

# **NSPCC WRITTEN SUBMISSION TO JOINT COMMITTEE ON HUMAN RIGHTS TO INQUIRE INTO HUMAN TRAFFICKING**

**January 2006**

## **A. Introduction**

A.1 The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC's purpose is to end cruelty to children. We seek to achieve cultural, social and political change - influencing legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

A.2 The NSPCC exists to end cruelty to children through a range of activities designed:

- to help children who have suffered abuse overcome the effects of such harm;
- to prevent children from suffering abuse;
- to prevent children from suffering significant harm as a result of ill-treatment;
- to help children who are at risk of such harm; and
- to work to protect children from further harm.

A.3 The NSPCC has more than 180 teams and projects throughout England, Wales and Northern Ireland. Their work includes:

- family support, assessment, counselling and therapy to children and families experiencing abuse;
- investigations into allegations of child abuse; and
- work within schools and other youth organisations to provide a voice for children and advocate their rights.

A.4 This submission is a summary of the NSPCC's experience and policy work involving the trafficking of children. It is set out below in sections that correspond to the specific questions asked by the Joint Committee. It focuses on trafficking in children and the child protection issues related to the impact of child trafficking.

## **B. Background**

B.1 The NSPCC is aware, from our services to children and young people, of the growing trend in trafficking in children for labour and sexual exploitation. Our evidence suggests that in recent years the UK has become both a destination and transit country for trafficking. The NSPCC's experience and knowledge in this area of work comes both from policy and the NSPCC services. The NSPCC's Street Matters/Bfree service, which is based in

London, works with children who have been sexually exploited. The NSPCC's Special Investigation Service (SIS) also works on issues related to child trafficking and has supported the police and other agencies in this area, most notably on Operation Paladin Child with the Metropolitan police in 2003.<sup>1</sup> At a policy level the NSPCC is a member of ECPAT UK and has worked alone and collectively as an ECPAT UK<sup>2</sup> member on child trafficking at both national and European level for several years.

### **C. Children as victims of trafficking**

C.1 "Trafficking" has been defined in various ways over the years and by different groups. The NSPCC recognises the widely used definition from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (also known as the Palermo Protocol). According to the Palermo Protocol, trafficking in persons is "the act of 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." Thus child trafficking can be said to exist from the time a child is recruited to the time that s/he arrives, regularly or irregularly in a country and is exploited. The consent of the child victim to the trafficking is irrelevant – this is true even if none of the following means have been used, force coercion, abduction, deception, abuse of power etc.

C.2 We know from our services that there is demand for children for sexual exploitation, such as child prostitution and the production of child pornography, and for labour exploitation. Children are therefore particularly vulnerable to traffickers, especially organised gangs. Demand for child prostitutes and child pornography is increasing in EU member states and while police and judicial authorities are trying to combat this particularly abhorrent form of abuse, traffickers and organised criminal gangs are becoming even more profitable<sup>3</sup>.

C.3 Children are entitled to specific rights under a number of international instruments. The United Nations Convention on the Rights of the Child (UNCRC) is the most comprehensive of these instruments. Several articles specifically relate to the rights of the child to be protected from violence and exploitation, in particular:

---

<sup>1</sup> Operation Paladin Child was a unique study into the migration of children through Heathrow airport between April and November 2003. The NSPCC worked closely the Metropolitan Police Service, Hillingdon Social Services and the Immigration Service during this study.

<sup>2</sup> ECPAT UK stands for End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes. It is a coalition of nine leading charities in the UK.

<sup>3</sup> European Commission Report of the Experts Group on Trafficking in Human Beings, Brussels, 22 December 2004.

C.4 Articles 19 - The right to protection from all forms of violence, injury, abuse, neglect or exploitation

Article 32 - The right to be protected from economic exploitation

Article 34 - The right to protection from sexual exploitation

Article 35 - The right of the government to prevent the sale, trafficking and abduction of children

Article 36 - The right to protection from all other harmful forms of exploitation

Article 37 - The duty of the government to prohibit torture, cruel treatment or punishment

Article 39 - The duty of the government to take measures to ensure that child victims of armed conflict, torture, neglect or exploitation receive treatment for recovery and social integration

C.5 The NSPCC uses the UNCRC as the basis for our work and urges the Government to adopt a human rights and children's rights approach to all policies related to combating trafficking in human beings. The NSPCC also urges the Government to adopt a children's rights approach to its asylum and immigration policy. In our experience the victims of child trafficking are often 'accompanied' by their trafficker and are therefore not identified as being at risk of harm on entry to the UK.

C.6 The EU Experts Group on Trafficking in Human Beings<sup>4</sup> recently reported that it is easier for traffickers to target children than adults through coercion, deception or manipulation as they are more dependent on adults and have fewer possibilities to escape an exploitative relationship. Children cannot always rely on the protection of their families, who are often threatened and terrified of what the traffickers may do. Some groups of children are particularly vulnerable because of lack of opportunities, education and support in their country of origin. Groups such as street children, children living in institutions, children from minority and disadvantaged groups are particularly vulnerable to organised gangs.

C.7 Trafficking in human beings often flourishes in areas of low social and administrative infrastructures, such as post armed conflict areas, areas recovering from humanitarian crises and countries in transition. Violations of individual security and the lack of economic development belong to the root causes of human trafficking. The EU Experts Report also stated that children may be abducted by traffickers, or handed over by their parents in the belief that they will be given education or "appropriate" employment, or because of their own poverty and desperation. The children often suffer demanding and dangerous journeys to their destinations. They may be sexually exploited

---

<sup>4</sup> European Commission Report of the Experts Group on Trafficking in Human Beings, Brussels, 22 December 2004.

and/or exploited in illegal activities or other forms of economic exploitation, exposed to violence of the exploiters and the clients. They often live on the streets or in inadequate accommodation, with no adult carers and no access to health, education and social services. These children usually have no legal status and therefore are prevented from seeking protection for fear of being returned. When identified by law enforcement authorities, in the UK and in other EU member states, they are often treated as illegal migrants, criminalised, held in detention centres, many of which don't have child protection systems in place. Article 37 of the UNCRC requires that deprivation of liberty shall only be used as a measure of last resort and for the shortest amount of time. The NSPCC does not support the detention of children. In the UK, many detention centres do not have adequate and robust child protection and safeguarding policies in place to deal with the children, particularly vulnerable victims of trafficking.

#### **D. The nature and extent of the problems arising from trafficking in the UK**

D.1 The NSPCC is aware that it is very hard to obtain accurate data on the extent and nature of child trafficking, owing to the lack of standardised information collection systems based on common definitions, and the clandestine nature of the activities involved. Research by ECPAT UK found 35 cases in 17 London boroughs, but that 32 out of 33 London boroughs were concerned about other potential cases.<sup>5</sup> The research suggested that there were many more reported cases of trafficking that go unidentified. The NSPCC would like to see better data collection and documentation on trafficking to form part of a national multi-agency plan on child trafficking.

D.2 While evidence from our services suggests a rise in the number of children being trafficked into the UK, our services also continue to find it difficult to gather reliable and accurate data on child trafficking. It appears likely that many children enter the UK without their experience of trafficking ever being identified. This could be for a variety of reasons. Practitioners may not be trained to identify trafficked children and may themselves need more information and guidance<sup>6</sup>, and the children involved may be less aware than adults of what has happened to them and they can take a long time to come to the realisation of the situation. In general terms, children can be less capable of understanding the consequences of their actions. Even when a child 'agrees' to be trafficked and/or exploited, consent cannot be assumed and should never be used against the child<sup>7</sup> as stipulated in the Palermo Protocol<sup>8</sup>.

---

<sup>5</sup> ECPAT UK (2004) 'Cause for Concern? London social services and child trafficking', London: ECPAT

<sup>6</sup> ECPAT UK (2004) 'Cause for Concern? London social services and child trafficking', London: ECPAT

<sup>7</sup> European Commission EU Experts report on Trafficking in Human Beings, 22 December 2004.

<sup>8</sup> The UN Convention to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol 2000)

D.3 Even with this lack of data, we are aware from the EU Experts Report that trafficking routes continue to change and although there are several 'established' routes into the EU (e.g. from West African countries, such as from Nigeria; from China and from Albania) the routes change and traffickers can and do adapt quickly to this changing environment. Within the EU itself there is also movement across internal borders e.g. from the Baltic States to Scandinavia, or the UK to Italy.

## **E. Evidence from the NSPCC's services**

E.1 The NSPCC has a sexual exploitation service, based in East London called Street Matters/Bfree. The service was started in 1999 and has a team of six workers offering a variety of support to young women under the age of 18 who are sexually exploited or at risk of being sexually exploited. The service also offers training and consultation to professionals around sexual exploitation. Street Matters/Bfree was developed within an action research framework ('Its Someone Taking a Part of You' NCB 2002) and defines sexual exploitation as a broad spectrum of abusive experiences ranging from vulnerability in relationships to managing violence to exchanging or selling sex.

E.2 The service operates on a needs led basis and in recent years has seen a significant shift in the nature of its referrals. The service started to accept referrals of very vulnerable girls (below the age of 18) who had arrived in Britain from Africa and were susceptible to sexual exploitation because of their previous experiences and/or level of isolation. Over the last few years sustained work with these girls and young women has led to them sharing their histories with staff and what has emerged from all the histories are quite clear indicators of trafficking for sexual purposes and in one case for domestic work.

E.3 A third (nine) of all current Street Matters/Bfree cases are orphaned migrant children from Africa, brought to the UK, then abandoned by their adult traffickers on arrival. They were all fleeing poverty and/or war, and were unaware of their sexual exploitation or trafficking status until made aware of it by our project.

E.4 Some of the children involved were exploited in their countries of origin, and again here in the UK. Several have received social services support with housing, but little else, and all have looked to the NSPCC for emotional and practical support. The Street Matters/Bfree project was not designed to deal with trafficking and has had to develop knowledge and expertise rapidly. Due to the very urgent and immediate needs of the girls referred to the project, a group was set up three years ago to offer help, support and advice. All of the girls referred to the group are from different African states. The group is called 'From There 2 Here' and is still running. It continues to accept new members. The girls involved in the group are aged 15-17 at referral, the majority being about 15. The girls come from Angola, Kenya, Burundi, Rwanda, Guinea, Uganda, Eritrea, and other African states.

## **F. The extent to which the UK legal framework is adequate to address the problem of human trafficking;**

F.1 The NSPCC welcomes the Sexual Offences Act 2003 which criminalises trafficking for sexual exploitation and makes it an offence to traffick in, within and out of the UK. We also welcome the new offences of trafficking for slavery or forced labour, human organ transplant or other forms of exploitation in the Asylum and Immigration (Treatment of Claimants, etc.) Act (2004). At European level, the NSPCC welcomes the recent Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the EU Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography which was the precursor to several of the trafficking offences in the Sexual Offences Act and lays down minimum sentences for trafficking in all EU member states.

F.2 However, the current UK legal framework does not have a human rights approach to human trafficking and victims can find themselves being criminalised rather than seen as victims. Within this context, the NSPCC welcomes the recent European Commission Communication on fighting trafficking in human beings<sup>9</sup> which urges that “first and foremost a clear commitment of EU institutions and Members States (should be) to follow a human rights centred approach.”

F.3 The current legal framework does not adequately cover the protection of victims of human trafficking. Although there have been several successful prosecutions under the Act, the willingness of victims to testify has been vital in securing these prosecutions. The NSPCC believes that the best interest of the child must be paramount. Whereas children must have the right to testify, their willingness to do so should not bear any influence on their asylum claim or their resident status. We suggest that if a child wishes to testify, then they should be enabled to do so with the necessary safeguards and procedures in place. The children should be able to understand fully the risks and benefits of their co-operation with the authorities, they have the right to be heard according to their evolving capacities and that the procedure complies with the principles of the best interest of the child and non discrimination. Child victims must also be given adequate protection, advice on their status and access to the services they will need to help to overcome the abuse they have suffered as a result of trafficking.

## **G. Immigration and Asylum Issues**

G.1 A major problem we have encountered at the NSPCC services that work with girls who have been victims of sexual exploitation is the contradiction between UK immigration and asylum legislation and child protection. The UK ratified the UN Convention on the Rights of the Child in 1992. At the time of the ratification it entered a reservation to the Convention which states that:

---

<sup>9</sup> COM (2005) 514 Final, Communication from the Commission to the European Parliament and the Council on fighting trafficking in human beings – an integrated approach and proposals for an action plan

*The United Kingdom reserves the right to apply such legislation in so far as it relates to the entry into, stay in and departure from the United Kingdom on those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom and the acquisition and possession of citizenship as it may deem necessary from time to time.*

The NSPCC believes that the UK government should remove its reservation from the UN Convention on the Rights of the Child in relation to immigration control.

G.2 However, whether or not the reservation is lifted we believe that the UK asylum process should recognise child trafficking as a cause of persecution on return and that trafficked children should be seen as a distinct group. We believe that the child should have the right to remain, should he/she wish, where there is evidence that they have been trafficked.

G.3 A child centred process must be put in place where children who are the victims of trafficking should undergo an assessment of their best interests by a multi agency panel and that they themselves should be able to participate in this process. Children should only be returned to their country of origin on a voluntary basis and following a risk assessment. It is vitally important to recognise the significant risks on return for trafficked children both of being persecuted for being victims of trafficking and of being re-trafficked.

## **H. Evidence from the NSPCC's services**

H.1 Evidence from the NSPCC's Bfree/Streetmatters service highlights these kinds of problems as children who have been trafficked here face an unsympathetic and punitive asylum process. The service have a number of young victims of trafficking who did not claim asylum for trafficking upon their immediate arrival (they may not have identified themselves as having been trafficked, understood what had happened to them or used the word 'trafficking'). This has complicated their applications for indefinite leave, and diluted the support available to them. It now appears likely that they will be deported and returned to countries where they will have no support or means of survival. These young women will therefore be vulnerable to re-trafficking and placed at risk of further sexual exploitation.

H.2 Some of the children have already been forced through the legal system three or four times while appealing to Home Office decisions to 'return' them to their countries of origin. The situation now for all of them is that they have, after going through a convoluted and at times distressing immigration process, been given time limited leave to remain, however this is only up to the age of 18. They will then have to reapply for indefinite leave. All applications now will be considered on the basis of the fact that they are now adults, rather than the circumstances in which they arrived as children.

H.3 In consultation the children and young women in the 'From There 2 Here' Group have strongly stated that time limited leave causes further distress as they get settled and socialised into British society. Their links with their home

countries naturally lessen as they do not have the resources or knowledge to maintain contact and are more unable to as they have lost immediate families and are preoccupied with setting up lives here.

H.4 Experiences of going through the immigration legal processes have been daunting and distressing for these children and young women. They were already traumatised by their experiences in their home countries, found themselves in a country whose systems and infrastructure they have little knowledge of, and exploited and abandoned by the only adults they knew in the world at that point.

H.5 Another problem has been with the provision of legal advice and assistance. Legal advice offered to these young people is often of a poor quality, and as Asylum law is constantly changing it is proving more and more difficult for solicitors to be able to appropriately brief and represent young people.

H.6 There are four young women currently receiving support from the NSPCC sexual exploitation service who have children (under the age of five) who were born here in Britain. Yet all of these young women face the threat of deportation in 2006. On return these young women are faced with the same dangers of sexual exploitation that they suffered before if they return to their countries of origin. But now as they are parents themselves, their children could also be returned to situations of significant harm. The NSPCC also has concerns that some of these young women may choose to leave their children to be taken into care if their own asylum claims fail, as they may deem this to be in the best interests of their child. The NSPCC believes that this situation is unacceptable and that there should be a duty of care to the children of trafficking victims as well as to the victims themselves.

## **I. The treatment of and protection provided to the victims of trafficking;**

I.A Despite the wide range of legislative and policy initiatives at national, European and international level, there are significant weaknesses in the current approach to child trafficking. For instance, the focus has been primarily on concerns of law enforcement and judicial co-operation, rather than prevention, or safeguarding children's rights.

I.B NSPCC believes that all actions undertaken in relation to trafficked children should be based on the principles set out in the 1989 UNCRC, in particular:

- The best interests principle: the best interests of the child should be the primary consideration in all actions concerning children. Considerations relating to immigration or crime control should be secondary. The child victims of trafficking should not be criminalised
- The right to participate: the views of children should be sought and taken into account, in accordance with their age and maturity, in all matters affecting them;

- The 'non discrimination' principle: trafficked children should be treated as children first and foremost; considerations of their national or other status should be secondary.

I.C It is important to provide adequate assistance and protection to children who are victims of trafficking including safe and appropriate accommodation. We are aware anecdotally of cases where child victims of trafficking 'disappear' from safe houses, possibly being picked up by their trafficker. Children must also be provided with counselling, health care, free legal assistance, and educational opportunities. Specialised services should be provided to meet their specific needs, including their linguistic and cultural needs, and protect their rights.

I.D The NSPCC is concerned that currently there is no clear and comprehensive guidance for social services to identify trafficked children and to act to protect them. We would like to see a national strategy developed for a multi-agency approach from a child protection perspective. This would put in place multi-agency training programmes and ensure awareness, understanding and clear guidance on child trafficking issues across sectors including immigration services (IND), social services, Local Safeguarding Children's Boards, teachers and medical professionals. The NSPCC would also like to see multi agency teams in place at ports of entry in order to identify concerns about trafficking and undertake investigation and protection measures.

I.E It is also important that older children should not be treated as de facto adults, detained and placed in reception centres without adult support. The NSPCC believes that all child victims of trafficking should have an independent legal guardian appointed to act in their best interests and support them through the process of assistance and protection.

## **J. The law and practice on the deportation of the victims of trafficking.**

J.A In order to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom and/or would submit them to inhuman or degrading treatment, any decision to deport or return a trafficked person, including trafficked children, should be preceded by a risk assessment which should be carried out by a multi agency team. NGOs and other service agencies that provide assistance to the trafficked person concerned should be actively included in this process. Returns should only be voluntary, following the multi agency risk assessment being done, and if the return is in the best interests of the child, is safe and assisted.

## **K. Whether or to what extent ratification of the Convention by the UK would enhance human rights protection in this area, and assess the changes to law, policy and practice which would be necessary in order to ratify and successfully implement the Convention.**

K.A The NSPCC urges the Government to ratify the legally-binding 2005 Council of Europe Convention on action against trafficking in human beings

which has already been signed by 15 European countries. Significantly, the treaty identifies trafficking as a violation of human rights; extends the scope of the Palermo definition to cover both trans national and internal trafficking, and trafficking not necessarily involving organised criminal groups; contains minimum standards for the protection of the rights of trafficked persons (including a reflection period of 30 days to allow them to consider); and sets out provisions related to the prevention and criminalisation of trafficking. It also establishes an independent body of experts (GRETA) to monitor the implementation of the treaty by those states that have ratified it.