

Scottish Universities Insight Institute

Human Trafficking: Conceptualising definitions, responses and ‘what needs to be done’

Summary of Event One

Concepts and Definitions

October 2012

This Briefing Paper summarises the key issues which formed the basis for discussions at the first SUII Human Trafficking event which took place in October 2012. It is intended to highlight a number of points for further consideration at Events Two (December 2012) and Event Three (March 2013).

Event One took place on 11 and 12 October and included inputs from expert contributors from a number of organisations:

Kirsty Thomson (Brown & Co. Solicitors at Legal Services Agency Ltd) *Setting the Scene in Scotland: The Scottish Context*

Sarah Di Giglio (Save the Children Italy) *Identifying trafficked children in Italy and challenges for their effective protection*

Tara Warden (University of Stirling) *Tripping Over Agendas: Anti-Trafficking Initiatives at the Expense of Human Rights (Case Study Guatemala)*

Robin Veitch (Scottish Crime and Drugs Enforcement Agency) *Organised Crime in Scotland*

Hazel Cameron (University of St Andrews) *The relationship between global conflict and organised criminality in Scotland*

Jackie Turner (London Metropolitan University) *Cross-border traffickers: profiles, modus operandi, kinship and diaspora connections*

Lorena Arocha (University of Bedfordshire) *Looking at the interaction between anti-trafficking policy and other related policy areas*

Gunilla Ekberg (University of Glasgow) *Prevention of trafficking in human beings with a focus on the demand: Implementation of an international human rights standard*

All presentations were followed by discussion and debate by participants, covering a wide range of issues and providing opportunities for different professional, practice and academic insights into the challenges of conceptualising and defining trafficking in humans.

Event One focused on the complex area of definitions and concepts which determine initial identification and subsequent interventions and supports for people who have been trafficked, and which determine the prosecution of traffickers. Differences across countries, legal systems and service providers produce a disjointed approach in responding to victims and perpetrators of trafficking resulting in noticeable levels of fragmentation despite partnership working; and ongoing problems surround the identification of, and responses to, children and adult victims.

The importance of moving international agenda's forward was emphasised; identifying why systems that are in place appear to ineffective in making significant change in this area; and what we need to (and can do) about this.

Key points for consideration included the following:

International legal framework for trafficking in people is a minimum standard and the Convention was fragmented by political tensions in its development, resulting in a compromised document as a result.

Prior to the Palermo Protocol, trafficking was a human rights issue, however compromises that were made during the process of drafting the Protocol may have lead to it becoming focused upon criminal justice responses driven by legislation, ultimately having little impact in terms of recovery and rehabilitation for victims. There may always be a compromise between law – rights – welfare, although with the right will and policy these do not have to be mutually exclusive.

Discussion developed around international legislation and definitions as the overarching basis for subsequent interventions concerning protection and support for victims and the prosecution of traffickers. There was recognition that there are often ‘glass walls’ surrounding the issue of trafficking, reflecting the different priorities of all services involved.

Multi-agency responses (from international legal issues through to national policy and front line practice) are key to any hope of success in addressing trafficking. Within Scotland (as in every other jurisdiction) there has to be a political will to address the issue, that is reflected in a national strategic approach supported by laws and resources to tackle trafficking.

In addition to political will, political power is required for an effective strategic approach. Need for commitment and access to resources. But important to understand how trafficking is physically and materially connected with how we live. For example, even the allocation of funding to support anti-trafficking activities is a highly political process in some countries. It is important to recognise the role of the state and subsequent operation of state institutions; and the distinction between ‘top-down’ and ‘grass-root’ approaches.

Some participants felt that to be effective in tackling these issues, there has to be compliance and ratification of international law which is the *political will*; this then has to

be translated into national laws. *Political and strategic power* is needed for national laws to be translated into front line practice and to actually affect front line practice to protect victims. Multi-agency training, delivered and repeated at regular intervals as knowledge and understanding develops, was considered to be the key to successful delivery of front line services that adhere to international laws. However tension was noted between a top down legal approach and bottom up experiences on the front line. Does there have to be such tension? Is this where concepts and definitions of trafficking/exploitation/abuse begin to unravel?

One example of international obligations translated into practice was the NRM in the UK. This was introduced in the UK to provide a mechanism of identification that should then lead to appropriate support and interventions for victims. There was view that everybody has an obligation to refer to NRM or equivalent as the most effective solutions tend to be societal responses to the issue. There was also some related discussion of the interpretation in the UK of the ‘competent authority’ [article 10] with questions as to how emphasis had shifted from the significance of community involvement in this process to prioritise the decision making of UKHTC/UKBA; with UKBA’s priority of border control rather than protection of children and adults (notwithstanding s55 recently introduced).

Translating laws into front line practice was recognised as a particularly challenging task, especially when definitions of key concepts vary between agencies; often depending on the primary focus of those agencies e.g. UKBA (where the key responsibility is border control) – social work child and adult protection – criminal justice system prosecution of offenders.

For front line practitioners trafficking may constitute one more form that abuse may take; however separating trafficking from other forms of exploitation may be problematic in terms of effective service delivery while merging it may result in another set of challenges if the intrinsic factors associated with human trafficking are overlooked. International obligations exist to identify and respond to trafficking victims, while there are also obligations to all other victims of exploitation.

Does the response to trafficking require a specialist approach from government/strategists/policy makers/service providers or can it be incorporated into existing provision?

Related issues arose from these discussions including:

- How do we translate serious violations of human rights into a serious crime?
- How do we define internal human trafficking?
- Need for political will to make a difference, and effective leadership. Similarly, original plans for the NRM were much wider than the system currently in place.
- Further challenges posed by the ambiguity in law and implementation. But to what extent will clarification of the law make any difference? Perhaps some, but implementation is crucial. Requires ownership to ensure strategic delivery and integrated approach from all relevant organisations and state institutions.

Criminalisation of victims – how does this occur, how is exploitation defined and perceived within the criminal justice system?

Criminalisation of victims appears to be most noticeable in terms of convictions for ‘prostitution-related’ offences and cannabis cultivation.

To what extent will it be possible to prevent prosecutions for cannabis cultivation which is a serious crime in UK, even if trafficking can be ‘proven’?

In some countries, if it is considered that an offence could not be committed by a child on their own and without adult involvement, then there should not be any prosecution of the child. However, problems have been experienced when those who have worked in front-line social work child protection and criminal/youth justice have experience of children being entirely capable of cultivating and selling cannabis (maybe on a smaller scale) without adult intervention. The issue of children’s agency was considered important in this discussion.

Further consideration was given to situations where victims of human trafficking become perpetrators, in order to pay debts or through other forms of coercion. What is the role of the justice system in these situations?

Global connectedness and neo-liberal assumptions in post-conflict reconstruction. How do international organisations (particularly the International Monetary Fund and World Bank) impact on states in transition?

While there was some agreement that trafficking does require specific legislation in each country to comply with international directives, there was considerable concern that conceptual and theoretical underpinnings (e.g. globalisation/local and international conflict/inequality of women) requires societal changes that cannot be addressed by legislation alone, or merely at the point of service provision. This highlights different views among participants as to whether legislation can drive behavioural changes; or whether any change requires bigger global changes in theory and practice.

The connectedness that was evident in terms of global victimisation was agreed BUT the discussions which arose queried the extent to which national/local law should differ to take account of regional variations. While models of intervention may well be possible to replicate from country to country – comparative research should consider the extent to which the experiences of victims in Scotland reflect those of victims in other countries.

Importance of intersections of different policy areas and how they affect anti-trafficking policy. Fragmentation of social movements and depoliticisation of anti-trafficking with a focus on short-term interventions. Government manipulation of funding climate.

To understand wider social movements and the globalisation of trafficking in humans and responses to this requires theoretical analysis: for example feminist theory, globalisation

theories, and consideration of analysis that prioritise immigration as a way of conceptualising the issues.

Can there be an overarching conceptualisation of trafficking that can better inform legislation and interventions?

The importance of policy was noted as it impacts on practice and there was agreement that it should be informed by academic research. Policy will impact both strategically and legislatively on service-delivery in relation to human rights, victim support and law enforcement.

However, is academic research lagging so far behind at the moment that it will be a challenge to conceptualise trafficking within the political and international relations agenda.

The importance of ‘prevention’ as an intervention was emphasised.
Prevention as sealing borders? Prevention as equality of women and girls
Prevention as the enforcement of children’s rights

The significance and role of Rapporteurs was considered – good, bad or indifferent?

The current emphasis on numbers/estimates of trafficking in humans was noted; however there was agreement that this should not be the determining issue. One victim is enough to require action, but there was recognition that in the ‘real world’ political will is governed by the ability to affect change within available resources

Final points:

The challenge of the complexities of issues in this area was recognised and acknowledged.

People and agencies often appear to be working in silos – we need to have a better understanding where these silos meet in terms of an overarching understanding of trafficking.

Do international legal definitions and laws make the issues appear too black and white when on the ground things appear to be mired in a cloudy grey?