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Research on Criminalisation of Migrant Women

Dr Liz Hales is a Senior Research Associate at the Institute of Criminology, University of Cambridge.

Professor Loraine Gelsthorpe is University Professor in Criminology and Criminal Justice at the Institute of Criminology, University of Cambridge.

The work of a number of key organisations, such as the International Organisation for Migration, means that there is now greater awareness of the extent of national and international people trafficking and exploitation by smugglers or agents of people seeking to leave their country to seek work or asylum. Within the UK, public knowledge has been influenced by the setting up of the UK Human Trafficking Centre in October 2006, the work of a number of human rights organisations and media interest in some cases. However, to date, there has been no formal recognition of the numbers of potential victims in custody on criminal charges, nor systematic prison based research that provides evidence of how these individuals have been managed within the Criminal Justice System and by the United Kingdom Border Agency (UKBA). Our research on the criminalisation of migrant women, funded for 18 months by the ESRC, aims to fill this knowledge gap.¹ In this article we outline the background to this work, our research design, and initial findings as we approach the final phase of this work.²

Background to the research

The latest published figures on the female prison estate show a 34 per cent growth in the female sector between 1999 and 2009. The number of new receptions peaked at 12,676 in 2008, with a gradual fall since then.³ However, during this period of time, within the population where nationality has been recorded, receptions of foreign national prisoners increased from 8 to 19 per cent of the total.⁴ In 2009 foreign nationals accounted for 26 per cent of all new untried receptions and for 16 per cent of receptions with an immediate custodial sentence.⁵

Alongside this increase there has been a shift in the balance of offence categories. In the past women arrested at port of entry on importation of drugs were identified as the dominant group. However, in the latest static population count, one third had been charged in relation to their immigration status or related offences of deception and fraud to enter, remain, leave or secure work within the UK.⁶ There is also evidence of an increased number of those involved in organised illegal activity such as cannabis production, selling of fake goods or street robberies. Data from voluntary sector organisations working with foreign women in custody indicate that those charged within this offence group tend to be migrant women, that is, those who have entered the UK to seek work or asylum, rather than as temporary visitors or for reasons of current employment, education or marriage.

This period of increase of migrant women in custody is perhaps not surprising — with the tightening up of border security, the introduction of a points based system for those seeking rights to enter for work, and raids on premises to identify and prosecute those employing illegal migrants.⁷ It has also been a time of tighter regulation of foreign nationals in terms of rights to remain in the country. Automatic deportation provisions came into effect in August 2008 for those who had been sentenced to a period of imprisonment of at least 12 months.⁸ This necessitated much closer working and information sharing between the prisons and the UKBA Criminal Casework teams and, as foreign prisoners are rarely deported at the Earliest Release Date, this has contributed to a parallel growth of those held solely on Immigration warrants. The legal routes of entry into the country, to seek work or asylum and legally accessing employment once within the UK, have therefore been closing down at a time when women seeking asylum or the opportunity to support their

1. ESRC GRANT No: RES-062-23-23-2348.

2. In carrying out this research with women in custody we also recognise that there are similar victims of trafficking and smuggling within the male estate and YOIs.

3. Ministry of Justice (2010) *Offender Management Caseload Statistics 2009*.

4. Within the figures presented by the Ministry of Justice (2010) 1.5 per cent are of 'unrecorded nationality'.

5. Ministry of Justice (2010), *Offender Management Caseload Statistics 2009*.

6. Women and Young People's Group, Ministry of Justice (2008) *A Strategy for Managing Foreign National Prisoners in the Female Estate*. Ministry of Justice.

7. This was resultant on implementation of the Asylum and Nationality Act 2006 in February 2008.

8. Under the UK Borders Act 2007.

families by seeking labour overseas and sending money home have been increasing. Many of these women have been employed in the informal sector⁹ in their country of origin and as pointed out by the Global Alliance Against Traffic in Women there is a strong link between trafficking, migration and labour opportunities.¹⁰ In addition, non EEA overstayers or 'undocumented migrants' have found that access to work has become increasingly difficult where they are competing with increasing numbers of A8 and A2 nationals.¹¹

Interlinked with this is the increase in illegal recruitment, transportation and employment of these migrants, who are effectively managed as profitable commodities to be bought and sold and whose illegal status is a coercive tool used by their agents. To challenge this area of crime the UK Government ratified the Council of Europe Convention on Action against Trafficking in 2008. This was implemented in the first half of 2009, with the imposition of custodial penalties for those found guilty. The Convention defines trafficking as *acts* such as recruitment, receipt, transportation, by *means* such as threats, coercion, deception, abuse of position of vulnerability, for the purpose of *exploitation* such as sexual exploitation, forced labour or slavery. It also accepts that the relationship with smugglers, whose assistance is initially sought to escape persecution, can become equally

abusive and fall within the same category. One weakness relating to the effectiveness of the legislation, however, concerns the problem of charging those who exploit trafficked labour without evidence of their direct involvement in the recruitment and transport aspects of trafficking. Additional legislation was thus introduced in Section 71 of the Coroners and Justice Act 2009 — of holding someone in slavery or servitude or requiring a person to perform forced or compulsory labour. This came into effect in April 2010.

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The objective of these two additional elements of legislation is thus to ensure the punishment of those guilty of what some have seen as modern day slavery, but a key element is also the recognition and appropriate treatment of anyone subject to these crimes as a 'victim'. A formal method of identifying potential victims of trafficking and ensuring they receive appropriate care has thus been introduced through the National Referral Mechanism (NRM). This approach necessitates facilitating and responding appropriately to disclosures made by

victims and, with the individual's consent, making referrals through the NRM, so that a decision can be made on whether there are 'reasonable grounds' to believe the individual is a potential victim of trafficking. If confirmed, the victim is then provided with protection and support and currently offered 45 days of 'reflection and recovery' during which a 'conclusive grounds' decision can be made before their removal from the UK is enforced. There is the potential to increase this to a year if the victim has agreed to assist the police in their criminal investigations. Any further stay in the UK is at the discretion of the UKBA. Unfortunately, anyone who does not want to be formally identified as a victim, due to fear of retribution or stigmatisation is not eligible to be referred in this way.

In cases where the victim of trafficking is in court on a criminal charge, Crown Prosecution Service

(CPS) legal guidance advises prosecutors that where the criminal offence has been committed whilst in a coerced situation, there is a strong public interest to stop the prosecution¹². It provides clarity for prosecutors about the circumstances of the person's situation which might support a defence of duress in law, relevant factors when deciding where the public interest lies, and clarity around the more subtle forms of coercion exercised by traffickers and exploiters. This guidance has been recognised by the Court of Appeal in the case of *R v O* [2008].¹³

9. Informal sector refers to those doing work that is not recognised or protected under existing laws, such as domestic work, street vendors and small traders.

10. Global Alliance Against Traffic in Women *Beyond Borders; exploring links between Trafficking and Labour*. GAATW Working Paper Series 2010.

11. A8 refers to the eight countries from Eastern Europe who joined the EU in 2004 (Poland, Hungary, Slovakia, Latvia, Lithuania, Czech Republic, Slovenia and Estonia) and A2 to the two who joined in 2007 (Romania and Bulgaria).

12. CPS (2010) *Legal Guidance on Human Trafficking and Smuggling*.

13. *R v O* [2008] EWCA Crim 2835.

Against this background we are aware that there are still victims of trafficking, smuggling and forced labour in the female prison estate. In 2008, the Poppy Project, which was the main provider of accommodation and support to women who have been trafficked into prostitution or domestic servitude, reported that 21 per cent of their referrals between 2001 and 2007 had been held within the prison or immigration estate and this has continued over the last three years despite the new legislation.¹⁴ The Anti-trafficking Monitoring Group raised concerns in relation to this in their report in 2010, identifying flaws in victim identification by the NRM and stating that victims of trafficking are still routinely prosecuted for offences they commit when coerced.¹⁵

The main aim of our research is therefore to take a more in-depth look at migrant women who are being processed through the criminal justice system in the South East of England, targeting those who may be victims of trafficking, smuggling or enforced labour. Through this we aim to identify the extent to which there are victims in the system, to understand the reasons for this, and to look at how these women are being managed. We are doing this by identifying and gaining consent to interview those in custody who have been changed with illegal entry, offences of deception and fraud to enter, leave, remain or secure work within the UK, or involvement in organised illegal work activities such as cannabis production. We are also interviewing women charged with importation of drugs, who state that their experiences of threats, deception and coercion were as described in the definition of trafficking that we gave.¹⁶ Where the initial interview indicates that the women have entered the country in the hands of traffickers or smugglers and/or have been working under duress we seek the interviewees' consent for engagement in the research, to gather information and monitor management of their cases.

The goal has been to gradually gather relevant data in a number of key areas, but to allow those interviewed to recount their experiences and feel in control of the meeting.

The key task of this research has been to gather information from potential victims through individual interviews. The interview format was prepared in anticipation that the most likely victims would not have English as a first language, could well be traumatised by their experiences and might still be in fear of those who brought them into the U.K. or controlled them once here. Great care has thus been taken in guaranteeing confidentiality and anonymity of data gathered and in the choice of professional interpreters. The goal has been to gradually gather relevant data in a number of key areas, but to allow those interviewed to recount

their experiences and feel in control of the meeting.¹⁷ The key areas of information sought have revolved around:

- Place of origin, first language, need for interpreter support, socio-economic background and childcare responsibilities.
- Reasons given for leaving country of origin and seeking entry to the UK.
- Method of contact and recruitment by the travel facilitator, method and amount of payment and information offered in terms of work, payment, intended destination and legality of position on arrival.
- Journey to the UK, including work en route, control of travel documents and stated experience of threats or coercion.
- Access to and control over work choices once within the UK, payment received and experiences of coercion or violence and, for those who escaped from a controlled work situation in the UK, awareness of options and support available.
- The criminal justice proceedings, including disclosures made in court, advice on plea, history of court appearances, sentence given and period of time in custody on court and immigration warrants.
- The immigration proceedings, including access to legal advice, details and location of initial, full

14. Stephen — Smith, S (2008) *Prisoners with no Crime. Detention of Trafficked Women in the UK* The Poppy Project, Eaves Housing for Women.

15. The Anti-Trafficking Monitoring Group (2010) *Wrong Kind of Victim? One Year on: an analysis of UK measures to protect trafficked persons*. Anti Slavery International.

16. In relation to this it is not insignificant that the new EU directive adopts a broader definition including exploitation of criminal activity where elements of forced labour or services occur in activities such as drug trafficking.

17. This is in line with the ethical and safety recommendations for interviewing trafficked women provided by the World Health Organisation (WHO) (2003).

immigration interviews, appeal cases, and outcomes.

- ❑ In respect to criminal justice and immigration proceedings, the level of understanding expressed, level of interpreting services provided and access to legal representation, including times, location and nature of contact.
- ❑ Stated problems in relation to physical and mental health and indicators of stress evidenced at interviews.
- ❑ Referral for assessment as victims of trafficking through the NRM.

Progress to Date

As we reach the final phase of this work we have completed initial interviews with 103 migrant women in custody and from this we have identified 43 women who entered the UK in the hands of traffickers and worked under the control of others, 5 who entered independently but ended up working in 'slavery like' conditions in the UK and 10 who entered in the control of smugglers¹⁸. Follow up work with this target group of victims has (to date) consisted of sixty six follow up interviews. These have been mostly in the prison estate, but a few have been carried out at Yarl's Wood IRC and seven have been with women in the community after release. We have also attended and observed their court appearances whenever possible. With the women's permission we have also talked with those supporting them on the criminal justice and immigration matters and looked at their communications with their legal representatives and the UKBA. In addition, a number of those interviewed have welcomed the opportunity to stay in contact with us by letter between visits. Through this work we have built up a comprehensive understanding of their experiences in relation to those who have recruited, transported and worked them, their experiences, after escape, of attempting to return home or survive as undocumented migrants, and from the point of arrest their experiences within the criminal justice and immigration system.

We have also gathered information around their greatest stated anxieties and looked at their needs for, and access to appropriate protection and support, in the custodial environment and in the community.

Key Themes

At this point in the research it is too early to outline the full findings, evidence relating to compliance with

the Convention on Trafficking and victim protection and Human Rights Legislation, and good practice issues in relation to the way these women have been managed. However the key themes that are emerging from the data analysed to date are as follows:

- ❑ The number of identified victims of trafficking, within the total sample of all those interviewed within the female estate, is not insignificant.
- ❑ The practice of processing of victims through the NRM may be extremely limited.
- ❑ The largest nationality groups represented within the sample of victims concern those from Nigeria, followed by those from Vietnam and China.
- ❑ Victims of trafficking tend to come from lower socio-economic groups, and over half agreed to come to the UK in anticipation of earning money to support their families.
- ❑ At the same time, there is evidence to suggest that a number also leave their country of origin to seek asylum, due to threats from within the immediate family as well as political conflict.
- ❑ Many of the women have described weighing up the risks of staying in their country of origin compared with moving away from existing family support to seek a new life. For most it was their first experience away from home.
- ❑ A number within our sample were brought here by force, but the majority were recruited by traffickers who marketed their product to suit what they saw their victims' greatest needs. A number had been initially brought into the UK as children and others had been trafficked between countries.
- ❑ Once within the UK, forced work was most common in the provision of sexual services, followed by cannabis production, domestic servitude and a number of other controlled criminal activities. Irrespective of the key area of work, rape was a common experience.
- ❑ Most victims knew that there were other women, and in some cases children, trafficked and worked by those who had controlled them.
- ❑ Two women sentenced for importation of drugs were also victims of trafficking and information gathered from others indicates a close link between those who profit from trafficking people and those who profit from trafficking drugs.
- ❑ Almost all of those interviewed had experienced violence and intimidation and many still felt in the hold of traffickers after their arrests. This intimidation impacted on what they felt they could safely say on arrest and in court.

18. Victim identification by the researchers was based on the key indicators outlined in the Trafficking Toolkit and used in the NRM referral form.

- ❑ With the exception of those working on cannabis farms, most arrests were after the victim had escaped and was trying to return home or survive in the UK as an undocumented migrant.
- ❑ A high percentage of those interviewed were in need of support in relation to physical and mental health problems resultant on all they had been through.
- ❑ Only one had been granted leave by Immigration to remain in the UK, having been trafficked in and then detained as a child.
- ❑ How these victims are processed through the immigration system in terms of awareness of procedures, access to legal representation and the management of asylum interviews within a custodial setting.
- ❑ Outcomes of asylum applications and appeals and the impact of the UK Borders Act on victims of trafficking.
- ❑ Access to appropriate protection and support for those identified and those who are not processed through the NRM.

Why are these victims in custody?

In the group of 43 women who appear to be victims of trafficking, to date only ten have or are being processed through the NRM and in only four cases did this happen in time to stop criminal proceedings. The focus of our current work is therefore revolves around the analysis of the reasons for this. The key issues being explored are:

- ❑ Evidence of failures to facilitate and respond appropriately to victim disclosures from the point of arrest onwards.
- ❑ The relationship between the defendant and her legal representative and the barriers presented for non-English speakers being processed through a foreign criminal justice system.
- ❑ Management of cases where the fact that the defendant is a victim of trafficking is raised in the context of court proceedings.
- ❑ In relation to the above, interpretation of current legislation within the courts and failures to stop criminal proceedings where the victim is involved in cannabis production
- ❑ How well relevant professionals understand the NRM mechanism and the responsibilities of those who are recognised as first responders.

Linked in with this we are also looking at:

- ❑ The level of investigations carried out by police in response to disclosures.

- ❑ The long term outcomes for those released into the community, dependant on the National Asylum Support System, as they await final decisions on their immigration status.
- ❑ Issues impacting on the welfare of children and other dependants, in the UK and the country of origin, as their mothers are managed through the criminal justice and immigration systems.

The final stage

Over the final three months of the research we will continue to monitor the progress of our current cases as well as completing our data analysis and writing up the full report on our findings. Through publication of this report we aim to identify and evidence areas of management where changes in policies and practices might be warranted to ensure better compliance with the Convention on trafficking and wider Human Rights Legislation. All of this will be shared with relevant policy makers within the Ministry of Justice and UKBA. We also hope that this will contribute to a better understanding of relevant issues for the UK Government during the transposition phase of the new fuller EU Directive on Trafficking.¹⁹ We also plan to submit a further article to the Prison Service Journal, summarising the findings and any recommendations of our report, once it is published.

19. This is due for completion in April 2013.