis will focus on how these political and legal documents use a HRBA throughout to address issues of trafficking of women for forced labour, considering the victim and their rights, as well as whether the UK meets, or even goes beyond, their EU obligations.

UK Policy: The Government Strategy Paper 2011

The 2011 government paper *Human Trafficking: The Government's Strategy* addresses the UK government's response to trafficking in human beings. Within this strategy paper, the UK government acknowledges the need to work with non-government and civil society groups in order to effectively address all areas of human trafficking. It also acknowledges that trafficking for forced labour is increasingly prevalent, and may soon be more so than trafficking for sexual exploitation.¹⁸³ Three out of five aims within the paper include a reference to victims or potential victims. The first aim includes 'maintaining effective victim support'; the second is wholly focused on victims and the identification and support specific to the needs of a victim.¹⁸⁴ Aim three includes communicating risks to potential victims of trafficking, in order to prevent it from happening. Aims four and five do not address victims, and instead focus on border control, policing, and the National Crime Agency (NCA), enabling better identification of criminals and a coordinated response to trafficking.¹⁸⁵ The strategy also provides a useful indication of the prevalence of different types of exploitation resulting from trafficking, by collating the number of referrals to the NRM from 1 April 2009 to 31 December 2010. The number of referrals of adults for labour exploitation was 267, compared with 438 for sexual exploitation, with 175 for domestic servitude, and a further 52 that were an unspecified form of exploitation.¹⁸⁶ If domestic servitude is included with other forms of labour exploitation, the number of referrals for labour trafficking (442) is comparable with that for sex trafficking (438).

¹⁸³ HM Government, "Human Trafficking: The Government's Strategy," ed. Home Office and Immigration Enforcement (2011), 5.

¹⁸⁴ *Ibid.*, 7, 9.

¹⁸⁵ *Ibid.*, 12.

¹⁸⁶ *Ibid.*, 6.

Aim one of the strategy paper addresses trafficking from “end to end”, incorporating a victim support angle, which is important for a rights-based approach. Under this aim, the UK states that it has considered the varying needs of different types of victims, including men, women, and children, and wishes to improve care for these victims. It also acknowledges the need for collaborative efforts with voluntary and non-government organisations, to utilise their skills and knowledge, as well as the private sector. Businesses are important to ensure working more effectively in identifying trafficked people, and making it more difficult for traffickers to carry out their work.¹⁸⁷ The UK also stated its intent to investigate how cooperation with the public could further assist work in anti-trafficking. Within this aim, the UK makes an effort to incorporate more awareness of victims and their need for support after being trafficked. The chapter is brief, but gives an overview of some of their intentions in this area. It also continues to have a strong crime focus, again referring to the NCA, with its command units and intelligence hub that will help the UK fight organised crime.

Aim two of the strategy addresses victim identification and care. To improve identification and to better support trafficking victims, the UK aims to strengthen their NRM which they already use to support victims. Internationally, the UK signed and implemented the CoE Convention against Trafficking in Human Beings in 2009. From this, the UK reports that they offer a 45 day period of recovery and reflection for victims, which is over and above the 30 day period required in the minimum standards from the CoE Convention. They also offer one year residence permits for confirmed trafficking victims provided they meet certain criteria. This is discussed further in the following chapter. A big step for the UK was its decision to opt in to the EU Directive on combatting trafficking in human beings and protecting victims, providing another set of minimum standards to attain, in addition to the minimum standards from the CoE Convention. The UK, in this Strategy, states its commitment to implement changes in order to meet the directives standards by April 2013.¹⁸⁸

In aim two, the UK also hopes to expand their partners in anti-trafficking by working with the department of health to provide better health services to trafficking victims, and by improving immigration services to increase sensitivity to and identification of vulnerable persons that may have been trafficked. The alliance with the Department of Health is particularly important in cases where the trafficking victim’s exploitation involved abuse, either physical or emotional, and the victim needs medical assistance to recover. Of particular importance to women is the commitment of the Department of Health to work with the Women’s Health and Equality Consortium. This is with the

¹⁸⁷ Ibid., 7-8.

¹⁸⁸ Ibid., 10.

goal of providing guidance to health professionals on dealing with trafficking victims and to promote awareness of human trafficking.¹⁸⁹

It is also important for trafficking victims to have a positive interaction with immigration or border authorities to help discourage the perception that UK authorities are to be feared, or are not approachable or helpful. The training of UK immigration workers is essential to ensure greater awareness of vulnerable people needing assistance, and to encourage trafficking victims to approach immigration workers to seek help at point of entry into the UK. It is also one of the areas addressed in Article 18 of the 2011 THB Directive, and therefore is a way for the UK to better comply with EU policy. One way the UK is integrating gender into this is by training officers from the UK Border Agency Asylum Screening Unit to better identify vulnerable or potential victims of trafficking, to increase gender sensitivity.¹⁹⁰ The UK is also increasing the number of partner organisations that can support trafficking victims once they have been freed. In line with this, funding for trafficking victims can follow the victim even if they change the organisation they have gone to for support. The idea around increasing the partner organisations is to allow diversity to suit the trafficking victim's potential needs, which can differ from one situation to another, depending on the trafficking experience they have had. This is a positive development as it would provide for different organisations to offer support to trafficking victims allowing for differing levels of exploitation, different amounts of time spent in exploitation, as well as origin and/or ethnicity of the victim. To fund these organisations, the UK is retaining funding of £2 million per year for adult victims.¹⁹¹ The US TIP report considers the UK's victim identification and subsequent referral process as needing improvement, due to reports that many victims are still not adequately helped, and victims are also being treated as criminals or deported rather than treated as a victim of trafficking requiring support and assistance.¹⁹² There is a need for the UK to go above and beyond just implementing the minimum standards required by the EU and international organisations on combatting trafficking, to achieve a consistency in protecting and supporting victims, regardless of nationality. Providing a 45-day recovery and reflection period, providing additional training to those who are likely to come across trafficked people and extending partner organisations are a good start to improving their response to trafficking for forced labour.

One initiative the UK is introducing under aim three of this strategy is to standardise de-briefing of trafficking victims and traffickers. In particular for the trafficking victims, having only one de-briefing

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid., 11.

¹⁹² U.S. Department of State, "Trafficking in Persons Report: Country Narratives: T-Z and Special Case," 378.

reduces potential trauma, or re-trauma, from multiple agencies needing to ask similar questions concerning their experience over again. The suggested standardisation would include questions that cover what different agencies require for their service provision and practice, as well as for data collection for statistics and improving the UK response. While this standardisation appears to be from more of a practical standpoint than to aid victims, it nonetheless supports Article 12 of the EU 2011 directive where they address secondary victimisation. Here, the EU acknowledges that a victim having to relive their experience through repeated questioning or through facing their trafficker (or exploiter) can cause additional trauma, and that this should be avoided where possible.

The third aim also includes a forced labour specific goal of working towards common standards across the EU for “identifying and punishing labour exploitation”.¹⁹³ They will work with labour inspectorates in order to do this. It is a positive development that the UK is specifically addressing forced labour, however this focus is on the exploiters rather than on the victim, and is not focused on building a stronger HRBA.¹⁹⁴ This task is to be carried out by the Home Office and SOCA,¹⁹⁵ again illustrating the crime focus.

The UK has a number of partners which they plan to work with to prevent trafficking, according to aim three of the strategy. Firstly, the UK Human trafficking Centre (UKHTC), which is part of the NCA, is an important agency that has the role of collating information on trafficking and then analysing and disseminating this information, helping the UK form a strategic response to the issue. The UK is also planning to work with Interpol, Europol and Frontex, which are Europe-wide policing and border control agencies, to raise awareness of trafficking among potential victims to reduce the supply of trafficking victims to traffickers. They are also working with the International Organisation for Migration (IOM) and UNODC to raise awareness, as well as China and Thailand.¹⁹⁶

Awareness-raising is important, especially where vulnerable groups can be identified. For example, those who may wish to migrate for better financial opportunities in order to provide for their family back in their home country or town are some of the people who are vulnerable to being trafficked. When looking at awareness-raising at a country level, outside the UK, there are many potential obstacles. Education and literacy, prevalence of media use, targeting the right groups, and cultural factors all need to be considered when implementing a prevention campaign. What may work in a well-educated and developed country, with countless media sources to utilise, will not be effective where education is lacking, media is not accessible through either illiteracy, lack of money, or lack of

¹⁹³ HM Government, "Human Trafficking: The Government's Strategy," 16.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid., 29.

¹⁹⁶ Ibid., 15.

media outlets, and where the target audience is broad and the country is large. In less well educated areas, the message may not translate well to the victims, or they may not heed the message, especially if they perceive the message as the UK not wanting immigrants. More locally based awareness-raising in the UK may be more effective, as there is a human trafficking is an issued that is already being talked about and advocated for among NGOs. If the UK can build on these campaigns, there could be a greater effectiveness.

The next point of focus in the strategy is the UK border. Aim four addresses tightening border controls and policing to prevent traffickers from entering the UK. Due to the high numbers of people crossing the UK border every day, the strategy states the difficulty in identifying both traffickers and trafficking victims.¹⁹⁷ Through this aim, the UK takes a strong criminal justice approach, discussing source routes, ways of improving and bringing together intelligence on criminal operations, and strengthening enforcement against traffickers. These are all important in tackling trafficking; however of potential worry is the wording surrounding the UK's discussion of their goals in combatting trafficking. Their main concern comes across as wanting to prevent the traffickers from crossing the UK border rather than preventing or fighting trafficking as a whole. This alludes to the UK still considering trafficking as an immigration concern and not a human rights issue.

Throughout the strategy paper the important role of the new NCA is discussed, and it is highlighted as a tool that will secure the UK's borders and prevent traffickers from entering the UK. The UK is aiming to create a strong and clear border, with provisions in place to ensure criminals and traffickers are stopped before they can gain entry. They also hope to identify potential victims or vulnerable people at the border, allowing for an assessment of the risk of return to their home country of potential victims at the border.¹⁹⁸

Finally, in aim five, this strategy states the government's aim to review whether current legislation is sufficient for prosecuting acts of labour exploitation. It is acknowledged that it is harder to prosecute under forced labour cases than those of sex trafficking, because there is more proof required when prosecuting under the Asylum and Immigration Act 2004 compared with prosecuting sex trafficking cases under the Sexual Offences Act 2003.¹⁹⁹ This aim also mentions demand for labour, specifying the need for a greater "moral and social responsibility" among businesses to reduce the demand for and use of labour that is exploitative.²⁰⁰ While the strategy offers specific legislative means to reduce

¹⁹⁷ Ibid., 17.

¹⁹⁸ Ibid., 18.

¹⁹⁹ Ibid., 23.

²⁰⁰ Ibid.

demand and prosecute for sexual exploitation, there is no mention of any current or proposed legislation to reduce demand for labour exploitation.

This strategy provides a comprehensive approach to trafficking, and includes forced labour as a key form of exploitation that occurs with human trafficking. The strategy encompasses many aspects of human trafficking from ensuring victim support services are appropriate and sensitive to the victims culture and the experience they have just had, as well as targeting prevention by raising awareness and training those who come in contact with potential victims of trafficking. Finally, the strategy continues to look at prosecution and whether the current legislation is adequate, and the need to reduce demand for labour in addition to inhibiting the supply.

UK Legislation

The UK has two Acts which cover trafficking for forced labour. The first piece of legislation is the Asylum and Immigration Act 2004. Section 4 of this act includes trafficking as an offence if it happens into, out of, or within the UK, and is inclusive of whether the person intends to exploit the person themselves, or believes that someone else will exploit them once at their destination. Subsection 4 further specifies what constitutes exploitation. Slavery and forced labour are included if the person is a "victim of behaviour" that violates Article 4 of the CoE's Convention for the Protection of Human Rights and Fundamental Freedoms. Exploitation relevant to forced labour is also included if the person is forced, threatened or deceived into providing a service, providing another person with benefits, or to enable another person to acquire benefits. Under this Act, a maximum sentence of 14 years of imprisonment and/or a fine is available as punishment upon conviction on indictment.²⁰¹

The second piece of legislation is the Coroners and Justice Act 2009. Section 71 of this provides a legal framework on slavery, servitude and forced or compulsory labour.²⁰² It includes situations where a person knowingly holds another person in slavery or servitude, or knowingly requires a person to perform forced or compulsory labour. This section directly references Article 4 of the CoE's Convention for the Protection of Human Rights and Fundamental Freedoms as underpinning what slavery, servitude, and forced and compulsory labour mean. Section 71 also provides a maximum sentence of 14 years to those convicted on indictment under this Act.

The UK still has relatively low numbers of convictions for trafficking. In the period from 2009-2011, there were eight convictions for trafficking for non-sexual exploitation, and 41 for sexual exploitation.²⁰³ The number of prosecutions was more, with approximately 93 over the three years

²⁰¹ *Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004*, (July 22).

²⁰² *Coroners and Justice Act 2009*, (November 12).

²⁰³ "Report on the Internal Review of Human Trafficking Legislation," (London2012), 9.

2009-2012 for forced labour offences (and 311 over the same years for sexual exploitation).²⁰⁴ The data clearly shows a greater number of cases of trafficking for sexual exploitation that are discovered and charged, highlighting the need to seek out potential cases of forced labour, which can be hidden inside a private home, such as in cases of domestic servitude. From the statistics provided in the 2012 Report on the Internal Review of Human Trafficking Legislation, the year 2011-2012 shows a higher number of cases of prosecution for forced labour than any previous year. A total of 37 cases were prosecuted under Section 4 of the Asylum and Immigration Act 2004, and 15 from the Section 71 of the Coroners and Justice Act 2009. In previous years there were less than 21 prosecutions in total, which came under the Asylum and Immigration Act.²⁰⁵

Report on the Internal Review of Human trafficking Legislation

In May 2012, the Internal Review of Human trafficking Legislation was published, following on from the 2011 Human trafficking Strategy. To comply with the EU's 2011 trafficking directive, one important change was to legislation criminalising trafficking for "non-sexual exploitation which takes place wholly within the UK".²⁰⁶ Trafficking for sexual exploitation is not the only trafficking crime, and they are not the only victims, so it is an important step the UK is taking to expand their legislation to cover forced labour as well. It may be less visible, but it is no less important. The report highlights the diversity of coverage for human trafficking related offenses, and the UK's view of how these issues should be covered in law. The second important change for trafficking for forced labour is in the case of an 'unduly lenient' sentence. In the past, only sentences for cases of sexual exploitation could be appealed if the sentence was deemed to be too lenient. With the changes in legislation, all forced labour would be covered. This shows a strengthening of UK law covering all trafficking, and indicates a commitment by the UK government to ensure they are up to standard with the EU 2011 directive. In their opinion, as stated in the report, trafficking issues are covered sufficiently in current legislation and trafficking does not require its own separate act, for example a human trafficking bill.²⁰⁷

Draft Modern Slavery Bill

Despite the UK's Report on the Internal Review of Human trafficking Legislation stating that a single human trafficking bill was not needed to bring together different legislation prohibiting trafficking, a new Bill is being passed through parliament which targets modern slavery as a whole, and includes human trafficking. In fact, the UK's Draft Modern Slavery Bill (DMSB) is described as Home Secretary Theresa May's way to bring together current legislation on trafficking and to ensure traffickers and

²⁰⁴ Ibid., 8.

²⁰⁵ Ibid.

²⁰⁶ Ibid., 6.

²⁰⁷ Ibid.

exploiters face severe penalties for their actions. She states that “tackling this abhorrent crime is a personal priority for me”,²⁰⁸ and due to this, the aim is to push the DMSB through parliament quickly and before the next election.

The DMSB provides up to date definitions on trafficking, slavery and forced labour. It is specifically aimed at combating modern day slavery and includes offences such as holding a person in slavery, exploiting a person and human trafficking. Slavery is defined as controlling another person which then significantly deprives that person of their individual liberty, or results in obtaining “benefit through use, management, profit, transfer or disposal” of that person.²⁰⁹ The definition of a trafficking offence is in line with the UN Protocols on trafficking, involving three parts, and beginning with recruiting or harbouring, for example; followed by coercion or deception among others; resulting in exploitation. The bill lists these as separate offences, which is appropriate as forced labour can occur without trafficking, but can also be the exploitation part of trafficking.

One of the biggest developments within this bill is the creation the role of an anti-slavery Commissioner. The mandate given to this position involves best practice in prevention, detection, investigation and prosecution of the offences laid out in part 1 of the Bill.²¹⁰ It also includes reporting, making recommendations, supporting or doing research, and educating, training or providing information.²¹¹ The Commissioner must also produce an annual report on actions they have carried out, based on the plan prepared at the beginning of that year, both of which are to be presented to Parliament. The DMSB describes the new Commissioner’s role as purposed to “galvanise law enforcement’s efforts to tackle modern slavery”.²¹² The role of this Commissioner could be so much more diverse than as it described and mandated in the DMSB. The role needs to include aspects of protection and prevention that are not rooted in law enforcement, and to produce research that aids this protection and prevention, and therefore promotes the rights of the victims. By narrowing the focus of the Commissioner to law enforcement such as investigation and prosecution, any prevention that is included in the role will again have a criminal focus. This is not in line with a HRBA and the role of the Anti-Slavery Commissioner does not seem to be focused on empowering trafficking victims at all. The Slavery Working Group recommends that the Commissioner work with NGOs on a shared agenda to stop human trafficking with the Commissioner serving the function of

²⁰⁸ Theresa May, "Theresa May: Slaves May Work in Your Nail Bar Too," *www.telegraph.co.uk*, November 24 2013.

²⁰⁹ Joint Committee on the Draft Modern Slavery Bill, "Draft Modern Slavery Bill Report: Session 2013-2014," ed. House of Lords and House of Commons (London: The Stationary Office Limited, 2014), 5.

²¹⁰ HM Government, "Draft Modern Slavery Bill," ed. Home Office (London: The Stationary Office Limited, 2013), 33.

²¹¹ *Ibid.*, 33-34.

²¹² *Ibid.*, 4.

liaising between the government and NGOs.²¹³ They also recommend the role to focus on the best interest of the victims, rather than focus on law enforcement, and provide independent monitoring on the UK.

The DMSB continues to distinguish between human trafficking and slavery, recognising a slavery offence as the act of exploitation such as forced labour or servitude. In contrast, a trafficking offence involves the movement of a victim with the intention to exploit them, either into a position of forced labour or slavery, or into sexual exploitation.²¹⁴ This distinction is an important one to ensure the maximum reach of legislation, and that no victim of either trafficking or slavery fails to find justice because the offence against them is not clearly stated and defined. The DMSB provides a place for human trafficking to be addressed legally in one document, whether it is for the purpose of forced labour or sexual exploitation, and is one of the strengths of the new legislation. Forced labour has been less recognised in the past as a part of trafficking, with the focus strongly on trafficking for sexual exploitation. This bill provides an equal footing for trafficking cases for either purpose, which is a positive step for the UK.

Another potentially positive development in Part 4 of the DMSB, in the use of a HRBA, is the duty of a public authority, such as the police or immigration officers, to notify the NCA if someone is suspected to have been trafficked. However, even this development serves a law enforcement/criminal justice purpose. It is to “build a clearer picture of the nature of this hidden crime”,²¹⁵ rather than to provide better victim services to those discovered to have been trafficked. They may aim to prevent further victims, but there is a clear gap in the bill as it does not include provisions to aid and assist any current victims, or on the provision of support services. For a HRBA, and to align more fully with EU directives, the UK government needs to reconsider what is included in this bill, and to work on incorporating more victim focused provisions. The UK already has relatively strong crime agencies to combat the criminal aspects of trafficking. With this DMSB, the human rights angle needs to be considered and included.

The Joint Committee on the Draft Modern Slavery Bill produced a report on the DMSB outlining their recommendations for improving the draft. This report offers some more victim-centred suggestions for improving the DMSB so that it encompasses more than just prosecution. One major recommendation is to make victim support and the provision of care services have a “statutory footing”,²¹⁶ enabling better access and claim to compensation by victims. Another important

²¹³ Slavery Working Group, "It Happens Here: Equipping the United Kingdom to Fight Modern Slavery," 64.

²¹⁴ HM Government, "Draft Modern Slavery Bill," 41-42.

²¹⁵ Ibid., 4.

²¹⁶ Joint Committee on the Draft Modern Slavery Bill, "Draft Modern Slavery Bill Report: Session 2013-2014," 3.

recommendation is to ensure that victims of trafficking (and slavery) cannot be held legally accountable to anything illegal they may have done during while enslaved or exploited.²¹⁷ The report also recognises the need for the immigration status of a person and their victim status to be kept separate.²¹⁸ This is a crucial element of a HRBA, enabling a victim's rights as someone who has been exploited and abused to be valued and realised.

Other criticisms of the DMSB include the lack of it addressing important human rights issues such as the exploitation that can occur with the current Domestic Workers Visa. There has been no effort to target the victim aspects of trafficking and exploitation or slavery, only to strengthen the criminal and legal elements. The Human Rights Watch Report recommends the UK parliament include migrant domestic workers in the Modern Slavery Bill, allowing domestic workers to change their employer and renew their visa.²¹⁹

The DMSB continues to focus on strengthening the UK's criminal toolbox against traffickers and those holding people in slavery. While this is very important, it is not aiding the UK in developing a more rights-based focus in trafficking policy and legislation. The UK is again focusing their attention on criminal aspects of trafficking, neglecting the victim and their empowerment. The Modern Slavery Action Plan that Theresa May planned to produce by spring of 2014 has not yet eventuated. This is the part of the new push to combat modern slavery that could have had a focus on the victims of trafficking, their protection, and prevention measures. The UK is also not currently demonstrating an alignment with the EU on priorities in trafficking policy and legislation. The UK has a unique opportunity to address trafficking from many angles, to right policy wrongs, and produce a bill that is leading the EU and other states in their approach to combating trafficking. Instead, they are sticking to the same story of prosecution and more prosecution, which is only one side of the very multi-faceted trafficking story.

[Inter-Departmental Ministerial Group on Human Trafficking](#)

The final part of UK policy and legislation on trafficking involves the Inter-Departmental Ministerial Group (IDMG) on human trafficking, which combines the Scottish, Welsh, and HM Government, along with the Northern Ireland Executive. The Group allows these governments to collaborate on anti-trafficking work, and acts as the UK national rapporteur for human trafficking in compliance

²¹⁷ Ibid.

²¹⁸ Ibid., 3-4.

²¹⁹ Human Rights Watch, "Hidden Away: Abuses against Migrant Domestic Workers in the UK," (Human Rights Watch, 2014), 7.

with the EU 2011 trafficking directive and following on from the 2011 UK trafficking strategy.²²⁰ The IDMG produces yearly reports on the UK and its progress on tackling human trafficking. After the 2013 report, the group was renamed as the IDMG on modern slavery.

The first report acknowledged external reports on the UK's response to trafficking and the areas that were highlighted in these reports as needing working, namely, a more strategic and coordinated response, and a better strategy for preventing trafficking, including awareness-raising.²²¹ It also provided specific examples of what has been done to improve public awareness of trafficking and to prevent it from occurring. Some examples of awareness-raising are training airline cabin crew who work for Virgin Atlantic and Thomas Cook and running a Stop the Traffik campaign to increase trafficking awareness in taxi drivers, as members of the public who may come into contact with trafficked people. Additionally, the GLA ran a campaign in ASDA supermarkets in the UK, aimed at foreign workers and providing awareness and information of the GLA is preventing labour exploitation.²²²

The second report coincided with the move from the Serious and Organised Crime Agency (SOCA) to the NCA, and as such, details the positioning of the UKHTC within the NCA. It was also anticipating the DMSB and the creation of the role of an Anti-Slavery Commissioner. This report identifies data collection, awareness-raising and training, victim care and support, and legislation and enforcement as the key areas of focus moving forward.²²³

The third report is much more succinct, with a more detailed report planned for the following year. It reports on the creation of an Anti-Slavery Commissioner, as part of the soon to be Modern Slavery Bill, as an independent means for working on law enforcement and identification of victims. It also reports on more awareness-raising, with a new Modern Slavery helpline. There is also a review of the NRM which will soon be reported on, with the intention of improving victim support.²²⁴ Overall, this report indicates that the UK government is taking the issue of trafficking for forced labour seriously, although its focus has adjusted slightly to the language of modern slavery, rather than trafficking, to align with the new Modern Slavery Bill.

²²⁰ HM Government, The Scottish Government, and Department of Justice, "First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking."

²²¹ *Ibid.*, 85.

²²² *Ibid.*, 99.

²²³ "Second Report of the Inter-Departmental Ministerial Group on Human Trafficking," (UK: The Stationary Office Limited, 2013), 47.

²²⁴ HM Government et al., "Joint Statement of the Inter-Departmental Ministerial Group (IDMG) on Modern Slavery," (UK 2014).

These reports show that the UK is concerned with human trafficking and modern slavery, and is receptive to external reports on how effective its response is, and where potential gaps are. This is really positive, as it demonstrates a commitment to working harder to prevent trafficking occurring by raising awareness among the public as well as in private industries, and in continuing to target criminals to prevent or intervene in the recruitment and transfer of victims to a workplace where they will be exploited. They are also reviewing the current mechanisms such as the NRM, to ensure it is as effective as it can be to gain referrals and support victims. The DMSB is also something the UK is very proud of in its efforts to fight trafficking and modern slavery, although the limitations of this in its current form have been discussed earlier. With the adjustment of terms from human trafficking to modern slavery, the focus moves away from solely preventing and combating forced labour resulting from trafficking, to exploitation in general. One of the positive aspects of this is the move in focus from trafficking for sexual exploitation as the most discussed and salient issue, to a more general focus on trafficking and exploitation, which includes labour.

A Criminal or an Immigration Issue?

An area of debate on the UK's response to trafficking for forced labour is the categorising of trafficking as an immigration issue versus a criminal one. On one hand, trafficking often includes crossing an international border; however, it does not necessarily have to do so. On the other hand, trafficking is an issue of organised crime and one where the trafficked victim needs support and protection (and to not be criminalised for any crimes they were forced to commit under their exploitation). The Slavery Working Group (SWG) in their report *It Happens Here* highlighted the importance of seeing trafficking as not just an immigration issue, because UK nationals are trafficked as well as migrants. In the UK, the Minister of State for Immigration is highly involved in anti-trafficking work, as is the UK Border Agency. The SWG considers that this is not the right approach, and rather than trafficking and modern slavery falling under the Immigration Minister's portfolio, it should instead be the responsibility of the Minister for Policing and Criminal Justice. This is because trafficking is a serious criminal offence and modern slavery should not be considered as simply an immigration issue.²²⁵ Satvinder Juss, part of the SWG working on this report, also discussed the UK government response to trafficking in his book chapter *Human trafficking, Asylum and the Problem of Protection*. In this chapter, Juss discusses whether the UK is just asserting immigration control, or whether they are treating trafficking and victims of trafficking as a separate issue. In addition, he also expresses the need to see trafficking victims as victims of crime rather than as criminals

²²⁵ Slavery Working Group, "It Happens Here: Equipping the United Kingdom to Fight Modern Slavery."

breaking immigration law.²²⁶ These two publications certainly highlight an important point, which is particularly relevant to the UK. Should trafficking fall under the Immigration Minister and under the border authorities when, although it is often a case of cross-border movement, trafficking can be within national borders? Further still, in the case of domestic servitude and the UK's domestic workers visa, a worker may enter the UK legally but still have been trafficked into and exploited within the UK. Conversely, would more responsibility for trafficking to the Minister of Policing and Criminal Justice serve victims of trafficking well and be a move towards a more rights-based approach to trafficking? The SWG seems to think this is the best response, and wants the UK to be a more hostile environment for criminals – but is this at the expense of some victims? The following chapter further explores these questions while looking more in depth at what the UK has been implementing to tackle trafficking for forced labour at and within its borders, and whether these measures truly represent a rights-based approach.

The United Kingdom in Practice

In addition to a policy and legislative framework around trafficking for forced labour, the UK has a number of government-related organisations and mechanisms in place to regulate and combat human trafficking. Some of these, like the Equality and Human Rights Commission (EHRC), investigate the human rights of workers and potential exploitation. Others, like the NCA, focus on stopping organised crime, but also include mechanisms to handle the victims of trafficking. On top of these organisations, tools the UK has to regulate immigration and help enable legal forms of work, such as the Domestic Workers Visa, can in practice have the opposite effect. This chapter takes a closer look at specific organisations and tools the UK uses to reduce organised crime, to prevent trafficking, and protect victims of trafficking for forced labour.

Equality and Human Rights Commission

The UK EHRC is a Non Departmental Public Body that is sponsored by the Government Equalities Office. Its role is to promote and protect human rights in the UK.²²⁷ Part of its role involves investigations into areas where human rights may be violated. These investigations include one into the equality and human rights of workers in the field of cleaning services, and another inquiry into the meat and poultry processing sector. The former inquiry found a prevalence of migrant worker exploitation. The EHRC reports that there are approximately 437,600 people employed in the

²²⁶ Satvinder S. Juss, *The Ashgate Research Companion to Migration Law, Theory and Policy*, (Farnham: Ashgate Publishing Ltd, 2013), <http://canterbury.eblib.com.au/patron/FullRecord.aspx?p=1123190>.

²²⁷ Equality and Human Rights Commission, "Our Vision and Mission," <http://www.equalityhumanrights.com/about-us/about-commission/our-vision-and-mission>.

cleaning sector in the UK and 37 percent of these are migrant workers.²²⁸ Within their preliminary analysis of how equality and human rights are being respected in this area, the EHRC provides positive and negative indicators for each human right that is relevant to recruitment and employment within the cleaning sector, under an equality and human rights framework. Of particular relevance to this research are the indicators for number 6, abolition of forced labour. The positive indicators to see human rights respected and ensure that a worker is not in a situation of forced labour includes migrant workers having a contract they can understand, along with voluntary aspects of the job such as whether or not to work overtime, and the ability to leave the job, or not take it in the first place, without any coercion or threat. Negative indicators include; lack of wages being paid; deception about the work; indebtedness; taking and holding onto personal possessions of the worker including their passport; or using threats, either against the worker or perhaps their family or friends to induce them to stay in the employment or restrict their ability to leave that employment. Along with number right 6, they also include rights such as the right to just and favourable remuneration; right to a safe work environment; right to rest and leisure; and access to remedy.²²⁹ Throughout this framework and the given indicators, especially in abolition of forced labour, clear wording is used that relates to international documents on forced labour, such as the ILO's definitions. This provides an example of the sort of work the EHRC does, and how it can then feed back to the UK government on current human rights issues and violations, and particular sectors where there is a demonstrated vulnerability to forced labour and the potential of human trafficking into those positions. When a sector is identified, steps can then be taken to protect the human rights of those workers.

National Crime Agency

The UK's National Crime Agency was developed as part of the UK's 2011 strategy for tackling human trafficking. It replaced the Serious Organised Crime Agency (SOCA) in October 2013. Its aim is to strengthen national borders and take a hard line tackling crime and fighting criminal activity in the UK. It is a key part of the UK's strategy, connecting different facets of the UK response and action, including at a local, national and international level. These different levels within the NCA include an Organised Crime Unit, Border Policing, Economic Crime Unit, Child Exploitation and Online Protection Centre, and the UKHTC. The idea of the NCA is to pull in information for all areas that relate to organised crime to build a comprehensive picture of the problem and therefore provide ideas on how to tackle organised crime, including trafficking.

²²⁸ "Recruitment and Employment in the Cleaning Sector," <http://www.equalityhumanrights.com/about-us/our-work/key-projects/cleaning>.

²²⁹ "Equality and Human Rights Framework," <http://www.equalityhumanrights.com/about-us/our-work/key-projects/cleaning/equality-and-human-rights-framework>.

The NCA has a clear criminal focus, taking a hard line on fighting criminal activity in the UK, highlighted with their four 'p's. These are pursue, prevent, protect and prepare. Unlike the EU's three 'p's, these four terms are focused on the criminals, prosecuting (pursue) those involved in serious and organised crime, preventing involvement, protecting against crime, and reducing the impact of crime (prepare). At every stage of the NCA's description of its role, it is using law enforcement to combat organised and serious crime, which includes trafficking of human beings.²³⁰ The NCA by itself does not contribute to a HRBA as it focuses on human trafficking as an organised crime problem with the aim of preventing the crime and stopping traffickers.

UK Human Trafficking Centre

Within the Organised Crime Command of the NCA is the UKHTC, which is the home of the NRM and part of the UK's strategy to combat trafficking. The Organised Crime Command aims to coordinate a national response to organised crime,²³¹ while the role of the UKHTC is to provide protection to victims, while also prosecuting the traffickers responsible. The UKHTC also aims to prevent trafficking from occurring wherever possible, and states that it is a victim-focused organisation.²³²

The UKHTC has a best practice guide that provides insight into its approach and whether this is indeed a victim-centred one. The guide gives strategies and recommendations for dealing with potential victims, such as awareness of language, including using an interpreter of the correct dialect; and ensuring the interview process is appropriate, remembering to respect cultural differences to make the process easier for the victim.²³³ An awareness of cultural differences and offering an interpreter that speaks not just the potential victim's language but also dialect are important considerations necessary for an approach that addresses a victim's human rights. The inclusion of this is also important for the UK's adherence to the 2011 EU anti-trafficking directive, as article 11.5 specifies that translation and interpretation services need to be offered to assist overcoming any cultural and language barriers. A victim is empowered when they are enabled to not only understand the situation and be provided with accessible information, but also when they are able to express themselves and be understood. They are then empowered to make informed choices,

²³⁰ For more information see <http://www.nationalcrimeagency.gov.uk/about-us>

²³¹ National Crime Agency (NCA), "UK Human Trafficking Centre," <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre>.

²³² "Prevention, Protecting Victims and Prosecution," <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/prevention-protecting-victims-and-prosecution>.

²³³ "Best Practice Guide," <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/best-practice-guide>.

such as whether they want to assist in criminal proceedings, or what rights they are able to claim in the UK.

Another important provision the UKHTC makes in its best practice guide is to ensure female victims are only interviewed by females, and are offered female interpreters.²³⁴ Culturally this is very important to ensure any victim feels as comfortable as possible, and hence this guideline is essential in ensuring gender sensitivity. The best practice guide demonstrates an awareness of the issues in supporting trafficking victims and focuses on supporting a victim or potential victim when they are initially identified or referred to the UKHTC.

National Referral Mechanisms

The UK's National Referral Mechanism is a tool for the UK, and the UKHTC more specifically, to identify victims or potential victims of trafficking, providing protection and support while also serving as a way to collect data on trafficking. The development of the NRM was the UK's response to the Council of Europe Convention on Action against Trafficking in Human Beings, which the UK ratified on 17 December 2008 and came into force on 1 April 2009, ensuring they fulfilled their obligations under this convention. The UK explains their success at implementing this convention, creating a 45 day (15 days long than the minimum requirement) period of recovery and reflection while the potential victim's trafficking status is being investigated, and where the victim does not have to worry about their legal status in the UK. Following confirmation that a person is a victim of trafficking, a residence permit allowing the trafficking victim to stay in the UK for at least one year may be issued, subject to certain criteria.²³⁵

The process involved in the NRM has a number of steps, beginning with a referral to the NRM. This can come from UK government agencies, local authorities, or certain listed NGOs, and they are known as a first responder. A potential victim has to sign a referral form to authorise the first responder to refer them to either UKHTC or the Home Office Immigration and Visas, depending on the potential victim's situation. Once referred to one of these authorities, the victim's case will be assessed to ascertain whether it fits with the parameters defining trafficking. Before the victim's 45 days of recovery and reflection begin, five days are spent gathering some more information, if necessary, to decide whether there are reasonable grounds to believe trafficking has occurred. Once this has been decided, the victim is provided with suitable accommodation and they begin their 45 period, allowing the victim time to recover and also decide what they want to do. For example, the victims may decide they want to return home, or they may wish to stay in the UK, and they may also

²³⁴ Ibid.

²³⁵ National Crime Agency, "National Referral Mechanism," <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>.

decide whether they want to testify or act as a witness in a case against those involved in their trafficking. The US TIP report recommends that the UK consider a 'pre-reasonable grounds' period, where potential trafficking victims can access support services before any necessary contact with authorities, such as police or immigration.²³⁶ This pre-reasonable ground period could also serve as an opportunity to increase the number of victims that have access to support services without any delay, and regardless of their immigration status. Meanwhile, over this 45 days more investigations occur into their case on their behalf, and the victim's case manager makes a decision as to whether they believe it is "more likely than not" that the victim has been trafficked.²³⁷ The next steps are where the UK's use of a rights-based approach can be assessed. If the victim decides to participate in police investigations into the criminality of the situation, and act as a witness in any prosecutions, then the victim can be granted discretionary leave to remain (DLR) for one year. It is less likely that a victim who does not wish to participate in any judicial process will be granted DLR, but it is possible. Paragraph 2.4 of the UK Governments Discretionary Leave immigration document provides more detail on the granting of DLR in trafficking cases. There are three levels of recommended eligibility to DLR, the first being a victim's cooperation or participation with a police investigation. The wording of the document suggests that if a victim's presence is needed for a successful prosecution then this is a good situation in which to grant DLR. The second level is where a victim files a claim for compensation against their trafficker, it is considered legitimate, and by staying in the country to see the claim through, there is likely to be justice for the victim and consequences for the trafficker. This section of 2.4 is careful to specify that having a compensation claim is not enough for DLR to be granted, but if it would be difficult or 'unreasonable' for the victim to continue their claim from outside the UK then, and only then, should DLR be granted. The third situation is when a person is a victim of trafficking and because of their personal circumstances there are reasons "so compelling" that granting DLR would be an appropriate response.²³⁸ These requirements of DLR in trafficking cases inhibit the rights of a victim and do not represent a rights-based approach to trafficking, because a victim's post-trafficking care is tied to their judicial cooperation. Here, the UK's immigration interests are at the forefront, rather than the victim's interests. It is

One of the main issues with returning a victim to their home country, if the victim is not from the UK, is the potential risk of being re-trafficked once returned. The victim may also not have any access to rehabilitation once they have returned, leaving permanent scars from the experience. This is the

²³⁶ U.S. Department of State, "Trafficking in Persons Report: Country Narratives: T-Z and Special Case," 378.

²³⁷ National Crime Agency, "National Referral Mechanism".

²³⁸ HM Government, "Discretionary Leave," ed. UK Visas and Immigration (2014), 5.

opposite of a HRBA's desired outcome. The Home Office offers support to victims of trafficking to return home, as well as those who in due process are found to not be a victim of trafficking.²³⁹

The 2013 Slavery Working Group report offers a critique of the NRM, ultimately finding it is not as effective as it could be. Specifically, they consider that the NRM should be more effective in gathering data to be used to inform the UK's response to modern slavery, or in this case, human trafficking.²⁴⁰ They also note that there are many cases of women who may have been trafficked that have not been referred to the NRM at all, despite coming into contact with referring agencies, and see this as a shortfall of the NRM.²⁴¹ This indicates that as well as awareness-raising of trafficking as an issue, there needs to be awareness-raising of the NRM within those workers who should be making referrals.

Gangmasters Licensing Authority

The Gangmasters Licensing Authority (GLA) is an important UK Non Departmental Public Body for monitoring labour and protecting from exploitation or forced labour. It is part of the UK Home Office and regulates the businesses that provide workers (for example recruitment agencies) to businesses requiring staff, in the areas of agriculture, horticulture, and shellfish gathering and fishing, and any processing and packaging that is done within the supply chain.²⁴² By requiring these agencies and businesses to obtain a licence before procuring and supplying workers to those businesses with a need, the UK is able to more effectively monitor working conditions and to prevent labour exploitation. The GLA licensing standards ensure workers are paid appropriately, that they have safe and suitable accommodation when provided by the employer that employees are trained for the job, and health and safety is observed. These are all important elements when preventing forced labour. The GLA website states the benefits of licensing, including lifting industry standards to ensure businesses who wish to employ with fair wages and conditions are not being undercut by those who try to avoid tax or the minimum wage. The specific standards include the areas of Fit and Proper Test; Pay and Tax matters; Prevention of Forced Labour and Mistreatment of Workers; Accommodation; Working conditions; Health and Safety; Recruiting Workers and Contractual Arrangements; and Sub-Contracting and Using Other Labour Providers.²⁴³ By setting clear standards and monitoring them, which also includes an awareness of workers of their rights, the workers are empowered to demand fair working conditions, and it becomes a lot harder for employers to recruit trafficked people, and coerce or force them into an exploitative situation. The requirement of a GLA licence also makes it

²³⁹ National Crime Agency, "National Referral Mechanism".

²⁴⁰ Slavery Working Group, "It Happens Here: Equipping the United Kingdom to Fight Modern Slavery," 67.

²⁴¹ Ibid., 70.

²⁴² Gangmasters Licensing Authority, "What We Do," <http://www.gla.gov.uk/Who-We-Are/What-We-Do/>.

²⁴³ "Licensing Standards," <http://www.gla.gov.uk/Guidance/Information-on-Licensing/Licensing-Standards/>.

harder for recruitment agencies to act as middle parties to connect trafficked people with those wanting cheap or free labour, and to avoid having to ensure the workers have appropriate living conditions reflecting dignity of life.

The GLA is governed by The Gangmaster (Licensing Conditions) Rules 2009, and the Gangmasters Licensing Act 2004. This makes this legislation coincide with the Council of Europe Convention, and precede the EU's 2011 anti-trafficking directive. Operationally, the GLA carries out inspections on businesses holding licences, ensuring any cases of alleged worker exploitation are investigated. Prosecution may occur where a business is discovered to be operating without a licence.²⁴⁴

The GLA offers a workers page including information on employment rights, and examples of cases where workers were being exploited but have subsequently been paid due to the GLA revoking a gangmasters licence or intervening where exploitation has been occurring. The workers page includes links to a document on workers' rights in a number of languages. It details the national minimum wage, the hours an employee can expect to work, leave entitlements, the importance of an itemised payslip, and what deductions can be made from wages.²⁴⁵ These are all important facts to be aware of as an employee working in potentially exploitable industries, but the accessibility of the website, that is, knowing to look for it, or even knowing what the GLA is, is a potential problem. Providing information is important, but it also needs to be somewhere where migrants will look for it or can access it, which may not be on a Gangmasters website. The GLA does offer a phone number, email address, and an anonymous reporting form however, which are helpful options if a person does find themselves being exploited but also in possession of the document.

A limitation of the GLA is highlighted by the JRF in their report produced in response to the DMSB focusing on forced labour and labour exploitation in the UK. They recommend the UK extends the reach of the GLA to other fields where exploitation occurs, such as construction and hospitality.²⁴⁶ Broadening the scope of the GLA would certainly offer wider ranging protection to workers in the UK and assist in protecting against trafficking for forced labour, as it would be a lot harder for traffickers to exploit workers once in the UK. This does not of course include exploitation in private households, where it is more difficult to regulate and follow up on regulations.

The Tied Domestic Workers Visa

In April 2012, the UK introduced a new visa for domestic workers in a private household. This allows domestic workers to come to the UK for up to six months with an employer for whom they have

²⁴⁴ "How We Inspect and Prosecute," <http://www.gla.gov.uk/Enforcement-and-Compliance/How-we-inspect-and-prosecute/>.

²⁴⁵ "Advice for Workers," <http://www.gla.gov.uk/Guidance/ac/en/Advice-For-Workers/>.

²⁴⁶ Klara Skrivankova, "Forced Labour in the United Kingdom," (UK: JRF, 2014), 15.

already been working for one year. It includes cleaners, chauffeurs, cooks, nannies, and workers providing personal care. This visa does not allow for a domestic worker to change their employer during their stay in the UK.²⁴⁷ Prior to 5 April 2012 domestic workers were more independent of their employer. They were able to change employer, and also renew their visa every 12 months, with the potential to settle permanently in the UK after five years continuous residence.²⁴⁸ Without even reading NGO reports on the effects of the change in the domestic workers visa, it is possible to see how the new visa could adversely affect domestic workers. Despite requiring one year's service with the same employer before moving to the UK, if that work was performed under threat or abuse, once in the UK there is no freedom or provision for the domestic worker to escape their situation and find other work legally. The visa even has the potential to increase trafficking, for example from the Middle East, as it is presumed the domestic worker is in a good working relationship. Immigration may not notice or suspect that the domestic worker is being abused and being transported to the UK under threat, coercion or abuse of a position of power. A case study in Canada of human trafficking and front line workers coming into contact with internationally trafficked people, revealed the use of legal channels of entry into Canada by traffickers, such as through the Live in Caregiver Programme, can result in exploitation upon arrival.²⁴⁹ It is easy to see how this could also occur in the UK under the Domestic Workers Visa. A recommendation from the TIP report is for all domestic workers travelling to the UK with their employer to have a private interview with the relevant authorities so they are aware of their rights while working in the UK, and of protection that is available to them if they are in a situation of exploitation or abuse.²⁵⁰ Human Rights Watch also recommends interviews with incoming domestic workers, by British embassy staff and by border officials, prior to and on arrival in the UK to ensure domestic workers know what rights they have.²⁵¹ While implementing this recommendation would cost time and money, it is within the UK's interests to provide this service, as the benefits are twofold. The first benefit involves the victim. Any worker already being exploited is presented with the opportunity to speak to someone about it privately and is therefore given a way out of trafficking and provided with protection and support. At the same time, all domestic workers travelling to the UK on the Domestic Workers Visa are informed of their rights and, provided this information is delivered in a way they can understand, that is, in their own language and in a non-threatening environment, know that there are options for escaping

²⁴⁷ See <https://www.gov.uk/domestic-workers-in-a-private-household-visa/overview> for details on visa eligibility and more information.

²⁴⁸ See <https://www.gov.uk/domestic-workers-in-a-private-household-visa/domestic-workers-who-applied-before-5-april-2012> for more information.

²⁴⁹ Kaye, Winterdyk, and Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada," 31.

²⁵⁰ U.S. Department of State, "Trafficking in Persons Report: Country Narratives: T-Z and Special Case."

²⁵¹ Human Rights Watch, "Hidden Away: Abuses against Migrant Domestic Workers in the UK."

exploitation if it occurs while they are in the UK. The second benefit is that this interview makes it a lot easier for trafficking to be picked up before entry, allowing the UK to continue to stop organised crime and human trafficking at the border, which is of great importance to the UK. The Human Rights Watch recommendations actually go further than just an interview to provide knowledge of rights. They recommend specifically explaining to migrant domestic workers that they need to keep their identity documents in their own possession while they are in the UK, and they also would like orientation sessions for migrant domestic workers after they have arrived in the UK, to again educate them on their rights and avenues of help and protection. They also recommend orientation sessions for the employers so they know UK law that relates to them as an employer.²⁵² This would mean no employer has an excuse that they did not know they were violating UK law if they continue to exploit despite knowing that their employee is legally entitled to rest breaks, days off, and a national minimum wage, for example.

What is important in these recommendations is that the UK carefully considers the situation of potential trafficking victims, and those that provide details of their situation that indicate trafficking. It is not helpful to send these domestic workers straight back on a plane, thinking that the job is done by removing them from an exploitative situation and returning them home. The situation is often much more complex than that, and the victim still needs support including counselling, health care, and the opportunity to seek justice from their exploiter, if they wish it. This does not take away from the need for the UK to seriously consider changing the Domestic Workers Visa back to its previous version, or at least amending it so that a domestic worker is not trapped with their employer.

Unfortunately, the UK has not signed on to the ILO Domestic Workers Convention, which would also aid in protections for domestic workers, along with visa changes. The ILO Domestic Workers Convention, 2011 (No. 189) entered into force on 5 September 2013. It begins by defining domestic work and workers, then ensuring Members of the convention ensure the human rights of domestic workers are respected. Article 5 ensures freedom from violence, article 6 for decent working conditions, and article 10 sets out minimum consecutive rest hours.²⁵³ The UK is but one of many countries who have not ratified this convention. Human Rights Watch recommends that the UK ratifies this convention and takes the necessary steps to put its contents into practice.

UK has also not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990. This would offer further protection to potentially

²⁵² Ibid.

²⁵³ International Labour Organisation, "Domestic Workers Convention, 2011 (No. 189)."

trafficked migrants by the provisions in Article 11 where it prohibits against a migrant being held in a position of slavery, servitude, or forced labour. Article 25 is also important as it provides for migrant workers to work under the same fair conditions and terms as a national of the country they are residing and working in would be entitled to.²⁵⁴ By not ratifying this convention, the UK is offering less security to migrant workers within its borders. It demonstrates, along with not ratifying the ILO's Domestic Workers Convention, a disregard of international conventions protecting migrant and domestic workers and shows that workers' wellbeing is not high on their priority list when it comes to trafficking for forced labour. The UK wants to stop organised crime and exploitation, but they are not prepared to sign international conventions to help ensure migrant and domestic workers are protected. As one of the elements of a HRBA, the UK is showing they are not fully committed to adhering to conventions aimed to increase migrant domestic workers rights, and by tying domestic workers to one employer they are also not empowering the workers as rights holders. In this area, the UK has much progress to make to demonstrate it is using a HRBA in its policy and in its decision making.

Conclusion

This analysis of the organisational frameworks and mechanisms the UK has in place to combat trafficking for forced labour and also fulfil its international and EU obligations reveals agencies with a strong criminal focus, as well as others with a purpose more closely aligned with a HRBA. The UKHTC and NRM are excellent opportunities for the UK to focus on the victim and provide support that is fully separate from any criminal proceedings. While the UK has gone beyond its obligations in some areas (such as the 45 day reflection period), it lags behind in others (such as the complications associated with the domestic workers visa). Going forward, the UK needs to continue to evaluate its approach to trafficking, and whether they are achieving an approach that considers all aspects of a victim's rights and wellbeing, separate from any criminal aspects of the trafficking case.

Conclusion

Human trafficking is a continuing problem that the EU and UK have to work to improve their policies on and continue to seek out solutions to. Within both EU and UK policy and legislation, there is little differentiation or reference to specific practices to be introduced that will help combat trafficking for forced labour, versus sex trafficking. This is one area that can be improved in their policy, especially as forced labour continues to be discussed as an equally important issue as sex trafficking. Forced labour has begun to be more fully developed in EU directives, with references to labour inspectors

²⁵⁴ United Nations General Assembly, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," ed. Office of the United Nations High Commissioner for Human Rights (New York 1990).

as an example of methods for preventing, or at least discovering, trafficking. This thesis has considered the ways in which the EU and UK have incorporated human rights and a HRBA in their policies, specifically in regards to the trafficking of women for forced labour. While at times it is difficult to separate out gender, and forced labour from sexual exploitation, there has been a reasonable amount of inclusion of these terms in later policies, indicating an increased awareness and importance to forced labour as a type of trafficking outcome as well as gender sensitivity.

How is the EU meeting the challenge of implementing a rights-based approach to the trafficking of women for forced labour?

The EU has made a lot of progress since 2002 in introducing policies that focus on victim support and protection, and promote the key elements of a HRBA – empowerment, adherence to normative values and conventions, and a pulling back from a criminal justice approach. Policies in 2011 and 2012, namely the anti-trafficking directive and the directive on minimum standards for victims of crime, go a long way further in providing support for victims, aligning with UN and CoE priorities, and distancing themselves from criminal justice approaches. Some of the key areas where a HRBA is implemented are in the range of rehabilitation services that are offered to victims, and the consideration for making the process easier and less intimidating for victims. This is very important when they have already been through trauma. Overall, compensation and protection are adequately covered by EU policy, and the EU has demonstrated an awareness of how different procedures and policies may impact on the victim. Another example of this is the EU's awareness that a victim needs support and rehabilitation regardless of whether they agree to participate in criminal proceedings or not. The un-tying of this participation to gaining a residence permit is one of the important steps the EU has made.

One critique of the 2011 THB Directive that must be mentioned again is the weakness of language when discussing prevention measures. The EU needs to improve this in the future, to ensure that all Member States are at the same level. This is particularly important in the case of human trafficking, as it is transnational in nature, and frequently occurs across EU borders. The EU needs to lead the way for the Member States in this area, promoting good practice and providing clear guidelines and standards for the Member States to implement on a national level. This could then also lead into EU-wide awareness campaigns supported nationally from Member States, and tackle demand at the same time.

The EU has also increasingly included gender in its policies, acknowledging that men and women are exploited differently, that they are affected differently, and recover differently. Including gender in their approach is another way of supporting a victim to empower them to claim their rights..

How does the UK comply with both EU and International frameworks for human trafficking for forced labour?

The UK has generally accepted all relevant EU policy that covers aspects of forced labour, excepting the Council Directive 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. This directive had flaws from tying a residence permit to cooperation with competent authorities; however the lack of buy-in by the UK indicates a continued reluctance to offer a residence permit to anyone they do not have to. For the UK to embrace a HRBA, it needs to move away from thinking about immigration and instead focus on the victim as a person under the care of the state due to the fact they are currently residing in that state. It is to the credit of the UK that they have actually opted in to the other directives related to human trafficking when they had the choice not to (although that can go both ways with having negotiated the opt outs to begin with).

The UK does genuinely seem to want to combat trafficking effectively, which is demonstrated by the effort they have gone to by creating the DMSB. The flaws of the DMSB are well commented on by various parties reviewing the draft. In the governments favour is the thought that the process of bringing this bill before parliament, and to the attention of the public for feedback, highlights trafficking as one of the important issues of today. The DMSB needs to cover human rights issues a lot more thoroughly, however, before this bill can be counted as being successful in implementing a HRBA.

In general, the UK does a fair job of incorporating EU and international frameworks into their national policy. Implementation can be found throughout their policies and legislation, as well as in the actions of the different government organisations and agencies discussed in chapter four. The NRM in particular is a response to the CoE Convention against Trafficking, and the UK does go beyond what it is required to in some areas, such as by providing an extra 15 days of reflection and recovery to victims before a decision is made on their status.

How effective are governmental organisations in the UK at implementing a rights-based approach in the trafficking of women for forced labour?

The various government agencies provide different levels of support to victims, depending on their focus. As discussed earlier, the NCA is very strongly focused on crime and catching criminals, which is where the UKHTC comes in. The UKHTC includes a HRBA, with a focus on appropriately supporting victims, but there is still scope for more. The NRM is the direct contact point for victims, and if the

victim is referred, then they can be assisted with their rehabilitation. The problem arises when the victim is not referred and therefore loses access, or when the victim has an incorrect impression of what the NRM is (often due to an irregular migration status) and does not wish to be referred. The NRM does utilise a HRBA but this is lost somewhat when longer-term decisions are made on whether the victim can stay in the UK or not.

The GLA is an example of an organisation that exists to ensure workers are treated with respect and have their full human rights. In this regard, the GLA is an example of an organisation promoting a HRBA. However, the reach of the GLA needs to be expanded to include monitoring of additional sectors, to better protect workers' rights, and to identify situations where trafficking for forced labour has occurred. The Domestic Workers Visa is an example of a situation where the UK is looking after immigration priorities before human rights priorities, and this is a definite area the UK needs to review and improve.

Overall, the UK needs to continue to review their policy, and seek ways where they can go beyond what is required from EU policy and international conventions, and really focus on how a victim can be best supported, regardless of their immigration status.

Recommendations

This research has focused on analysing the EU and UK at a policy level. Further research could be done to evaluate the implementation of policies that are more in line with a HRBA, and any measurable results or effects from their implementation. Another potential area for further research includes evaluating NGOs in the UK and how they specifically contribute to a HRBA, and to compare those focusing on labour exploitation versus the many that offer support services to those who have been trafficked for sexual exploitation.

In conclusion, both the EU and the UK still have room to develop a more robust HRBA to trafficking for forced labour. As forced labour continues to grow in visibility through promotion by NGOs and media coverage, the UK in particular, but also the EU, will have to continue to re-evaluate how they are responding to this type of trafficking. As this re-evaluation occurs, there will also be more opportunity for the UK to focus on implementing a rights-based approach, keeping the victim at the centre, rather than as an inconvenience in the regulation of UK borders. As the EU continues in the direction of a HRBA, there is hope that this will continue to successfully filter into Member State policies, and that the EU will be able to be increasingly more forceful in promoting rights-based values in its policies.

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Appendices

Appendix 1. Additional Tables from Analysis of EU and UK

Policy/Strategy	Trafficking	Forced Labour	Gender/Women	Domestic Servitude
COUNCIL FRAMEWORK DECISION 2008/841/JHA on the fight against organised crime	no	no	no	no

COUNCIL OF THE EUROPEAN UNION Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings	yes	yes - type of THB, specifies office looking after FL crimes, recognises close link with THB and FL.	yes - group more affected by THB,	yes - as domestic labour/work, recg as a field that is exploited
2001 Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA)	no	no	no	no
2002 Council Framework Decision on combating trafficking in human beings (2002/629/JHA)	yes	yes - in def of exploitation	yes - violence against women, ref protocol,	no
2002 Council Directive defining the facilitation of unauthorised entry, transit and residence (2002/90/EC)	yes - supplement to other instruments against THB	no	no	no
2004 Council Directive relating to compensation to crime victims (2004/80/EC)	no	no	no	no
2004 Council Directive 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 (2004/81/EC)	yes	no	yes - ref protocol, medical assistance to pregnant women (in special needs category)	no

2011 Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011/36/EU)	yes	yes - specifies some different areas of labour exploitation; includes forced begging as a type of forced labour; prevention incl. with labour inspectors.	yes - gender specific support as men and women often trafficked for different purposes, with different push and pull factors; UN protocol; gender as a factor to considering in vulnerability assessments; using gender perspective in strategies to prevent THB;	yes - as an example of exploitation
2012 Directive of the EP and of the Council establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA (2012/29/EU)	yes	no	yes - violence against women; gender-based violence; equality between men and women; discrimination based on gender; gender sensitive training to be provided; and poss need for special support, risk of repeat victimisation	no

Policy/Strategy	Trafficking	Forced Labour	Gender/Women	Domestic Servitude
2011 UK Government Strategy Paper	yes	yes	yes - p10 gender sensitivity in identifying victims (1 mention); women - to illustrate diversity in approach, but mostly in reference to sex trafficking	yes but mostly as definitional/acknowledgement
Draft Modern Slavery Bill	yes	yes	related to mention of violence against	yes

			women	
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Ratified	Not Ratified
ILO Forced Labour Convention C29 (1930)	ILO Abolition of Forced Labour Convention C105 (1957)
ILO Abolition of Forced Labour convention C105 (1957)	ILO Domestic Workers Convention C189 (2011)
UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime (2000)	
Council of Europe Convention on action against trafficking in human beings (2005)	