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**ANALYSIS OF CHILD TRAFFICKING: THE CASE OF  
THE UNITED KINGDOM**

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A chi avrebbe voluto vedere questo momento.

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# INTRODUCTION

## Research aim

The aim of this thesis is to bring to the attention of readers the importance of child trafficking. In fact, during the drafting of this paper, it has been noted that the data available on this phenomenon were often combined with general information on human trafficking, without a clear distinction between children and adults. Moreover, research has shown that too often children are criminalized for the offences committed due to being trafficked.

By addressing this issue, this thesis will attempt to analyse the specific characteristics of child trafficking, in particular considering exploitation and how it can affect children who are misidentified and struggle to be recognized as victims. It will focus on sexual and criminal exploitation, with a particular focus on the latter, for the purpose of having a better understanding of the phenomenon.

For this reason, it will analyse in depth the case of the United Kingdom, by considering both the peculiarity of the region and the legislative response given to this matter. Particularly, this thesis will take into consideration two recent legal cases, in order to understand how their different outcomes have affected the identification process and the criminalization of victims of trafficking. Therefore, this paper will attempt to assess what challenges children victims of trafficking face when undergoing through criminal proceedings.

## Chapter outline

The first chapter will provide the legal framework, starting with the definition of trafficking in human beings and the steps that have been taken to develop Article 3 of the Trafficking Protocol. It will analyse international and regional instruments which have dealt with trafficking in human beings and, consequently, it will consider the national legislation of the UK. The paper will introduce the Modern Slavery Act 2015 along with the role of the experts in trafficking trials, in order to provide some background on the cases that will be examined in the last chapter.

The second chapter will address child trafficking in the United Kingdom. It will start with the analysis of the phenomenon of child sexual exploitation and child criminal exploitation, in particular on the latter, due to the characteristic diffusion of “County Lines”, which will be inspected through its drivers and its components. Therefore, there will be a necessary study of organised crime groups and local gangs, who are the actors responsible for the grooming of children and young people into criminal exploitation.

The third and final chapter of this work will look into the system of the National Referral Mechanism, in order to understand its strength and weaknesses and to assess whether this instrument is succeeding in the identification of victims of trafficking. Indeed, two legal cases will be considered: the DPP-v-M and R-v-Breani judgement. These cases will provide a deeper understanding of the relation that exist between the National Referral Mechanism and the statutory defence introduced through Section 45 of the Modern Slavery Act 2015. The defence should represent the implementation of the non-punishment principle; however, the two analysed cases will show how different the concluding judgement was, despite the status of victim appointed to both defendants through the National Referral Mechanism. It will be observed how the role of the experts has influenced the cases; in particular, how it affected the Breani judgement and what was the reasoning behind the decision of the Court of Appeal, in order to understand the possible effects that this case could have on future criminal proceedings.

The conclusion of this paper will introduce the comments and the recommendations that the Group of Experts on Action against Trafficking in Human Beings have made towards the United Kingdom and its approach to trafficking victims. For this reason, the conclusion will also refer to the recent pilot project based in London and founded on the successful Nordic Barnahus model. This can give another useful perspective on the approach used towards children and young people who have been victims of trafficking to provide them with the assistance and the support needed, without re-victimizing them, especially if they are involved in criminal proceedings.

# Chapter I – LEGAL FRAMEWORK

## 1.1 History of a definition

Human trafficking is a complex phenomenon to which no region all over the world is immune. It is difficult to have a clear picture of what trafficking looks like, due to its clandestine nature and lack of reports.<sup>1</sup> Trafficking in human beings is one of the world's most successful illicit businesses for organized crime networks. It is ascending in the list of international crimes, earning third place.<sup>2</sup> What is now referred to as “modern-day slavery” includes all those exploitative practices that fall under the category of human trafficking.

The International Labour Organization (ILO) estimates that, in 2016, 40.3 million people fell victims to modern slavery. These are men, women, and children who were forced to work under threat and against their will, living under conditions they had previously not agreed on.<sup>3</sup> 24.9 million victims are being trafficked around the world for sexual exploitation, forced labour exploitation, and criminal activities, both outside and within the state's borders.<sup>4</sup> Of these 24.9 million victims, statistics indicate that 20.1 million are trafficked for labour purposes, including being forced to work in factories or as domestic workers. Another 4.8 million people are trafficked for commercial sexual exploitation: 99% of these victims are women and girls who enter the sex industry involuntarily or are exploited.<sup>5</sup> These alarming numbers show that trafficking has an incredibly broad radius of action and it is a phenomenon that does not discriminate: it is not limited by geography and borders, and while one might think that it thrives where people lack opportunities and

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<sup>1</sup> J. Todres, “Widening our lens: Incorporating essential perspectives in the fight against human trafficking,” *Michigan Journal of International Law* 33 (2011): 53-76.

<sup>2</sup> Maria Ravlik, *The Fight against Human Trafficking. Drivers and Spoilers* (Palgrave Macmillan, 2020), 1.

<sup>3</sup> *Global estimates of modern slavery: Forced labour and forced marriage*, International Labour Office (ILO) and Walk Free Foundation (Geneva, 2017).

<sup>4</sup> Emma Ecker, “Breaking down Global Estimates of Human Trafficking: Human Trafficking Awareness Month 2022”, *Human Trafficking Institute*, January 12, 2022, <https://traffickinginstitute.org/breaking-down-global-estimates-of-human-trafficking-human-trafficking-awareness-month-2022/>

<sup>5</sup> Ibid.

where poverty is present, which is true, trafficking in human beings is also something that industrialized countries face<sup>6</sup>.

In states where trafficking is not defined and its lines are blurred, victims of human trafficking run the risk of being convicted for criminal offences, as stated by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA).<sup>7</sup> Thus, it is essential to understand the meaning of human trafficking, since the vagueness in terminology could actually hamper the application of measures meant for the protection of victims.<sup>8</sup>

Before analysing the definition of trafficking, it is necessary to understand the history of the word. As a matter of fact, trafficking as related to the trafficking of human beings is a concept that came into international use referring to white slavery, at the beginning of the twentieth century.<sup>9</sup> The term was then confined to the sexual exploitation of white women: in 1904, the International Congress adopted the very first agreement aimed at the suppression of the white slave trade, in particular the criminal traffic of women and girls.<sup>10</sup> Later in 1910, the International Convention for the Suppression of the White Slave Traffic bound States to punish those who "by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes".<sup>11</sup> However, references to white slavery ceased in 1927 and the only instruments adopted in this period were the Suppression of the Traffic in Women and Children and the Suppression of the Traffic in Women of Full Age, which did not define the term 'traffic' or 'trafficking', but only dealt with the recruitment of women with the purpose of prostitution. The agreements were circumscribed to this process and did not consider the consequences of it, namely the detention of women in brothels against their will, since it was something that could not

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<sup>6</sup> Winterdyk, Perrin and Reichel, *Human Trafficking Exploring the International Nature, Concerns, and Complexities* (CRC Press Taylor & Francis Group, 2012), 24.

<sup>7</sup> J. M. Muraszkiwicz, *Protecting victims of human trafficking from liability. The European Approach* (Palgrave Macmillan, London, 2019), 15.

<sup>8</sup> Ibid.

<sup>9</sup> Anne T. Gallagher, *The International Law of human trafficking* (Cambridge University Press, New York, 2010), 13.

<sup>10</sup> Ibid.

<sup>11</sup> International Convention for the Suppression of the White Slave Traffic, May 4, 1910, Art. 2.



concern international legislation but only internal, as specified in the closing statement of the White Slavery Convention.<sup>12</sup>

Some elements of a definition of trafficking are present in another instrument: in 1949, the United Nations adopted the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others. There is no definition of what ‘traffic’ and ‘trafficking’ consist of, however, despite the broadness of the Convention, it obliges States to punish those who are involved in the management of brothels and those who avoid systems of registration and supervision of prostitutes.<sup>13</sup> Article 1 of the Convention states that:

any person who, to gratify the passions of another:

- (1) procures or entices or leads away, for the purposes of prostitution, another person, even with the consent of that person;
- (2) exploits the prostitution of another person, even with the consent of the person.<sup>14</sup>

This is the first attempt at dealing with both the recruitment, which is the beginning of the process of a trafficked person, and the result of such process, which sees the exploitation of the person as the direct consequence. The acts contained in the Convention were probably not meant to punish what nowadays is known as “trafficking in human beings”, moreover the discussion about the exploitation of women and girls forced into prostitution was not that far-reaching into everyday conversation. These matters were limited to human rights discourse, which at that time was still low-profile.<sup>15</sup>

Only in the early 1990s did the case of trafficked women and girls become widespread in the international arena. One of the things that changed the perspective on the matter was the identity of the victims: they were no longer white, quite the contrary, and they came from underdeveloped countries. Another issue that reignites the debate was the fear of HIV/AIDS and its transmission, in particular through the migration of women, therefore

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<sup>12</sup> Anne T. Gallagher, *The International Law of human trafficking* (Cambridge University Press, New York, 2010), 14.

<sup>13</sup> *Ibid.*

<sup>14</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, at Art. 1.

<sup>15</sup> Anne T. Gallagher, *The International Law of human trafficking* (Cambridge University Press, New York, 2010), 16.

in this context, it began the debate about a more adequate legal framework for preventing women's sexual exploitation and about a trafficking definition.<sup>16</sup>

The international community began to acknowledge the worsening problem and the literature started to associate the phenomenon related to women with other criminal trends, such as the movement of migrants for the purpose of exploitation. In the late 1990s, these issues gained momentum and trafficking, as contemporary understood, was finally being recognized.<sup>17</sup> From being incidentally considered among other issues, namely the sexual exploitation of women or the prohibition of slavery, trafficking became something on which institutions began to focus, starting on defining the problem.

The UN General Assembly in 1994 referred to trafficking as “the illicit and clandestine movement of persons across national and international borders [...] as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, clandestine employment and forced adoption.”<sup>18</sup> A report of the UN Secretary-General followed this resolution, exploring the relationship between trafficking and illegal migration. In the report, it is clear that these two phenomena are different, however, they can be connected: migration across borders without documentation is definitely illegal, but it is not necessarily coercive: people can be trafficked with their consent, but the distinction that is necessary to make regards the reason for which borders are being crossed.<sup>19</sup> These attempts at defining trafficking are of great importance because they notify a shift in the general understanding of human trafficking, formerly linked, almost exclusively, to the sexual exploitation of women and girls. The definition provided by the Secretary-General mentioned that victims may have consent, to some extent, to the ‘movement’, stressing the intentions of the trafficker. On the other hand, what the General Assembly identified were the illegal activities related to trafficking that count as such. Therefore, the two constructions create an umbrella definition under which both the process and the result

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> UN General Assembly, “Traffic in Women and Girls,” UN Doc. A/RES/49/166, Dec. 23, 1994.

<sup>19</sup> UN General Assembly, “Traffic in Women and Girls: Report of the Secretary-General,” UN Doc. A/50/369, Aug. 24, 1995.

are included in what can be identified as trafficking, which constitutes a remarkable step forward.<sup>20</sup>

The United Nations were not the only one struggling to define trafficking: also European organizations tried to articulate the phenomenon, but it was the European Parliament that started to conceive trafficking as something that was not exclusively bound to the sexual exploitation of women but included “the illegal action of someone who [...] encourages a citizen to stay in another country in order to exploit that person by using deceit or any other form of coercion [...]”<sup>21</sup> Around 2000, the European States agreed on some elements that needed to be included in a trafficking definition, such as the differences between the trafficking of adults and children, and the consent of the person being trafficked, which is to be considered meaningless if force, coercion and abuse of authority are present in the process.<sup>22</sup>

It was the United States that had the most impact on the evolution of trafficking definitions before the adoption of the Trafficking Protocol. They made no distinction on gender and there were no requirements for crossing international borders. Their Trafficking Victims Protection Act identified coercion, force, and fraud as ‘means’, while sex trafficking, forced labour, slavery, and debt bondage were considered ‘ends’.<sup>23</sup>

However, one of the broadest definitions was proposed by the UN Special Rapporteur on Violence against Women:

Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:

- (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage for the purpose of

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<sup>20</sup> Anne T. Gallagher, *The International Law of human trafficking* (Cambridge University Press, New York, 2010), 18.

<sup>21</sup> European Parliament Resolution on trafficking in human beings, Resolution A4–0326/95, January 18, 1996.

<sup>22</sup> Anne T. Gallagher, *The International Law of human trafficking* (Cambridge University Press, New York, 2010), 22.

<sup>23</sup> *Ibid.*

- (ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such persons lived at the time of the original act described in (i).<sup>24</sup>

One of the key elements that transpire in these words is the absence of a distinction between internal trafficking or the one across borders, instead, it focuses on the removal of an individual from the community of origin. Moreover, contrary to other attempts at definitions, this one tries to close the gap that was always present between the process of trafficking and the result, stating that the ‘action’ covers all those people who have an actual role in the trafficking chain, from the beginning of it, with the selling of the trafficked person, to the end of it, with those who receive the victim and hold the person in forced labour, profiting from it.<sup>25</sup> The Special Rapporteur affirms that is the linkage between both coerced transport and practice that constitute trafficking, distinguishing this phenomenon from other illegal practices like smuggling or forced labour.<sup>26</sup>

## 1.2 UN Trafficking Protocol

In 1998, the United Nations addressed the problem of transnational crimes, which lead to the Resolution 55/25 of 15 November 2000 and the Convention against Transnational Organised Crime. The aim of this Convention was to fight organised crime, through cooperation between States Parties and mutual assistance.<sup>27</sup> The Convention has three supplementing protocols, but for the purpose of this thesis, only the Trafficking Protocol will be considered.

As of today, the international definition of human trafficking is provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (the so-called Palermo Protocol), which entered into force in December 2003. As the various definitions above mentioned may have suggested, it was quite a difficult

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<sup>24</sup> UN Commission on Human Rights, “Report of the Special Rapporteur, Ms Radhika Coomaraswamy, on violence against women, its causes and consequences, on trafficking in women, women’s migration and violence against women,” UN Doc. E/CN.4/2000/68, Feb. 29, 2000.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> J. M. Muraszkievicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 16.

assignment to agree on a universal definition of the phenomenon, mostly because human trafficking is a process, and thus cannot be associated with a specific act.

The Palermo Protocol is the first legally binding document with a definition that is universally accepted.<sup>28</sup> It is contained in Article 3, which states that:

(a) "Trafficking in persons" shall mean 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.<sup>29</sup>

Three different elements in this final definition are worthy of notice: action, means and purpose. 'Action' refers to "the recruitment, transportation, transfer, harbouring or receipt of persons"<sup>30</sup>, while the term 'means' refers to the ones used in order to ensure that action,<sup>31</sup> meaning:

"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".<sup>32</sup>

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<sup>28</sup> The Protocol for Human Trafficking." United Nations: Office on Drugs and Crime. Accessed July 16, 2022. <https://www.unodc.org/unodc/en/human-trafficking/protocol.html>.

<sup>29</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, New York. United Nations, 2000, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

<sup>30</sup> Ibidem.

<sup>31</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.29.

<sup>32</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, New York. United Nations, 2000.

On the other hand, ‘purpose’ refers to the exploitation in its various forms, such as sexual, forced labour or practices like slavery.<sup>33</sup> All these elements must be present in order to identify a situation of trafficking, the only exception concerns children, for which the ‘means’ can be overridden. This happens because it is not necessary to demonstrate the use of force or other means used for trafficking children, but it is more than enough to recognize that a child has been the subject of a said ‘action’.<sup>34</sup>

When referring to the ‘action’ element, it is important to notice the extended range of actions that are being included in the definition, such as the ‘harbouring’ and the ‘receipt’. This inclusion is crucial since it widens the understanding of trafficking as a practice that involves both the process and the end result of it, meaning that buying an individual through the mentioned means for the purpose of exploitation, but also maintaining an individual in said situation falls into the definition of trafficking.<sup>35</sup> This new range has the possibility of making accountable “not just recruiters, brokers, and transporters but also owners and managers, supervisors, and controllers of any place of exploitation such as a brothel, farm, boat, factory, medical facility, or household”.<sup>36</sup>

The second part of the trafficking definition concerns the means used and most of them are self-evident.<sup>37</sup> Coercion is the first element mentioned and it is an umbrella term that includes several different behaviours. In the Trafficking Protocol, it refers both to the direct use of force and threat, but it indicates also the means used to maintain individuals in a situation of exploitation: it has been argued that this lack of clarity on what could actually be classified as means could include not only physical and psychological but also relevant economic pressure.<sup>38</sup> Another concept that the Trafficking Protocol introduces is the abuse of power: this notion was understood as the power that family members, usually male, have over other members, usually female, in some legal systems and the power that a parent can carry out on children.<sup>39</sup> In the Travaux Préparatoires for the Organized Crime

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<sup>33</sup> Ibidem.

<sup>34</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.29.

<sup>35</sup> Ibidem.

<sup>36</sup> Ibidem.

<sup>37</sup> Ibidem.

<sup>38</sup> Ibidem.

<sup>39</sup> Travaux Préparatoires for the Organized Crime Convention and Protocols, at 343, note 20, [file:///C:/Users/Lucrezia%20Colomba/Downloads/The%20International%20Law%20of%20Human%20Trafficking%20\(Arne%20T.%20Gallagher\)%20\(z-lib.org\).pdf](file:///C:/Users/Lucrezia%20Colomba/Downloads/The%20International%20Law%20of%20Human%20Trafficking%20(Arne%20T.%20Gallagher)%20(z-lib.org).pdf)

Convention and Protocols, an interpretative note clarifies that the particular phrasing in the definition of the abuse of a position of vulnerability is conceived as “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”<sup>40</sup> The concept is later better elaborated by the Explanatory Report to the European Convention on Action against Trafficking, which affirms that vulnerability can be of several kinds, including physical, psychological, emotional, family-related, social and economic.<sup>41</sup> For instance, any situations in which the victim may be forced to accept being exploited for example because of the illegality of the immigration status, delicate health, or unstable economic situation, falls into the category of vulnerability. The Explanatory Report states that “persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.”<sup>42</sup>

The third element present in the trafficking definition is the purpose. This means that the individual intended for the action to happen in order to obtain a specific end result.<sup>43</sup> It is important to understand that the actual fulfilment of the intention does not need for the end result to be carried out. This translates as a situation of trafficking that does not necessarily lead to exploitation, however, it is more than enough to demonstrate that the exploitation was indeed the aim of the individual implicated. As a matter of fact, the purpose is strictly related to the first element considered as the action.<sup>44</sup> According to this reasoning, it becomes easier to establish which are the suspected traffickers involved in a situation of exploitation, based on their eventual closeness to said situation, on the other hand, it may be more complicated to identify as traffickers all of the persons related to the situation, since some recruiter or transporter may not acknowledge the final purpose for which they were working.<sup>45</sup>

Therefore, for what concerns the purpose of the Trafficking Protocol, three objectives can be identified, as stated in Article 2: the prevention of trafficking in human beings and its

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<sup>40</sup> Ibidem, at 347, Interpretative note, Subparagraph (a).

<sup>41</sup> Council of Europe, Explanatory Report on the Convention on Action against Trafficking in Human Beings, CETS 197, Warsaw, 2005 at para. 83.

<sup>42</sup> Ibidem.

<sup>43</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.34.

<sup>44</sup> Ibidem.

<sup>45</sup> Ibidem.

fight, special attention to the protection and assistance of trafficking victims, and the promotion of cooperation between States Parties.<sup>46</sup>

These three elements are clear indicators that trafficking in human beings involves several actors that can play an essential role in the creation of a trafficking victim,<sup>47</sup> “from the acquaintance in the victim’s village who knows someone who can organise a job or visa, to the individual who facilitates the illegal crossing of the frontier, to the person who supplies rooms to accommodate victims in transit and the bar owner who eventually ‘buys’ the victim.”<sup>48</sup>

Article 5 of the Trafficking Protocol contains the obligation for States Parties to criminalize trafficking, but there are other provisions of the Organized Crime Convention that binds States to establish specific measures in their domestic legislation regarding offences established under the Protocol.<sup>49</sup> These obligations take account of the criminalization of the laundering of proceeds of crime,<sup>50</sup> the measures to ensure the presence of the defendant at subsequent criminal proceedings,<sup>51</sup> the confiscation and seizure, to the greatest extent possible, of proceeds of crime, property, equipment or other benefits,<sup>52</sup> the mutual legal assistance between State Parties,<sup>53</sup> the protection of victims and witnesses from retaliation.<sup>54</sup>

The second part of the Trafficking Protocol deals with the protection of victims of trafficking, however, it can be argued that its provisions are not hard or very specific

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<sup>46</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, New York. United Nations, 2000,

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

<sup>47</sup> Piotrowicz, R., *Trafficking of Human Beings and Their Human Rights in the Migration Context*, 2007, in J. M. Muraszewicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 17.

<sup>48</sup> Ibidem.

<sup>49</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.80.

<sup>50</sup> Organized Crime Convention, at Art 6,

[https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf)

<sup>51</sup> Organized Crime Convention, at Art. 11(3).

<sup>52</sup> Organized Crime Convention, at Art. 12-13.

<sup>53</sup> Organized Crime Convention, at Art. 18.

<sup>54</sup> Organized Crime Convention, at Art. 24-25.



obligations.<sup>55</sup> States Parties are to protect the privacy and the identity of trafficking victims, eventually making legal proceedings confidential if the domestic law permits it, they need to provide victims with the necessary information and assistance on court and administrative proceedings, to guarantee the physical safety of the victims and to provide them with the possibility to obtain compensation.<sup>56</sup> Regarding the issue of compensation, it is relevant to observe that State parties are not required to use the criminal proceeds to fund the compensation for trafficking victims. According to Article 6 (3) of the Trafficking Protocol:

“Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.”<sup>57</sup>

It becomes evident that the Trafficking Protocol concedes little elaboration on how victims are supposed to be treated and how their rights can be guaranteed since it lacks obligatory provisions that bind States Parties to offer protective services.<sup>58</sup>

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<sup>55</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.82.

<sup>56</sup> Ibidem.

<sup>57</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, New York. United Nations, 2000,

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

<sup>58</sup> Winterdyk, Perrin and Reichel, *Human Trafficking Exploring the International Nature, Concerns, and Complexities*, CRC Press Taylor & Francis Group, 2012, p. 60.

### 1.3 Convention on the Rights of the Child

Keeping the focus on the international legal framework and its key instrument regarding the phenomenon of trafficking in human beings, it is relevant to mention the Convention on the Rights of the Child and its Optional Protocol. This treaty, adopted by the General Assembly in 1989, is the only international human rights treaty where trafficking is clearly expressed, except for the CEDAW Convention. The Convention on the Rights of the Child is an extremely valid tool “for understanding and responding to the trafficking and related exploitation of children.”<sup>59</sup> Although the terms ‘abduction’, ‘sale’, and ‘trafficking’ are not mentioned in the Convention’s provisions, article 35 obliges States Parties to take the appropriate measures to prevent these practices from happening and article 34 states that children need to be protected from every form of abuse and exploitation, it being economic or sexual. As a matter of fact, the Committee on the Rights of the Child, in its concluding observations, has often pronounced on issues concerning trafficking as these relate to articles 34 and article 35 of the Convention.<sup>60</sup> Albeit it is ordinary to concentrate on a phenomenon like trafficking for sexual exploitation, the Committee has recently increased its attention towards other forms of trafficking, also recognizing trafficking for economic exploitation, forced labour, and trafficking for adoption.<sup>61</sup> In 2002, the Optional Protocol to the Convention on the Rights of the Child entered into force. Its purpose was that of broadening the scope of the Convention in matters related to the sale of children, child prostitution and pornography. The CRC Protocol does not mention explicitly trafficking, aside from the preamble, however it does offer a definition for what concerns the sale of children, which is an issue that involves a wide range of situations where trafficking of children is present most of the time. The Committee on the Rights of the Child has indeed confirmed the association between the sale of children and trafficking, although it is necessary to maintain a distinction between the two concepts: the former does not always include elements of exploitation, which is

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<sup>59</sup>J. Ennew, K. Gopal, J. Heeran, and H. Montgomery, *Children and Prostitution: How Can We Measure the Commercial Sexual Exploitation of Children? Literature Review and Annotated Bibliography*, (UNICEF, 2nd edition, 1996) in Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.65.

<sup>60</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.66.

<sup>61</sup> *Ibidem*.

essential for the situation to be labelled as trafficking, on the other hand, the latter does not always concern acts of sale of children.<sup>62</sup>

As previously stated, trafficking in human beings is a worldwide phenomenon, thus its presence also affects Europe. Therefore, it is necessary to acknowledge the instruments that have been adopted and to analyze its definition. The European Union started to address the trafficking issue in the middle of the 1990s and later it became a priority. Article 5 of the European Charter of Fundamental Rights, declared in 2000, explicitly prohibits trafficking in human beings, and it states that no one should be held in slavery or servitude, or conduct forced labour.<sup>63</sup>

#### 1.4 2002 Framework Decision

In 2002, the Council of the European Union ratified the Framework Decision on Combating Trafficking in Human Beings.<sup>64</sup> It was necessary to handle trafficking at a European level, not just internationally, so by 2004 all Member States were required to import the provisions included in the Framework Decision into their national legislation.<sup>65</sup> The UN Trafficking Protocol and the EU Framework Decision apparently had a solid link, since the European instrument was supposed to go beyond the scope of the Palermo Protocol, by extending both definition and sanctions and by improving its implementation. For instance, the EU Framework Decision broadened the focus that the Trafficking Protocol had on criminal justice: EU Member States criminalize trafficking crimes regardless of whether they are committed by a natural or a legal person, and this inclusion of legal persons inside the scope of this instrument indicates a considerable reinforcement of the Protocol's provisions.<sup>66</sup> Article 7 of the EU Framework Decision

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<sup>62</sup> Ibidem.

<sup>63</sup> Charter of Fundamental Rights of the European Union, 2000/C 364/01, Dec. 18, 2000, at art. 5, [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>64</sup> Council Framework Decision on Combating Trafficking in Human Beings, July 19, 2002, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002F0629>

<sup>65</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.97.

<sup>66</sup> 2002 Framework Decision on Trafficking, at Arts. 1–5, in Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.98.

states that children are to be considered “particularly vulnerable victims”<sup>67</sup> and each Member State should ensure the appropriate assistance for the child’s family.<sup>68</sup> Despite the willingness to address the issue of trafficking in human beings and to broaden the scope of the UN Trafficking Protocol, the Framework Decision on Trafficking faced some criticism. One of its faults was the lack of effective recognition of the need to protect trafficked children, as well as the absence of provisions on victim repatriation or human trafficking prevention.<sup>69</sup> What the 2002 Framework Decision actually represented was an instrument that ensured better uniformity between the EU Member States and their criminal law approach to trafficking. Later, these flaws have been identified and the European Union acted accordingly proposing a new Framework Decision on Trafficking, positively more extensive than the forerunner.<sup>70</sup> This new instrument labelled human trafficking as a gross violation of human rights and it defined in a much more meticulous way the issues concerning prevention of the phenomenon, prosecution and the protection of victims: the consultation that preceded the elaboration of the new Framework Decision attested that the criminal justice system was not working accurately in order to condemn perpetrators, victims were not receiving compensation let alone the adequate protection and there were not enough measures to prevent trafficking, which was flaring for the lack of coordination.<sup>71</sup>

## 1.5 European Trafficking Convention

The Council of Europe started to address the problem of human trafficking during the first years of the 21<sup>st</sup> century, first with the adoption of two instruments connected to trafficking for the purpose of sexual exploitation and for the protection of children from this type of exploitation. In 2002, following the entry into force of these Recommendations, it surfaced the idea of a convention on trafficking in human beings,

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<sup>67</sup> Council Framework Decision on Combating Trafficking in Human Beings, July 19, 2002, at art. 7(b), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002F0629>

<sup>68</sup> Ibidem, at art. 7(c).

<sup>69</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.99.

<sup>70</sup> Ibidem.

<sup>71</sup> Ibidem.

although it appeared that it would have a limited scope, related only to the trafficking of women for sexual exploitation, as the view of the Council seemed fixed on that issue.<sup>72</sup>

Eventually, the Parliamentary Assembly ensured with a new Recommendation that it was necessary for the future convention to “bring added value to other international instruments”.<sup>73</sup> In the following years, more recommendations insisted on the creation of a European treaty on human trafficking. Perchance, drafting a regional instrument focused on a topic that an international treaty has already covered may appear superfluous, but the goal is not a competition with other international instruments. As the Explanatory Report of the European Trafficking Convention states, with the adoption of a regional European convention, it becomes possible to reach stricter and specific standards.<sup>74</sup> Indeed, the preamble of the Convention takes account of the Trafficking Protocol and aims to improve and develop the standards already established by the international instrument.<sup>75</sup>

Therefore, when the European Trafficking Convention was adopted in 2005, article 1 set out its purposes:

- a. to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
- c. to promote international cooperation on action against trafficking in human beings.<sup>76</sup>

Its scope concerns all forms of trafficking, thus article 2 confirms the development from the very limited purpose of addressing only the trafficking of women for the purpose of sexual exploitation.<sup>77</sup> Moreover, the Convention widened its reach by including in its provisions trafficking committed within and between states, and related or not to

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<sup>72</sup> Ibidem.

<sup>73</sup> Council of Europe, Parliamentary Assembly, Recommendation 1610 on migration connected with trafficking in women and prostitution, adopted June 25, 2003, in Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.111.

<sup>74</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.112.

<sup>75</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at Preamble, <https://rm.coe.int/168008371d>

<sup>76</sup> Ibidem, at art.1.

<sup>77</sup> Ibidem, at art. 2.

organized crime. In addition, it considers trafficking as “a violation of human rights and an offence to the dignity and the integrity of the human being”<sup>78</sup>, and for this explicit statement in the preamble, the Convention can be acknowledged as a human rights instrument, since the importance of human rights is vigorously pronounced.<sup>79</sup> It is evident that while the Palermo Protocol focused mainly on the offence of trafficking, the European Trafficking Convention shifts the target to the victims and their protection, thus its added value lies in its human rights perspective.<sup>80</sup>

For what concerns the definition of trafficking in human beings provided by the European Trafficking Convention, it was unquestionable that, as stated above, the phenomenon would be confined to the boundaries of sexual exploitation of women and girls, especially after the ratification of the Trafficking Protocol.<sup>81</sup> The definition provided by the Convention in article 4 reflects for the most part the one contained in article 3 of the Protocol, with the same elements of action, means and purpose, that must be present altogether for there to be human trafficking.<sup>82</sup> The Explanatory Report to the European Trafficking Convention clarifies some aspects of the definition and the following provisions: for what concerns the action of “recruitment”, the definition also includes all the new technologies that can be used in trafficking in human beings, thus it encompasses recruitment “by whatever means”, whether it is oral, through the use of the press or Internet.<sup>83</sup> Moreover, another clarification regards “transportation”: the Explanatory Report makes clear that the Convention applies both to transnational and national trafficking, but it acknowledges that trafficking can also happen if the victim has crossed borders legally and the presence in that state is lawful.<sup>84</sup> Another element that becomes relevant under the definition is the fact that it is not necessary for a person to be exploited for trafficking to happen. The Convention implies that if the three components (action,

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<sup>78</sup> Ibidem, at Preamble.

<sup>79</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.114.

<sup>80</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at para. 80, <https://rm.coe.int/16800d3812>

<sup>81</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.115.

<sup>82</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at para. 76.

<sup>83</sup> Ibidem, at para. 79.

<sup>84</sup> Ibidem, at para. 80.

means, and purpose) are present before the actual exploitation of the victim, that classifies as trafficking.<sup>85</sup>

Moreover, the Convention defines victims as “any natural person who is subject to trafficking in human beings” according to the above definition.<sup>86</sup> This recognition is essential for the correct application of the Convention’s provisions for the protection of victims, which was not that relevant in the Trafficking Protocol.<sup>87</sup> Indeed, one of the most important provisions on victim protection was the one concerning victims’ identification. Article 10 recognizes the need for the correct identification of victims, which is essential in order to provide them with the needed assistance. It states that:

Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.<sup>88</sup> [...]

When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.<sup>89</sup>

As soon as an unaccompanied child is identified as a victim, each Party shall:

- a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
- b) take the necessary steps to establish his/her identity and nationality;
- c) make every effort to locate his/her family when this is in the best interests of the child.<sup>90</sup>

The Explanatory Report illustrates how article 10 manages the issue of victim’s identification, which can be tricky and often problematic: if the identification process is not correct, the victim cannot be identified as such, therefore this leads to the denial of

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<sup>85</sup> Ibidem, at para. 87.

<sup>86</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at art. 4.

<sup>87</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.115.

<sup>88</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at art. 10 (1).

<sup>89</sup> Ibidem, at art. 10 (3).

<sup>90</sup> Ibidem, at art. 10 (4).

the victim's fundamental rights and the appropriate protection. Moreover, these gaps in the identification could hamper the criminal proceedings in order to convict traffickers.<sup>91</sup> Hence, the European Trafficking Convention deems it important to avoid the criminalization of victims:<sup>92</sup> as article 26 states, "Parties should not impose penalties on victims that are involved in unlawful activities, to the extent that they have been compelled to do so".<sup>93</sup> Article 10 also recognizes that often national authorities are not that aware of the trafficking phenomenon, therefore it could be difficult to identify a victim whose passport has been taken away or who lacks identification documents. This leads to the risk of conviction of victims because they could be treated as illegal immigrants, prostitutes or illegal workers and therefore punished for that. In order to avoid this consequence, article 10 requires States Parties to provide their competent authorities with adequate and trained personnel, prepared to face trafficking situations.<sup>94</sup>

Concerning this matter and considering that, usually, the identification process is quicker than the criminal proceedings, article 10 provides that victims may have the assistance they need even before their recognition as such. When the competent authorities reckon that there is reasonable ground to believe there has been trafficking, then, presumed victims should benefit from protection.<sup>95</sup> The same reasoning is applied in the case of children: it is often complex to determine whether or not the victim is over or under 18 years old. Therefore, when there is this kind of uncertainty, victims shall be treated with the care reserved for children, until the eventual verification of their age.<sup>96</sup>

The European Trafficking Convention introduces in articles 36 and 37 a monitoring mechanism to ensure the implementation of the provisions by the Parties. The Group of Experts on Action against Trafficking in Human Beings (GRETA) is a monitoring body that is responsible for country visits and country reports, in which Parties are being evaluated on the basis of the legislative measures they have undertaken to implement the

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<sup>91</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at para. 127.

<sup>92</sup> Anne T. Gallagher, *The International Law of human trafficking*, Cambridge University Press, New York, 2010, p.117.

<sup>93</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at art. 26.

<sup>94</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at para. 128.

<sup>95</sup> *Ibidem*, at art. 135.

<sup>96</sup> *Ibidem*, at art. 136.



Convention's provisions.<sup>97</sup> GRETA is composed of a minimum of ten and a maximum of fifteen experts, elected by the Committee of the Parties for a mandate of four years, renewable once, nominated from nationals of the States Parties of the Convention. The criteria for being chosen as a member of GRETA shall include being a person of high moral character and with remarkable competence in the area of Human Rights, victims protection and trafficking in human beings. They ought to be impartial and independent when exercising their functions, and they should represent the legal system of their country.<sup>98</sup> GRETA monitors the compliance of States Parties to the Convention with questionnaires submitted to the state's government, visits and cross-consultation with civil society and NGOs. The evaluation round is initiated by a questionnaire on the implementation of specific provisions and the answer should come within the time limit that GRETA has decided. Questionnaires are public, so the replies to them, and GRETA can ask for further information on whether the data contained in the reports are not clear or too modest.<sup>99</sup>

When is thought necessary, GRETA shall send a delegation to carry out a country visit in order to assess the implementation of the measures taken on the field. The monitoring body informs the concerned party of the country visit, which will be previously organized, deciding the programme, the dates and the meetings with governmental and non-governmental bodies. The findings of the visit will later be reported to GRETA,<sup>100</sup> which later will prepare a draft report containing observations collected during country visits, through the questionnaire and the meetings with NGOs and civil society, concerning the implementation of the Convention's provisions under exam. When the draft report is ready, it will be transmitted to the party for comments. In the end, GRETA will make public the report and the conclusions, along with the eventual comments of the party under evaluation.<sup>101</sup>

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<sup>97</sup> "About GRETA – the Group of Experts against Trafficking in Human Beings", Council of Europe: Action against Trafficking in Human Beings, <https://www.coe.int/en/web/anti-human-trafficking/greta>

<sup>98</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197, at art. 36.

<sup>99</sup> GRETA, Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties, Strasbourg, November 21, 2014, at Rule 3-5, <https://rm.coe.int/native/16805a983c>

<sup>100</sup> Ibidem, at Rule 9.

<sup>101</sup> Ibidem, at Rule 14-15.

## 1.6 Directive 2011/36

In April of 2011, the European Union adopted Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims. Directive 2011/36 is an essential act that binds all EU Member States and it addresses the issue of trafficking. It aims “to amend and expand the provisions of Framework Decision 2002/629/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety in relation to Member States participating in the adoption of this Directive”.<sup>102</sup>

As stated in paragraph 11 of the Preamble, Directive 2011/36 acknowledges the developments in the phenomenon of human trafficking and embraces a much wider concept of what was the understanding of trafficking in human beings under the Framework Decision 2002/629/JHA, hence introducing further forms of exploitation such as forced begging, which is considered as forced labour, and exploitation of criminal activities, which is to be understood as a person who commits offences subjected to penalties. An additional expansion to the definitions involves also trafficking for the purpose of organ removal, illegal adoption and forced marriage,<sup>103</sup> in general, all those actions that “constitute a serious violation of human dignity and physical integrity”.<sup>104</sup>

The approach adopted by Directive 2011/36 is a holistic and human rights approach against trafficking in human beings. The objective is to obtain meticulous prevention, prosecution and protection for victims, trying to guarantee each form of trafficking an adequate response.<sup>105</sup> This is also reflected in article 18, which binds the Member States to “take the appropriate measures, such as education, training, information and awareness campaigns, education programs and cooperation with civil society organizations and other stakeholders.”<sup>106</sup> Directive 2011/36 also takes into great consideration the gender perspective, as reported in Article 1.<sup>107</sup> Indeed, it acknowledges the different treatment

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<sup>102</sup> 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, L 101/2, Strasbourg, 2011, at para. 30 (Preamble), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

<sup>103</sup> Ibidem, at para. 11 (Preamble).

<sup>104</sup> Ibidem, at para. 11 (Preamble).

<sup>105</sup> Ibidem, at para. 7 (Preamble).

<sup>106</sup> Ibidem, at art. 18 (1-2).

<sup>107</sup> Ibidem, at art. 1.

that victims of trafficking may experience based on their gender, being subjected to exploitation for different purposes, for instance, if one is being trafficked into the sex industry or for labour exploitation.<sup>108</sup>

For what concerns the definition of trafficking provided by the Directive 2011/36, article 2 states:

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, ‘child’ shall mean any person below 18 years of age.<sup>109</sup>

It is evident that the definition has some different elements from the other definitions that have been analysed. First of all, the ‘action’ element comprehends another component,

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<sup>108</sup> Ibidem, at para. 3 (Preamble).

<sup>109</sup> Ibidem, at art. 2.

the exchange or transfer of control. A new ‘purpose’ is also present, represented by begging and the exploitation of criminal activities.<sup>110</sup>

The ‘action’ element has six components: recruitment, transportation, transfer, harbouring, receipt of persons and exchange or transfer of control. The definition obliges States Parties to punish these actions, based on the concept that they precede exploitation, which could have not yet entered the picture for someone to be guilty of trafficking if the victim is subjected to one of these actions along with the means and for the purpose of exploitation. The actions mentioned include a broad range of activities that can be carried out either on national or transnational borders and by one or more persons and each of them constitute a criminal conduct.<sup>111</sup> The first mentioned is recruitment, which is to be intended as “any activity that leads from the commitment or engagement of another individual to the exploitation.”<sup>112</sup> It is the stage where both actors, victim and trafficker, become involved in the crime of trafficking, with opposite roles: no matter which kind of exploitation, in the recruitment phase the victim will be deceived with the promise of a better life, with an appealing job offer, that only later will be revealed as unfounded. Traffickers conceal themselves through the use of false profiles, often via social media, persuading victims in order to reach their scope.<sup>113</sup>

Transportation is quite straightforward: it can be within national borders or transnationals, and the type has no limits. Transportation can happen by car, flight, or on foot, and the distance is irrelevant. As long as one person is moved by a means for the purpose of exploitation, this is consistent with trafficking in human beings.<sup>114</sup>

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<sup>110</sup> J. M. Muraszkiwicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 20.

<sup>111</sup> Ibidem.

<sup>112</sup> Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, Joint Council of Europe/United Nations study, Strasbourg, 2009, p.78,

<https://rm.coe.int/16805ad1bb>

<sup>113</sup> Spapens, T., Tamas, A., Lulle, A., Durieux, H., Polatside, V., Dragota, C., et al. (2014). TRACE, D1.3: A Report Concerning the Macro and Micro Analyses of Human Trafficking. TRACE Project, p.24, [file:///C:/Users/Lucrezia%20Colomba/Downloads/TRACE\\_D1.3\\_Final-libre\\_2014.pdf](file:///C:/Users/Lucrezia%20Colomba/Downloads/TRACE_D1.3_Final-libre_2014.pdf)

<sup>114</sup> J. M. Muraszkiwicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 24.

The transfer of a person happens when the victim is handed over to another person, and it can also include the transfer from a family unit to another one, for the purpose of domestic servitude, and it includes the transfer of control from one person to another.<sup>115</sup>

The harbouring of a person involves the accommodation or housing in every possible way, during the journey to the place of exploitation,<sup>116</sup> while the receipt covers the receiving of the victims at the place where they will be exploited.<sup>117</sup>

The second element in the definition concerns the means, which are: threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability and giving or receiving benefits or payments. The list is not open to other eventual means that traffickers may use, which can constitute a problem for the victim whenever this situation occurs.<sup>118</sup> However, it can be argued that ‘means’ is actually an umbrella term that refers to much more phenomena than the ones explicitly mentioned. Nonetheless, it is quite vague the concept of abuse of power or a position of vulnerability: article 2 explains that it refers to a situation where the victim has no alternative than to submit to the abuse<sup>119</sup> and the Explanatory Report to the 2005 Council of Europe Convention on Action against Trafficking in Human Beings offers further clarification on what is the understanding of vulnerability., which can be of any kind,<sup>120</sup> even with this explication, vulnerability remains a subjective criterion.<sup>121</sup> Vulnerability often plays a primary role in a trafficking situation, but it is not always so evident. The circumstances in which a person is trafficked are the most variegated and this issue may be problematic to victims: some person can appear less vulnerable than others to society, but truthfully can be in situations that

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<sup>115</sup> Ibidem.

<sup>116</sup> Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, Joint Council of Europe/United Nations study, Strasbourg, 2009, p.78.

<sup>117</sup> J. M. Muraszkievicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 24.

<sup>118</sup> Ibidem.

<sup>119</sup> 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, L 101/2, Strasbourg, 2011, at art. 2(2).

<sup>120</sup> Council of Europe, Explanatory Report on the Convention on Action against Trafficking in Human Beings, CETS 197, Warsaw, 2005 at para. 83.

<sup>121</sup> J. M. Muraszkievicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 26.

traffickers may take advantage of, for example threatening victims with authorities like immigration or police.<sup>122</sup>

For what concerns coercion and force, it is not specified if it is referred to exclusively as physical acts or as psychological means too. It can be argued that there is a certain ambiguity in the use of the terms “fraud” and “deception”, however the overlapping of the two words may benefit national legislations that use one word or the other.<sup>123</sup>

When approaching the final element of the definition, the debate focuses on sexual exploitation: since the terms are not so defined, there is a gap in the international instruments for what concerns prostitution, which can be considered as a form of work or a product of a patriarchal society.<sup>124</sup> This entangles the common understanding of human trafficking: indeed the International Labour Organization considers the reference to sexual exploitation a “rather undefined term and subject to different interpretations.”<sup>125</sup>

Another concept that creates some ambiguity is exploitation: although in the instruments analysed, the term corresponds to given activities, its meaning is not exactly explicit. This creates some contrasts in the way that states face this phenomenon, as there can be uncertainties on when a certain situation classifies as exploitation.<sup>126</sup> There can be countries that consider exploitation a simple violation of labour rights, while others that identify as exploitation only gross violations. Therefore, the definition of this term is currently a matter of national legislation.<sup>127</sup>

## 1.7 UK Modern Slavery Act

Given the focus of this thesis, it is necessary to have an overall understanding of UK national legislation related to the phenomenon of trafficking in human beings. It is

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<sup>122</sup> Ibidem.

<sup>123</sup> Ibidem.

<sup>124</sup> Ibidem.

<sup>125</sup> International Labour Organisation. *Note on the Additional Legal Instrument Against Trafficking in Women And Children*, A/AC.254/CRP.14, 1999, Vienna, Operative part (Article 1), <https://www.ilo.org/public/libdoc/igo/1999/479829.pdf>

<sup>126</sup> J. M. Muraszkievicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 28.

<sup>127</sup> C. Rijken, *Legal Approaches to Combating the Exploitation of Third-Country National Seasonal Workers*, *The International Journal of Comparative Labour Law and Industrial Relations*, 2015, p. 431–452, in J. M. Muraszkievicz, *Protecting victims of human trafficking from liability. The European Approach*, Palgrave Macmillan, London, 2019, p. 28.

interesting to notice from the start that the UK Modern Slavery Act, adopted in 2015, is the first national legislation that uses the term ‘modern slavery’ and that tackles ‘slavery’ instead of just focusing on human trafficking or forced labour, which is a particular choice given the fact that modern slavery is a very broad term, for sure wider than human trafficking.<sup>128</sup>

It is important to understand the reason behind the shift to the term ‘modern slavery’, instead of using the more frequent term ‘human trafficking’. The former almost completely replaced the latter, following several campaigns and debates, also advocated by the Prime Minister of that time Theresa May, in order to review the problem as a general problem of slavery.<sup>129</sup> The social context of the UK at that time was extremely sensitive to immigration, which caused amplified public concern, also related to anti-EU sentiment. Therefore, the issue of human trafficking was categorized under the new frame of modern slavery, including however a wider range of activities. This choice gave more structure to the problem and possibly reduced its complexity, symbolically.<sup>130</sup> This shift from human trafficking to modern slavery is reflected in the perception of the matter and how policies responded to it. Even the media started to give attention to the phenomenon, not anymore related to sexual exploitation or foreign matters. Naturally, slavery was not new in the human trafficking framework: nevertheless, the term had a different connotation than trafficking. It is “heavily weighted and emotive”<sup>131</sup>, and its lack of clarity serves the purpose of the emotional repercussions that ‘slavery’ brings to the public attention.<sup>132</sup>

Prior to the international instruments that started to regulate the phenomenon of human trafficking, the UK’s response to this crime was handled by “legislation not entirely suited to the problem”.<sup>133</sup> One of these acts was the Sexual Offences Act 1956, later replaced by the Sexual Offences Act 2003 (Section 57 to 59A and 62<sup>134</sup>), which contained several

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<sup>128</sup> R. Broad and N. Turnbull, From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK, *Eur J Crim Policy Res* 25:119–133, March 22, 2018, p.120, <https://doi.org/10.1007/s10610-018-9375-4>

<sup>129</sup> *Ibidem*.

<sup>130</sup> *Ibidem*.

<sup>131</sup> *Ibidem*.

<sup>132</sup> *Ibidem*.

<sup>133</sup> *Ibidem*.

<sup>134</sup> Sexual Offences Act 2003, ss 57-59,62, [https://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga\\_20030042\\_en.pdf](https://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf)

provisions regarding trafficking into and out of the UK for sexual exploitation and the Asylum and Immigration (Treatments of Claimants) Act 2004, concerning trafficking for exploitation.<sup>135</sup> Other references to trafficking and its forms were mentioned in Section 71 of the Coroners and Justice Act 2009, regarding slavery, servitude, and forced or compulsory labour.<sup>136</sup>

The Anti-Trafficking Monitoring Group and the Centre for Social Justice acknowledged several issues with the legislation of that time period, therefore they pushed for the development of a multi-agency approach that could provide more coordination and better protection for victims of human trafficking. Hence, the suggestion was the adoption of a single modern slavery act.<sup>137</sup>

In 2015, the promulgation of the Modern Slavery Act permitted the consolidation of the already present offences and it increased sentences for offenders. It constituted an improvement of the situation simply because it managed to bring together in one instrument the offences that before were spread in three different acts, which was quite confusing and prone to misunderstandings, for instance, the fact that one of the offences related to trafficking for non-sexual exploitation was not even contained in criminal law.<sup>138</sup>

The Modern Slavery Act also introduces the Independent Anti-Slavery Commissioner, whose task is to “encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and in the identification of victims of those offences.”<sup>139</sup>

This instrument was considered by the former Prime Minister Theresa May a historic milestone, which could give a strong warning to criminals involved in these offences, as they would be arrested, prosecuted and locked up, and it had the power to say to victims

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<sup>135</sup> Home Office, Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015, Crown Copyright, April 2017, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610015/110417\\_-\\_statutory\\_guidance\\_part\\_2\\_-\\_GLAA\\_updates-\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610015/110417_-_statutory_guidance_part_2_-_GLAA_updates-_Final.pdf)

<sup>136</sup> Ibidem.

<sup>137</sup> R. Broad and N. Turnbull, From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK, *Eur J Crim Policy Res* 25:119–133, March 22, 2018, p.127.

<sup>138</sup> V. Mantouvalou, “The UK Modern Slavery Act 2015 Three Years On”, *The Modern Law Review*, 81(6) MLR 1017–1045, Oxford, 2018, p.1021.

<sup>139</sup> Modern Slavery Act 2015, Part 4, The Independent Anti-Slavery Commissioner, ss 41, <https://www.legislation.gov.uk/ukpga/2015/30/enacted/data.pdf>



of trafficking that they were not alone and they would have the needed assistance.<sup>140</sup> Later, May reaffirmed the Government's dedication to the elimination of the problem by saying:

Vulnerable people who have travelled long distances, believing they were heading for legitimate jobs, are finding they have been duped, forced into hard labour, and then locked up and abused. [...] Innocent individuals are being tricked into prostitution, often by people they thought they could trust. Children are being made to pickpocket on the streets and steal from cash machines. [...] These crimes must be stopped and the victims of modern slavery must go free. This is the great human rights issue of our time, and as Prime Minister, I am determined that we will make it a national and international mission to rid our world of this barbaric evil.<sup>141</sup>

The first part of the Modern Slavery Act 2015 regards the offences. They are parted into two different sections, the first one on slavery, servitude and forced or compulsory labour, the second one on human trafficking.<sup>142</sup>

The first section states that a person is committing an offence if he or she is holding another person in slavery or servitude, if he or she knows that a person is currently in a situation of slavery or servitude, or again if the person requires another person to perform forced and compulsory labour.<sup>143</sup> Moreover, the Modern Slavery Act remarks that it is necessary to have the most possible regard for all the circumstances, when there is a situation in which it is being determined whether a person is being subjected to the offences listed, in particular if the person is considerably more vulnerable than other persons for personal circumstances, such as not being over 18 years old, family relationships or physical and mental illness.<sup>144</sup> It is also specified that the consent of the person held in slavery or servitude is not relevant and it does not impede the acknowledgement of the situation of slavery or servitude the person is experiencing.<sup>145</sup>

For what concerns the second part of the offences about human trafficking, the Modern Slavery Act states that:

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<sup>140</sup> V. Mantouvalou, "The UK Modern Slavery Act 2015 Three Years On", *The Modern Law Review*, 81(6) MLR 1017–1045, Oxford, 2018, p.1022.

<sup>141</sup> "Modern slavery: Theresa May vows to defeat evil", July 31, 2016, BBC News UK, <https://www.bbc.com/news/uk-36934853>

<sup>142</sup> V. Mantouvalou, "The UK Modern Slavery Act 2015 Three Years On", *The Modern Law Review*, 81(6) MLR 1017–1045, Oxford, 2018, p.1022.

<sup>143</sup> Modern Slavery Act 2015, Part 1, Offences, ss 1.

<sup>144</sup> *Ibidem*, at Part 1, ss 1(4).

<sup>145</sup> *Ibidem*, at Part 1, ss 1(5).

- (1) A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.
- (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).
- (3) A person may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
- (4) A person arranges or facilitates V’s travel with a view to V being exploited only if— (a) the person intends to exploit V (in any part of the world) during or after the travel, or (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.<sup>146</sup>

As with the previous definitions, the action element is present as well as the purpose, which is better explained in the following section related to slavery, servitude or compulsory labour, sexual exploitation, and removal of organs. This part also provides the means element that seems to be missing at a first glance: the Act states that a person is exploited if submitted to force, threats or deception used in order to obtain benefits of any kind, which are to be offered by the victim to whoever is asking.<sup>147</sup>

The fourth part of the Modern Slavery Act creates the Independent Anti-Slavery Commissioner: the functions of this figure are to ensure “good practice in (a) the prevention, detection, investigation and prosecution of slavery and human trafficking offences; (b) the identification of victims of those offences.”<sup>148</sup> The Commissioner is responsible for making reports and recommendations to the public authorities about their functions and its aim is to ensure better coordination in the national response to the phenomenon of modern slavery.<sup>149</sup>

For what concerns child trafficking, the Act institutes independent child trafficking advocates which are responsible for supporting and representing children, who are believed to be victims of trafficking in human beings. The persons appointed in this role

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<sup>146</sup> Ibidem, at Part 1, ss 2 (1-4).

<sup>147</sup> Ibidem, at Part 1, ss 3 (5).

<sup>148</sup> Ibidem, at Part 4, ss 41 (1).

<sup>149</sup> The Center for Social Justice, “It still happens here: fighting UK slavery in the 2020s”, Justice and Care, London, July 2020, p. 8. <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2020/07/It-Still-Happens-Here.pdf>

have to act in accordance with the child's best interest and well-being and assist, if the case requires it, in obtaining legal assistance or other advice and representation.<sup>150</sup>

The Modern Slavery Act is also responsible for the introduction of the statutory defence for victims of trafficking in human beings, which aims at the protection from prosecution for crimes that they were forced to commit in the situation they were in.<sup>151</sup> Therefore, a person should not be condemned as guilty if "the person does the act because the person is compelled to do it"<sup>152</sup> and if "the compulsion is attributable to slavery or to relevant exploitation".<sup>153</sup>

Regarding the victim's identification system, the UK has established the National Referral Mechanism, after the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. However, this system has troubles with the constant and increasing number of cases of potential victims and with the assistance these victims should have guaranteed: because of the slowness of the bureaucratic machine, far too many victims remain without the necessary aid to move on with their life.<sup>154</sup> When a potential victim is referred to the National Referral Mechanism, the victim receives a "positive reasonable ground" decision and becomes entitled to support provided by the Government. The support comprehends accommodation, financial aid, interpretation services as well as access to legal aid, medical care and immigration advice, whether the victims wish to remain in the country or return home. This support is guaranteed for a minimum of 45 days, until a "conclusive grounds" decision has been made: nonetheless, this decision does not usually come after this time period, forcing victims into a limbo for several months, or years, until the National Referral Mechanism actually reaches some resolution.<sup>155</sup>

The Independent Anti-Slavery Commissioner Sara Thornton has denounced this situation and she has stated that:

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<sup>150</sup> Modern Slavery Act 2015, Part 4, ss 48 (1, 4-5).

<sup>151</sup> The Center for Social Justice, "It still happens here: fighting UK slavery in the 2020s", Justice and Care, London, July 2020, p. 8.

<sup>152</sup> Modern Slavery Act 2015, Part 4, ss 45 (1).

<sup>153</sup> *Ibidem*.

<sup>154</sup> The Center for Social Justice, "It still happens here: fighting UK slavery in the 2020s", Justice and Care, London, July 2020, p. 22.

<sup>155</sup> *Ibidem*.

“Many victims are facing unacceptably long delays for a bureaucratic system to assess whether they are victims of slavery. I have no doubt that this has a negative impact on their physical and mental health. This harm is then exacerbated by the fact that access to education is highly variable and access to work I soften limited to those who are from countries which are members of the European Economic Area. [...] Surely the time has come for more radical reform. Often cases are complex and vulnerable victims have many needs which are probably best met through a more local approach.”<sup>156</sup>

Another issue encountered in accessing support is the fact that victims need to consent to be referred to the National Referral Mechanism, and there is an average of five days to reach a “reasonable ground decision” that can start the process for the support provided for a minimum of other 45 days. However, potential victims often are not informed in an adequate way to understand their rights and to process a decision of being referred to the National Referral Mechanism as they do not know the implications of such a choice, therefore in this time period they are put in hotels or bed and breakfast, without aid or guidance, making them even more vulnerable to the risk of being re-trafficked. This is considered a relevant gap at a national level.<sup>157</sup>

### *1.7.1 Structure of the Courts and Tribunals system in the United Kingdom*

In order to understand the discussion on the cases that will be dealt with in the last chapter of this thesis, it is necessary to open a brief digression on the judiciary in the UK, in particular about the country’s legal systems and the criminal procedures which establish the rules about experts in trafficking cases.

The United Kingdom judiciaries are the three separate legal systems of England and Wales, Northern Ireland and Scotland. The Judiciary involves different authorities, such as judges, magistrates, tribunals and coroners. Their role is to examine cases in their relative courts and within their relative areas of law.<sup>158</sup> England and Wales’ legal system includes predominantly criminal law and civil law, which have their own courts and legal pathways.

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<sup>156</sup> “Victims are waiting too long for decisions. The time has come for more radical reform”, Independent Anti-Slavery Commissioner, February 21, 2020, <http://www.antislaverycommissioner.co.uk/news-insights/iasc-blog-victims-are-waiting-too-long-for-decisions-the-time-has-come-for-more-radical-reform/>

<sup>157</sup> The Center for Social Justice, “It still happens here: fighting UK slavery in the 2020s”, Justice and Care, London, July 2020, p. 23.

<sup>158</sup> Courts and Tribunals Judiciary, “Who are the Judiciary?”, Judiciary 2022, <https://www.judiciary.uk/>

Therefore, different kinds of cases have specific courts and different paths for how they reach the Court of Appeal. Criminal cases are usually dealt with in the Magistrates' court, however, when the criminal case in question has a bigger calibre, it is sent to the Crown Court, whose appeals will later go to the High Court, the Court of Appeal or the UK Supreme Court.<sup>159</sup> For what concerns criminal cases, the Crown Prosecution is the primary public agency to prosecute cases that have been considered by police authorities or other investigative agencies. It is an organ independent from the government and the police.<sup>160</sup>

The matter is quite different for cases whose category falls into the civil. Indeed, they begin their process in the County Court, and later the appeals will arrive at some divisions of either the High Court or the Court of Appeal.<sup>161</sup>

The Court of Appeal is the highest court among the Senior Courts of England and Wales, and it deals exclusively with appeals from other courts or other tribunals. It comprises a Criminal and a Civil Division, which have their own set of Procedure Rules.<sup>162</sup> The Criminal Division is in charge of the appeals from the Crown court, which is the highest court of first instance for what concerns criminal cases. On the other hand, the Civil Division hears the appeals from the different County Courts, the High Court of Justice and the Family Court.

### *1.7.2 The role of the expert in trafficking trials*

The role of the expert in a trafficking trial can be extremely useful and it can be crucial for the defendant, as an expert could testify the individual's status as a victim of human trafficking, in cases where the lines between victim and perpetrator are blurred.

However, there is not much literature on the topic, which is one of the reasons for having confusing judgements and sometimes identification issues when dealing with trafficking cases.

As a matter of fact, in order to qualify as an expert on human trafficking and in order to be able to testify on the defendant's account in court, an expert has to meet specific

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<sup>159</sup> Courts and Tribunals Judiciary, "Structure of the Courts & Tribunals system", Judiciary 2022, <https://www.judiciary.uk/about-the-judiciary/our-justice-system/court-structure/>

<sup>160</sup> The Crown Prosecution Service, Crown 2022, <https://www.cps.gov.uk/>

<sup>161</sup> Courts and Tribunals Judiciary, "Structure of the Courts & Tribunals system", Judiciary 2022.

<sup>162</sup> Courts and Tribunal Judiciary, "Court of Appeal", Judiciary 2022, <https://www.judiciary.uk/courts-and-tribunals/court-of-appeal-home/>

requirements and extremely high standards for what concerns their expertise. These distinct qualifications are comprised in section 19 of the Criminal Procedures Rules, which are the regulations about the criminal court procedures that are meant to be followed in magistrates' courts, the Crown Court and in the Court of Appeal.<sup>163</sup>

The standard procedure when someone is accused of a crime is either to receive a notice in which the individual is required to go to court on the date indicated or to fill a form with the notice and send it to the court. In the cases in which the person is arrested, they are formally accused of the crime for which they are being arrested and charged with those offences, and later convened to court.<sup>164</sup>

According to the Criminal Procedure Rules, the person charged with the offences is called a "defendant", while the figure who is responsible for the prosecution of the case is the "prosecutor", who is the Crown Prosecution Service for the majority of cases, as stated above. There is one judge in the Crown Court and usually, there is a jury for a trial. In the cases where the defendant pleads not guilty to the offence for which he or she is charged, the court needs to go to trial to collect the necessary evidence about the situation. Thus, there will be the first hearing where the court will ask for information, set the trial date and give directions in order to get the case ready for the upcoming trial.<sup>165</sup>

When the trial is in motion, if the defendant has not pleaded guilty, the court will hear the evidence collected by prosecution witnesses, who can be questioned both by the defendant or by the defendant's lawyer. Once the court has heard the prosecution's evidence, the defendant can present his or her own evidence, or bring witnesses in order to provide evidence for the defence. It is necessary to remind that it is always the role of the prosecution to demonstrate that the defendant is guilty of the charges, and it is not the task of the defendant to prove the opposite.<sup>166</sup>

For what concerns the experts admitted to trial and the evidence they can provide, the matter is regulated by Part 19 Expert evidence of the Criminal Procedures Rules. Section 19.1 refers to an "expert" as someone who needs to give or arrange expert evidence for the criminal proceedings, meaning the necessary evidence to establish "fitness to plead

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<sup>163</sup> Criminal Procedures Rules and Practice Directions 2020, October 5<sup>th</sup> 2020, Crown, <https://www.gov.uk/guidance/rules-and-practice-directions-2020#full-publication-update-history>

<sup>164</sup> Ibidem.

<sup>165</sup> Ibidem.

<sup>166</sup> Ibidem.

or for the purpose of sentencing”.<sup>167</sup> The following section states that the expert’s opinion needs to be objective and unbiased and “within the expert’s area of expertise”.<sup>168</sup> Moreover, the expert has also a duty toward the court to comply with its directions and to make notice to the court whether there are failures present. The expert’s duty outweighs the obligation that binds expert and defendant, in the case where the expert’s opinion is beneficial to the person charged with the offences, and takes overall priority over the individual who is giving the expert instructions.<sup>169</sup> Furthermore, the duty towards the court comprehends the obligation of stating the expert’s expertise and its relevant area both in the expert’s report and also when it is required to present evidence in person.<sup>170</sup> According to Section 19.4 of the Criminal Procedures Rules, the expert’s report needs to comply with the subsequent details:

- (a) give details of the expert’s qualifications, relevant experience and accreditation;
- (b) give details of any literature or other information which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert’s own knowledge;
- (e) where the expert has based an opinion or inference on a representation of fact or opinion made by another person for the purposes of criminal proceedings (for example, as to the outcome of an examination, measurement, test or experiment)—
  - i. identify the person who made that representation to the expert,
  - ii. give the qualifications, relevant experience and any accreditation of that person, and
  - iii. certify that that person had personal knowledge of the matters stated in that representation;
- (f) where there is a range of opinion on the matters dealt with in the report—
  - i. summarise the range of opinion, and
  - ii. give reasons for the expert’s own opinion;

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<sup>167</sup> The Criminal Procedures Rules 2020, Part 19 Expert evidence, s19.1 (2), <https://www.legislation.gov.uk/uksi/2020/759/rule/19.1/made>

<sup>168</sup> The Criminal Procedures Rules 2020, Part 19 Expert evidence, s19.2 (1) (a).

<sup>169</sup> The Criminal Procedures Rules 2020, Part 19 Expert evidence, s19.2 (2).

<sup>170</sup> The Criminal Procedures Rules 2020, Part 19 Expert evidence, s19.2 (3).

- (g) if the expert is not able to give an opinion without qualification, state the qualification;
- (h) include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;
- (i) contain a summary of the conclusions reached;
- (j) contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and
- (k) contain the same declaration of truth as a witness statement.<sup>171</sup>

Nevertheless, despite the stated requirements needed in order to assume the role of the expert in a criminal trial, it is not to be assumed that the evidence provided or the academic and on-field background are going to be sufficient in a trafficking case: indeed, the Brecani judgement demonstrated how quick it can be to dismiss a valid expert opinion on a case. In the last chapter of this thesis, the case of R-v-Brecani will be better analysed in order to provide some perspective on the role of the expert in a recent law case.

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<sup>171</sup> The Criminal Procedures Rules 2020, Part 19 Expert evidence, s19.2 (4).



## Chapter II – CHILD TRAFFICKING IN THE UK

Children are among the most vulnerable victims. It is relatively easy to manipulate them, building a relationship that has the purpose of exploiting them. They can be used for sexual exploitation, forced labour, petty crimes, drug dealing and many more. Young people can be targeted anywhere, either at shopping centres and parks or through online gaming platforms and social media.<sup>172</sup>

Child trafficking has not the same connotations as adult trafficking: firstly, because this phenomenon is far more low profile than the trafficking of adult persons, and secondly because children are more vulnerable. Despite being not so disclosed, trafficked children constitute more than a third of the number of cases identified by the UK authorities.<sup>173</sup>

As noted in the previous chapter, the UN Convention on the Rights of the Child in article 1 defines as a child “every human being below the age of eighteen years old”<sup>174</sup> and article 3 of the Trafficking Protocol states that the definition of human trafficking comprehends the “recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force [...] for the purpose of exploitation”,<sup>175</sup> however, for what concerns child trafficking, the element of ‘means’ can be taken out of the equation and it is not integral to the definition of child trafficking: the means listed in the definition are not necessary to demonstrate that a child is a victim of trafficking, as long the ‘action’ and the ‘purpose’ elements are present. Moreover, children cannot give consent to their own exploitation, despite the fact that they might seem to be aware of the situation.<sup>176</sup>

The picture of child trafficking in the UK is quite complex: children are being smuggled across international borders into the UK, and many children are unaccompanied, which

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<sup>172</sup> The Children’s Society, “County lines and criminal exploitation”, <https://www.childrenssociety.org.uk/what-we-do/our-work/child-criminal-exploitation-and-county-lines/what-is-county-lines>

<sup>173</sup> C. Setter, *Child trafficking in the UK*, The Modern Slavery Agenda. Policy, politics and practice in the UK, Policy Press, 2019, p. 121.

<sup>174</sup> OHCHR, Convention on the Rights of the Child, November 20, 1989, at art. 1,

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>175</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, New York. United Nations, 2000, at art. 3,

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

<sup>176</sup> Child trafficking in the UK 2021: a snapshot, Independent Anti-Slavery Commissioner & ECPAT UK, December 2021, p.7, <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=23b51868-f257-49bc-b779-a5059bd65a04>

increases their vulnerability. Children can also be trafficked within UK borders or outside of them, and they can be moved around towns or countries for exploitation and it is often difficult for them to be recognized as potential victims.<sup>177</sup>

Several case studies underlined how children are often victims of repeat abuse: traffickers manipulate, control and isolate them, making it almost impossible to get away from that situation.<sup>178</sup> The most recent report from the Independent Anti-Slavery Commissioner and ECPAT UK has highlighted how, despite the Covid-19 pandemic and its effects, the numbers of children trafficked are still remarkably high. It is still quite complex to understand the exact number of children being trafficked, due to the clandestine nature of the phenomenon in question and all its variations: in 2021, 10,685 individuals were referred to the National Referral Mechanism, of these, 4,646 were children, for an account of 43,5% of the total number of referrals. 60.6% of this number had the UK as their country of origin and 66.9% of these children were criminally exploited. Other common types of exploitation were, in order of size, sexual exploitation, followed by labour exploitation, domestic servitude and organ harvesting. There were cases notified in a not specified category and 1492 children were referred to the National Referral Mechanism as “county lines cases”.<sup>179</sup>

Data usually are broken down into different kinds of exploitation: in 2017, the Home Office released a document with all the different typologies of modern slavery offences in the UK, although it is arguably accurate of the real phenomenon of exploitation, which is extremely nuanced and possibly ever evolving.<sup>180</sup>

Thus, according to the data collected by the Home Office, modern slavery can look like labour exploitation, which encompasses victims that are being exploited for various scopes and usually live in isolated environments, often on the offenders’ property and with rather poorly conditions. These victims are used to repeated abuse and they do not

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<sup>177</sup> C. Setter, *Child trafficking in the UK*, The Modern Slavery Agenda. Policy, politics and practice in the UK, Policy Press, 2019, p. 121.

<sup>178</sup> Christine Beddoe, “Missing out. A study of child trafficking in the North-West, North-East and West Midlands”, ECPAT UK, January 2007, p. 17,

<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=702119f3-8136-4b96-bfe0-008eeffd75ba>

<sup>179</sup> Child trafficking in the UK 2021: a snapshot, Independent Anti-Slavery Commissioner & ECPAT UK, December 2021, p.7, <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=23b51868-f257-49bc-b779-a5059bd65a04>

<sup>180</sup> C. Setter, *Child trafficking in the UK*, The Modern Slavery Agenda. Policy, politics and practice in the UK, Policy Press, 2019, p. 124.

get paid. Victims exploited for the purpose of labour exploitation can also be forced to work in sites owned by their offenders, where the main method of exploitation is not getting paid or being underpaid illegally. Or again, they can work legally with someone unrelated to the offenders, employed for a low-skilled job, but since their bank accounts are controlled by the offenders, they do not get access to their wages.<sup>181</sup>

Another form of exploitation is domestic servitude: victims can be either exploited by partners, relatives or other persons who take advantage of them. When exploited by a partner, it is probably a result of an arranged or forced marriage, and the victim is forced to servitude alongside abuse and sexual exploitation. Many victims exploited by relatives are children, who are forced to undertake household chores for members of the family.<sup>182</sup>

Sexual exploitation has several variants. Children can be sexually exploited by a group of offenders or by a single individual for the purpose of personal gratification, but it can also involve forced sex work in established places. Victims can be trafficked and exploited in fixed locations used precisely for this kind of work, such as brothels or rooms, but locations can also be ever-changing. This is the case of victims forced to work on the streets, in the clients' residences, in hotels or on a rented property with the function of a brothel. Victims are usually confined to these sites by their offenders and are not free to go.<sup>183</sup>

The last form of modern slavery considered by the Home Office is criminal exploitation. This includes forced gang-related activities, usually connected to selling drugs. It is common that victims of criminal exploitation are for the most part children, forced to transport drugs and money from one place to another, usually from urban to suburban areas and smaller towns.

Criminal exploitation can also look like forced labour in illegal activities: the most frequent case is represented by victims forced to cultivate cannabis in private residences. Other examples are shoplifting, pickpocketing or forced begging on the streets. Offenders may offer accommodation and food to their victims, but the money collected does not remain in the hands of the victims, which are never paid. Another form of criminal

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<sup>181</sup> Home Office, "A typology of modern slavery offences in the UK", Research Report 93, October 2017, p.3, <https://www.antislaverycommissioner.co.uk/media/1190/a-typology-of-modern-slavery-offences.pdf>

<sup>182</sup> Ibidem.

<sup>183</sup> Ibidem.

exploitation is forced sham marriage in order to obtain, for example, immigration benefits, or again people can be victims of financial fraud and find themselves deprived of their identification documents, which are going to be used in illicit ways.<sup>184</sup>

## 2.1 Child Sexual Exploitation

Child sexual exploitation is a form of abuse. It is defined by the UK Department for Education by the following statement:

“Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology.”<sup>185</sup>

Therefore, the main difference between child sexual exploitation and child sexual abuse is the concept of “exchange” that characterized the former. The child receives something in order to engage in sexual activities or as a result of them.<sup>186</sup> The element of exchange is the clear separation between these two forms of abuse, in which sexual exploitation is considered a sub-category of sexual abuse. However, it is essential to remember that whatever reward the victim can obtain from the exchange, from money and drugs to love and protection, the power dynamic that occurs between child and perpetrator is always imbalanced and benefits the offender: the child or the young person who decides to accept his or her part of the exchange that is happening is not to be considered in any other ways than a victim.<sup>187</sup>

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<sup>184</sup> Ibidem.

<sup>185</sup> Department for Education, “Child Sexual Exploitation. Definition and a guide for practitioners, local leaders and decision makers working to protect children from sexual exploitation”, February 2017, Crown, p.5, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/591903/CSE\\_Guidance\\_Core\\_Document\\_13.02.2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/591903/CSE_Guidance_Core_Document_13.02.2017.pdf)

<sup>186</sup> K. Alderson et al., “Child sexual exploitation, poly-victimisation and resilience”, Journal of Criminological research, policy and practice, VOL. 8 NO. 1 2022, pp. 53-74, Emerald Publishing, DOI 10.1108/JCRPP-04-2021-0017.

<sup>187</sup> H. Beckett, D. Holmes and J. Walker, “Child sexual exploitation: Definition and Guide for Professionals”, Extended text, University of Bedfordshire and Research in Practice, February 2017, p.8.

Sexual exploitation can affect every young person or child under the age of eighteen, even in cases where the person is at an age where he or she can legally consent to sexual intercourse. Typical of this phenomenon is the power imbalance that perpetrators of the abuse have against their victims: it can be obvious that the age of the young person is an element that benefits the abuser, however, the difference in the balance of power can sometimes comprehend factors such as gender, sexual identity, physical and mental abilities, social status and resources.<sup>188</sup>

It is not always easy to identify the behaviours that could indicate the fact that a child may be a victim of sexual exploitation, as the indicators can easily be mistaken for a type of behaviour that is considered normal for an adolescence. Usually, the exchange that happens between young victims and perpetrators includes a promise of some kind of reward, which can consist of something tangible, such as illicit substances or money, or intangible, like protection, status or the affection that the child is missing from somewhere. This exchange could seem somehow beneficial to the young person who is receiving gifts and attention, nevertheless, it always brings advantages to the person who is exploiting the child.<sup>189</sup>

Children and young people are often manipulated into thinking they are in a loving relationship with the person who is actually exploiting them, a phenomenon called grooming. They may be induced to believe that what they are experiencing is entirely consensual, whereas the perpetrator is taking advantage of their vulnerabilities and tricking them into sexual exploitation, without them realizing it.<sup>190</sup>

Child sexual exploitation can happen either in person or online. The perpetrator can manipulate the child into making him trust their bond, which will be used as a means to control the victim in different ways: the abuser can take advantage of the relationship that has been established between him and the victim and coerce the young person into sending sexually explicit images of themselves, performing sexual activities or having sexual conversations. Hence, these acts can then be used by the perpetrator who might

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<sup>188</sup> Department for Education, “Child Sexual Exploitation. Definition and a guide for practitioners, local leaders and decision makers working to protect children from sexual exploitation”, February 2017, Crown, p.5.

<sup>189</sup> Ibidem.

<sup>190</sup> National Society for the Prevention of Cruelty to Children, “Child Sexual Exploitation”, <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/child-sexual-exploitation/>

threaten the child and blackmail him or her in order to continue the abusive relationship.<sup>191</sup>

Sexual exploitation is also a means used by gangs in order to exert power and control, however, gang members could also recur to this means for some kind of rite of passage and for the initiation of other members or use sexual exploitation as a weapon.<sup>192</sup>

Research has demonstrated that young people that reported episodes of sexual exploitation had previously experienced “lacking in warmth and affection during childhood”<sup>193</sup> by either their parents or caregivers, which indicates that the absence of a strong bond is an element that increase their vulnerabilities in the eyes of perpetrators, who can use these weaknesses to exploit them by understanding and providing for their unmet needs.

Therefore, the main vulnerabilities that can be noticed when considering victims of child sexual exploitation concern mainly biological factors, such as impaired cognitive functioning/intelligence, previous forms of abuse or neglect that the child had undergone, a poor relationship with parents or caregivers and difficult situations in which caregivers find themselves, such as poverty or poor mental health conditions. All these factors lead the young person to unmet needs, both physical (e.g. food or a place to stay) and psychological, especially when the child does not feel safe in his or her own home, if he or she develops difficulties in trusting others, low confidence and poor self-esteem. These elements increase the risk of being victims of sexual exploitation, as children and young people are potentially more exposed to perpetrators who can act freely without the victims’ supervisors and their net of protection.<sup>194</sup>

As a consequence, children will experience long-term effects of their experience as trafficked victims of sexual exploitation: firstly, they have potentially more risk of being re-trafficked and going through repeated abuses by perpetrators or other individuals. In

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<sup>191</sup> Ibidem.

<sup>192</sup> Ibidem.

<sup>193</sup> K. Alderson et al., “Child sexual exploitation, poly-victimisation and resilience”, *Journal of Criminological research, policy and practice*, VOL. 8 NO. 1 2022, pp. 53-74, Emerald Publishing, DOI 10.1108/JCRPP-04-2021-0017.

<sup>194</sup> Ibidem.

addition, they could blame themselves for the situation, feeling shame due to the perceived blame from other people.<sup>195</sup>

Hence, it is safe to say that there are some particular backgrounds that may be the precursor to child sexual exploitation, making young people more prone to the phenomenon. Nevertheless, no child is immune to this kind of exploitation, which can affect every person under the age of eighteen.

Having said that, there are some patterns of victimisation that can be recognized. Child sexual exploitation usually concerns people of post-primary school age, approximately between twelve or fifteen years old, even if research showed that the age diminishes to eight to eleven years old when there is the added element of online sexual exploitation. Sexual exploitation is not to be looked past in adolescence, which is an age where there is a higher assumption of the capacity to consent. This fact often allows for overlooking the abuse among young people of sixteen or seventeen years old, and the same mistake can be carried out in relation to those groups of children and young people who do not suffer from inadequate economic conditions or do not miss the necessary care from their home.<sup>196</sup>

Similarly, child sexual exploitation can be overlooked when the gender of the victim is male. Indeed, the phenomenon is mostly documented among girls, which could indicate that young males are less likely to report situations of child sexual exploitation and, on the contrary of females, are also less likely to be identified as victims. Likewise, the lower level of identification happens to other groups, too: children and young people belonging to ethnic minorities face the same struggles toward identification.

Research has highlighted a number of factors that may increase the vulnerability of children and young people to fall victim to sexual exploitation. Keeping in mind that these elements are not to be privileged in the assessment of whether an individual fall in the category of the victim or not, they are useful to understand some circumstances that can lead to the phenomenon in question and better provide for victims of this kind of exploitation. The factors that can heighten the vulnerability of children are:

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<sup>195</sup> *Ibidem*.

<sup>196</sup> H. Beckett, D. Holmes and J. Walker, "Child sexual exploitation: Definition and Guide for Professionals", Extended text, University of Bedfordshire and Research in Practice, February 2017, p. 11.

“Having a physical or learning disability; being in care (particularly those in residential care and those with interrupted care histories); having a prior experience of neglect, physical and/or sexual abuse; lack of a safe/stable home environment, now or in the past (domestic violence or parental substance misuse, mental health issues or criminality, for example); going missing (for short or long periods); substance misuse issues; disengagement or absences from education/training/employment; gang-association; recent bereavement or loss; social isolation or social difficulties; absence of a safe environment to explore sexuality, sexual identity or gender identity; economic vulnerability; homelessness or insecure accommodation status; connections with other children and young people who are being sexually exploited; family members or other connections involved in adult sex work.”<sup>197</sup>

Nevertheless, it is fundamental to remember that sexual exploitation is not a phenomenon that concerns only young people and children that present one or more of the above-listed characteristics: indeed, it is common that sexual exploitation happening on online platforms does not necessarily involve young people presenting these weaknesses. It is, however, a particular kind of abuse that occurs even when someone is willing to benefit from the children’s vulnerabilities and their proneness to ingenuousness in order to exploit them.

Children trafficked into sexual exploitation do not always report the situation they are experiencing. On the contrary, it is often complicated to identify victims of this offence due to the fact that, despite the acknowledgement by the victims that something is wrong, they find it hard to directly disclose what is happening.

Sometimes, children and young people may not want to denounce their exploitation because they do not recognize that what they are going through is indeed exploitation, to begin with. Another reason that may prevent young victims from reporting abuse is the emotional ties or the loyalty they feel toward their perpetrator: it is relevant to remember that clever abusers actually exploit children using the “boyfriend or girlfriend method”, through which they groomed their victims and made them believe that they are in a loving and affectionate relationship. In addition, young people often experience feelings of shame and guilt: they come to the belief that they are somehow complicit in the abuse endured for having accepted the rewards provided by the perpetrator and for consenting to the situation they found themselves in. they might be also feeling trapped in said

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<sup>197</sup> Ibidem.



situation or being threatened and blackmailed by the abuser, and they might not know where to ask for help and the steps to take in order to exit the abuse. Besides this, other reasons why young people may choose not to denounce sexual exploitation include the absence of confidence in the services apt to help victims, maybe due to previous experiences, or even the conviction that they will be judged or not be believed. Young people may also reason that denouncing the exploitation they are undergoing will entail the loss of what they are obtaining through the abusive relationship, such as money, drugs, alcohol, or the perceived feelings of love and protection.<sup>198</sup>

Besides the various reasons that young people may have for not reporting the offence of sexual exploitation, it is often common that they may also resist intervention: the power imbalance that happens between the perpetrator and the young victim involves an incredibly strong bond between the two parts, where the one of the victim is understandably weaker and dependent on the other. What is crucial to understand is that even if victims may still be in contact with their abuser, this is not to be interpreted as the absence of exploitation and harm or the consent to it.<sup>199</sup>

Perpetrators usually are adults who take advantage of children's vulnerabilities. Nevertheless, there are also cases where sexual exploitation is perpetrated by victims' peers. There may be various reasons for this situation to happen and it is fundamental to recognize that also young people perpetrating sexual abuse should have the necessary assistance and not just be sanctioned for the offences committed. Sometimes, a young person who is committing sexual exploitation at the expense of his or her peer is also experiencing sexual exploitation: for example, a girl might be compelled to introduce her younger friends to her abusers in order to avoid them assaulting her sister.

These kinds of situations require an adequate approach to address the perpetration carried out by the young person in the context of his or her own situation as a victim. Therefore, it is necessary to identify the previous situation of victimisation in order to comprehend its contribution to the actual perpetration of sexual exploitation. Moreover, young people and children who undergo this type of abuse often are groomed by their perpetrators to engage in other criminal activities, such as the dealing of drugs or petty crimes, which

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<sup>198</sup> Ibidem.

<sup>199</sup> Ibidem.

can be an excellent excuse planned by the abusers to ensure that victims remain under their control and could not consider reporting the situation to authorities in order to not be penalized for their offences.<sup>200</sup>

When referring to child sexual exploitation, it comes naturally to not make distinctions between genders. However, this phenomenon entails different characteristics for young males and females, although sexual exploitation of young boys is often overlooked.<sup>201</sup>

Research has highlighted how young males identified by services are usually younger than females at risk or victims of sexual exploitation. Moreover, male children and young people that fall victim to this abuse are more likely to present with disabilities, in particular autism, attention deficit hyperactivity disorder, and learning disabilities.

The grooming of young male individuals might start through the peers of the victims, such as a trusted friend with whom the young person shares some interests. Perpetrators may use the advantages provided by the common passions to bond with the victims and little by little introduce them to an extended group, who will engage them in a criminal gang. Belonging to an organised criminal group benefits the perpetrators as the victims may be more inclined to not disclose the sexual exploitation in order to not be condemned for their criminal activities.<sup>202</sup>

Research has considered another type of relationship that could lead to young male exploitation: indeed, young men who are exploring their sexuality may find fewer spaces to do so, therefore they could be more prone to exploitative same-sex relationships.<sup>203</sup>

Studies have also shown how young male victims are more prone to being sexually exploited by female perpetrators. Males still make the most of the statistics of abusers, however, in this case, there is a higher proportion of female offenders. according to research, female perpetrators are usually younger than their male counterparts and they could have come into contact with the victims often through their jobs and roles of

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<sup>200</sup> Ibidem.

<sup>201</sup> Barnardo's, "Research on the sexual exploitation of boys and young men. A UK scoping study Summary of findings", Barnardo's, August 2014, UCL and NatCen, p. 3, [https://www.nuffieldfoundation.org/sites/default/files/files/cse\\_young\\_boys\\_summary\\_report.pdf](https://www.nuffieldfoundation.org/sites/default/files/files/cse_young_boys_summary_report.pdf)

<sup>202</sup> Ibidem.

<sup>203</sup> Barnardo's, "Hidden in plain sight: A scoping study into the sexual exploitation of boys and young men in the UK. Policy Briefing", August 2014, Barnardo's, UCL and NatCen, p. 6, [https://www.barnardos.org.uk/sites/default/files/2020-11/hidden\\_in\\_plain\\_sight-4.pdf](https://www.barnardos.org.uk/sites/default/files/2020-11/hidden_in_plain_sight-4.pdf)

responsibilities, such as teachers or babysitters. Nonetheless, there are also cases where the female perpetrator acts as the girlfriend of the victim in order to lure him to move in with her from a young age. Other cases reported female offenders paying young male victims for sexual activities or exchanging these activities with drugs.<sup>204</sup>

One of the characteristics that distinguish the child sexual exploitation of young males from the opposite gender is the fact that the relationship established between the female abuser and the young male victim is most of the time seen as far less problematic than a relationship between a male offender and a young girl or boy. Nevertheless, it is crucial to recognize that if the relation between the parts is of an exploitative kind, there is the need to identify it as such, regardless of the gender of the victim implicated.<sup>205</sup> People who intervene and services that help exploited victims should always work taking into account that there are gendered biases that could hinder the process of identification of a victim of sexual exploitation, especially if the victim's gender is male.

The overall attitude with young boys is relevantly less protective than the care reserved for female victims of sexual or criminal exploitation. Therefore, male individuals trafficked and exploited do not always pass as potential victims as females do. Moreover, when a young man is identified as a victim of trafficking, there is often the chance that he will also be considered as the perpetrator of the offence. There is a lack of signs and indicators that might show the relation between boys and sexual exploitation, which leads to the late rescue by services who come in support of young individuals at a high risk of exploitation.<sup>206</sup>

In addition to these factors, there are other elements that may prevent the disclosure of sexual exploitation to services: studies have highlighted the presence of many barriers that could hinder the process of reporting the exploitative situation for children and young men: first of all, the stereotypes that view them exclusively as offenders and do not reckon the possibility of them being victims due to stereotypes on masculinity. Concerning this element, the expectation of such masculine behaviour is another barrier to the disclosure

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<sup>204</sup> Barnardo's, "Research on the sexual exploitation of boys and young men. A UK scoping study Summary of findings", Barnardo's, August 2014, UCL and NatCen, p. 3.

<sup>205</sup> Ibidem.

<sup>206</sup> Barnardo's, "Hidden in plain sight: A scoping study into the sexual exploitation of boys and young men in the UK. Policy Briefing", August 2014, Barnardo's, UCL and NatCen, p. 7.

of exploitation, as standing in the position of the victim is perceived as an act of weakness, and, as a consequence, young men could not possibly experience sexual exploitation.

This difference in the treatment of victims of sexual exploitation affects people belonging to the male gender in a negative way. The sharper focus on young girls makes it more difficult to discover and help male victims, who are less likely to initiate reporting a situation also due to their different emotional responses to the abuse and the less effective communication skills.<sup>207</sup>

## 2.2 Child Criminal Exploitation

Child criminal exploitation relates to “the selection, recruitment and control of a child in order for the child to commit crimes for, and on the behalf of another”.<sup>208</sup> Exploitation depends on the imbalance of power that naturally happens between the child and the perpetrator, who has control over the child. Child criminal exploitation is not a new phenomenon, however, it continues to rise despite the national legislation that protects children’s welfare: victims are being arrested and prosecuted, rather than protected and assisted, which benefits traffickers, who continue to exploit children for their illegal purposes while remaining undetected.<sup>209</sup>

Child criminal exploitation is not a recent phenomenon but has always happened over time. It takes different forms: children can be forced to work in cannabis cultivations, compelled to sell drugs or move money from town to town, coerced into petty crimes like shoplifting or pickpocketing, forced to beg on the streets or to threaten other children.<sup>210</sup> Ultimately, child criminal exploitation consists of grooming for the purpose of exploitation of the child into some kind of criminal activity. Every child forced to commit these crimes is a victim of exploitation and needs to be seen as such and to be given the appropriate assistance, rather than be criminalized and treated as a perpetrator.<sup>211</sup>

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<sup>207</sup> Ibidem.

<sup>208</sup> “Circles of Analysis: A Systemic Model of Child Criminal Exploitation”, *Journal of Children’s Services*, Emerald Publishing, April 2021, p.2.

<sup>209</sup> Ibidem.

<sup>210</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 4, [www.childrenssociety.org.uk/information/professionals/resources/counting-lives](http://www.childrenssociety.org.uk/information/professionals/resources/counting-lives)

<sup>211</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 4.

There is not a statutory definition of child criminal exploitation, which implies that the responses to the phenomenon are the most various: this does not benefit children victims of trafficking who experience too many gaps in the support that should be provided.<sup>212</sup> The only definition is provided by the Serious Violence Strategy which describes child criminal exploitation as a phenomenon that happens:

“Where an individual or group takes advantage of an imbalance of power to coerce, control, manipulate or deceive a child or young person under the age of 18 into any criminal activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial or other advantage of the perpetrator or facilitator and/or (c) through violence or the threat of violence. The victim may have been criminally exploited even if the activity appears consensual. Child Criminal Exploitation does not always involve physical contact; it can also occur through the use of technology”.<sup>213</sup>

Children are among the most vulnerable victims, which constitutes an advantage for traffickers, who can easily control them and manipulate them into committing crimes. Moreover, children are cheaper than other persons to employ and there is a considerable minor risk of them being detected.<sup>214</sup> A factor that makes that phenomenon difficult to recognize is the fact that children who are being exploited could not consider themselves victims, due to feelings of shame or little trust that they put in authorities, which prevent them from reporting the situation.

Moreover, there are other relevant factors that contribute to the clandestine nature of child criminal exploitation. Victims are subjected to violent coercion and the fear of retaliation is such that it is unlikely for victims to actually come forward and denounce what they have undergone. Furthermore, they usually are kept isolated or trapped, making them extremely dependent on the perpetrators, who can take advantage of the situation, especially in cases where the victims are being trafficked illegally into the country: therefore, their situation could not be recognized by authorities, on the contrary, they could be treated as illegal immigrants who will need to face eventually prosecutions.

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<sup>212</sup> Ibidem.

<sup>213</sup> HM Government, Serious Violence Strategy, April 2018, p.48, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

<sup>214</sup> “Circles of Analysis: A Systemic Model of Child Criminal Exploitation”, *Journal of Children’s Services*, Emerald Publishing, April 2021, p.6.

Other elements that preclude victims from looking for help could be the language barrier, in cases where they are being trafficked by other countries into the UK, or other physical or cognitive vulnerabilities.<sup>215</sup>

The real numbers of child criminal exploitation are not known, because children that have been exploited often are not identified and therefore cannot make it in the official statistics. Moreover, it is necessary to evaluate the impact that the pandemic had on this phenomenon, since the restrictions imposed have both hampered and helped the work of law enforcement: the lockdown permitted the police to “reallocate resources toward neighbourhood policing, particularly in communities considered high-risk”,<sup>216</sup> nevertheless, perpetrators were able to adapt and to groom children through different approaches.<sup>217</sup>

It is difficult to establish precisely which characteristics make a child more vulnerable to exploitation than his or her peers. However, recent data has shown that poverty is one of the main factors contributing to child exploitation. Poverty has a relevant impact on a child’s life, which means its effects will be seen also in the future, putting in motion a circle of socioeconomic and health disadvantages that will increase the vulnerability of children to certain situations. In England, ten million children experience poverty and, therefore, are more likely to endure “adverse childhood experiences”, which include domestic abuse, neglect, substance use, mental health issues and other characteristics that make children more inclined to criminal exploitation, especially to the eyes of perpetrators who are used to snare victims by meeting their needs.<sup>218</sup>

Other vulnerable groups of children considered prone to being trafficked for the purpose of criminal exploitation are those with “special educational needs and disability”, who are less likely to process information and make informed decisions about certain types of situations. As a matter of fact, 40% of children criminally exploited belong to this category and data shows that children who fall victim to exploitation or who become part of gangs have often undiagnosed learning impediments. Traffickers are aware of these

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<sup>215</sup> Ibidem.

<sup>216</sup> The Children’s Society, “Child Criminal Exploitation – PCSC Bill”.

<sup>217</sup> Ibidem.

<sup>218</sup> “Circles of Analysis: A Systemic Model of Child Criminal Exploitation”, *Journal of Children’s Services*, Emerald Publishing, April 2021, p.7.

characteristics and usually target schools and facilities whose scope is that of taking care of children with special needs.<sup>219</sup>

Another factor that links criminal exploitation to children is the absences from mainstream education: those excluded have a higher risk of being exploited than their peers, including those who have “adverse childhood experiences”. Children and young people out of mainstream education constitute an easier target for perpetrators. Those who identify themselves as members of a gang are five times more likely to be excluded or have been excluded from mainstream education than their peers, with a percentage of respectively 16 to 3%. Moreover, those who are more prone to the risk of trafficking are more likely to experience mental health issues, which are very relevant and always present in young people who define themselves as gang members, due to the over-exposure to a criminal and violent environment.<sup>220</sup>

### *2.2.1 County lines*

Child criminal exploitation takes different forms, but one in particular has become quite noteworthy: there is a relatively new dimension of drug trafficking, referred to as “county lines”. The Home Office’s definition of county lines is:

“a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas [within the UK], using dedicated mobile phone lines or other form of “deal line”. They are likely to exploit children and vulnerable adults to move [and store] the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons.”<sup>221</sup>

In other words, this form of criminal exploitation happens when criminals befriend children with different tactics, through the internet or offline, and exploit them in order to introduce them to drug dealing. Thus, ‘lines’ is referred to the cellular phones used to

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<sup>219</sup> Ibidem.

<sup>220</sup> Ibidem.

<sup>221</sup> HM Government, Serious Violence Strategy, April 2018, p.48.

keep the victims under control, when delivering drugs or exchanging money from the urban hub to the counties.<sup>222</sup>

According to the National Crime Agency, reports say that two in three police forces state that exploitation of children is mostly related to county lines, and one in four police forces report that young people and children involved in these activities are often experiencing also sexual abuse. However, the real scale of the abuse remains still an intelligence gap that is hard to fill.<sup>223</sup>

The National Crime Agency describes what the standard county lines scenario usually looks like. It involves a group of people that has established a network between town and the county location, and a branded mobile phone, used in order to access the orders of the customers. The line is usually controlled by a third party, not involved in the market. The group makes use of violence, weapons, intimidation and other means to exploit young people, who are constantly travelling between the urban hub and the county location to renew stocks and transfer cash.<sup>224</sup>

The 2019 report of the National Crime Agency has found the presence of about 1000 branded deal lines and 2000 individual deal lines. There are estimates provided by the Children's Commissioner for England that indicates that the number of children impacted by this phenomenon is around 30.000 to 50.000, considering that every county line could have a number of 30 to 50 children involved, albeit the real number of young people exploited is still difficult to calculate and continues to be a gap.<sup>225</sup> Reports show that children targeted usually are between 14 to 17 years old, but there are also cases of 7 years old children exploited in the drug dealing market. Organised crime groups are used to target children of various backgrounds, but there are some common denominators such as poverty, family breakdown or children with special educational needs. This kind of exploitation seems to affect boys most normally, but there are also cases of girls being

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<sup>222</sup> The Children's Society, "County lines and criminal exploitation", <https://www.childrenssociety.org.uk/what-we-do/our-work/child-criminal-exploitation-and-county-lines/what-is-county-lines>

<sup>223</sup> The Children's Society, Victim Support and National Police Chiefs' Council, "Children and young people trafficked for the purpose of criminal exploitation in relation to county lines. A toolkit for professional", p. 3.

<sup>224</sup> The Children's Society, "Counting lives. Responding to children who have been criminally exploited", July 2019, p. 15.

<sup>225</sup> Ibidem.



criminally exploited.<sup>226</sup> Indeed, the reports state that 91% of children and young people who are linked to child criminal exploitation through the county lines model are male. However, nationality or ethnicity seems to be the most various.<sup>227</sup>

As reported by the Children Society's organization:

“Gangs are deliberately targeting vulnerable children – those who are homeless, living in care homes or trapped in poverty. These children are unsafe, unloved, or unable to cope, and the gangs take advantage of this. These gangs groom, threaten or trick children into trafficking their drugs for them. They might threaten a young person physically, or they might threaten the young person's family members. The gangs might also offer something in return for the young person's cooperation – it could be money, food, alcohol, clothes and jewellery, or improved status – but the giving of these gifts will usually be manipulated so that the child feels they are in debt to their exploiter. However they become trapped in county lines, the young people involved feel as if they have no choice but to continue doing what the gangs want.”<sup>228</sup>

Gangs usually aim to establish either a fresh demand or to take over the network of a local dealer who is not able to resist them, or again they can take advantage of a local user, by using his or her home as a place where to run operations – this practice became known with the term ‘cuckooing’. Young people are used as “remote-controlled commodities”, since it is easier to evade the authorities and police if one is unconvicted.<sup>229</sup>

### *2.2.2 The driver of county lines*

To understand the phenomenon of county lines related to child criminal exploitation it is necessary to ask what the driver is of said phenomenon. According to the National Crime Agency, the main reason behind county lines is the demand and supply of controlled substances within UK borders, more specifically heroin and cocaine-based substances. In the past few years, the conventional market for drugs has become overly saturated, based on a reduction of people who were accustomed to the use and, as a consequence, a surplus

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<sup>226</sup> The Children's Society, “Child Criminal Exploitation – PCSC Bill”.

<sup>227</sup> The Children's Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 18.

<sup>228</sup> N. Stone, “Child Criminal Exploitation: ‘County Lines’, Trafficking and Cuckooing”, Youth Justice 2018, Vol. 18(3) 285–293, p. 286, DOI: 10.1177/1473225418810833

<sup>229</sup> Ibidem.

of supply, which drove gangs and organised crime to expand their reach, finding new clients.<sup>230</sup>

The substances that end up on the streets in the UK are not produced in the country, but arrive there after a significant journey: cocaine usually comes from South America and the Andean region, whereas most of the heroin found in the UK arrives from Afghanistan. Therefore, there is a well-managed effort between organised criminal groups to transport and then distribute drugs across the country. Usually, what is known as a “traditional model” for the production of cocaine sees the involvement of organised criminal groups with Cartels, who are responsible for the whole production. This process has always involved human trafficking as a means to distribute the product around Europe, using the large-scale “middle men” to sell drugs to smaller gangs and national organized criminal groups, who then are the ones with the task of selling, in turn, the products to the users.<sup>231</sup>

Nonetheless, recently there have been some changes in the distribution of substances in the UK. One of these shifts refers to the increase in the selling of drugs through the dark web, which, however, is mostly related to recreational use from the single individual who can place direct orders, therefore it is something marginal to the issue of county lines.

The most relevant change in the distribution of substances in the UK is represented by the rise in control of one defined organised criminal group, which has renewed the whole model of distribution and eliminated those who acted like intermediates.<sup>232</sup> The main risks of this illicit market are usually the international transport of drugs and the relative importation in the country, and the point of sale. Trafficking in human beings and their exploitation has always been part of the equation when referring to the distribution of substances, however, this new model has managed to reduce at a minimum the contact between producer and distributor in order to face fewer risks and it has done so by putting the whole chain of distribution in the hands of one organisation.<sup>233</sup>

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<sup>230</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 18.

<sup>231</sup> Ibidem.

<sup>232</sup> M. Townsend, “Kings of cocaine: how the Albanian mafia seized control of the UK drugs trade”, The Guardian, January 13, 2019, <https://www.theguardian.com/world/2019/jan/13/kings-of-cocaine-albanian-mafia-uk-drugs-crime>

<sup>233</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 19.

The only risks that are now present have shifted to taking over or establishing a specific area of demand, which could be quite challenging, considering the over-saturation of the market in the urban regions. This is where county lines become helpful: the demand, which is still present, is not the same as before, thus organised crime groups find it necessary to seek new areas that were not previously considered. Establishing a new business in new areas comes with risks, such as threats from rival organized crime groups or police and state intervention. As a result, people who managed the business of illicit substances consider it preferable to involve persons who can take those risks, rather than implicate more valuable members of the group. This is why criminal groups choose children and young people to run their businesses.<sup>234</sup>

Those who constitute the demand of the market for illicit substances are usually people facing addiction and abuse disorders, and data have shown that there is often a strong relationship between persons with adverse childhood experiences and substance misuse. Such correlation benefits criminal groups, whose aim is to exploit users with “cuckooing”, which the National Crime Agency describes as:

“In some cases, the dealers will take over a local property, normally belonging to a vulnerable person, and use it to operate their criminal activity from. This is known as cuckooing. People exploited in this way will quite often be exposed to physical, mental and sexual abuse, and in some instances will be trafficked to areas a long way from home as part of the network's drug dealing business.”<sup>235</sup>

Thus, children and young people that have been recruited by criminal groups in the areas where offenders moved their dealing business are forced to live in cuckooed houses and without any kind of payment or access to food or healthcare services.<sup>236</sup>

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<sup>234</sup> Ibidem.

<sup>235</sup> National Crime Agency, “County Lines Drug Supply, Vulnerability and Harm 2018”,

<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking/county-lines>

<sup>236</sup> National Crime Agency, Assessment “County Lines Drug Supply, Vulnerability and Harm 2018”, NAC(19)095, January 2019, p. 5, <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/file>

### 2.2.3 Grooming

In order to understand the phenomenon of child trafficking for the purpose of exploitation, it is necessary to go back to where it started. Thus, it is relevant to describe what is grooming and how it can affect a child's life.

Grooming is defined as the process when someone builds a relationship based on trust and an emotional connection with a child with the only scope of manipulation in order to traffick, sexually abuse or exploit them.<sup>237</sup> It is “the use of a variety of manipulative and controlling techniques with a vulnerable subject in a range of inter-personal and social settings in order to establish trust or normalize sexually harmful behaviour with the overall aim of facilitating exploitation and/or prohibiting exposure”.<sup>238</sup>

Grooming is considered a prerequisite in many cases of child exploitation. Children can be groomed online or offline, by people they know or by strangers. The relationships that groomers established are never based on a single event, on the contrary, they can last from weeks to much longer periods of time. Groomers can also set up strong ties with the child's family or friends in order to appear more trustworthy, also in front of the child's eyes who has no reason to suspect illicit purposes from one of his or her peers.<sup>239</sup> People who build relationships with children with the intention of grooming them can be either male or female and of any age. Young people often do not recognise of being groomed or that they are being abused, because of the strong relation that has been instituted between them and the groomer, which is considered as a person of trust.

This practice can take various forms: people with the intent of grooming can build romantic relationships, can present themselves as mentors, or as strong figures that offer assistance and presence in a child's life. Police reports describe the grooming process as

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<sup>237</sup> National Society for the Prevention of Cruelty to Children, Grooming, NSPCC 2022, <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/grooming/>

<sup>238</sup> A-M. McAlinden in J. Mooney and S. Ost, “Group localised grooming: what is it and what challenges does it pose for society and law?”, p. 3 at note 28, [https://eprints.lancs.ac.uk/id/eprint/67529/1/GLG\\_paper.pdf](https://eprints.lancs.ac.uk/id/eprint/67529/1/GLG_paper.pdf)

<sup>239</sup> National Society for the Prevention of Cruelty to Children, Grooming, NSPCC 2022.

a practice that lures young people with gifts, the offer of drugs or alcohol, the use of flattery and attention and monetary rewards.<sup>240</sup>

Grooming has more than one phase. The first stage refers to the targeting of the subject, when perpetrators choose the individual by identifying the unmet needs or necessities of the victim. These needs are not exclusively material, but can also consist of the stability of a certain relationship which was missing in the person's life.<sup>241</sup> Perpetrators usually target places where victims tend to socialise, thus public settings such as parks, cinemas, shops, restaurants or the streets. Therefore, groomers often choose victims who are simply socialising with their peers or are acting like many other adolescents in social contexts. However, some of the most targeted young people are groomed especially after dark, which can be an indication of vulnerability and therefore be more alluring for those who need such weaknesses in order to groom someone.<sup>242</sup> For instance, children who are being perceived as 'naughty' because they tend to stretch boundaries and expectations, or children who might be more naïve than others and 'easily convinced' with more probability can fall victims to groomers, which often target primary school aged children who present these characteristics.<sup>243</sup>

School is not the only ground where perpetrators come to look for people to exploit, but they can also choose to establish some relationships with the families of children they intend to groom. Sometimes, this choice can be explained by the vulnerabilities that parents or caretakers present related to substance abuse, or due to already existing relations with people inside the family who are affiliated with organised criminal groups, such as siblings or even entire families, where the structure of the criminal organizations is somehow internalized and perceived as normal.<sup>244</sup>

The second stage of the grooming process consists of engaging in communication between the child and the perpetrator. This engagement can be a lift, a party invitation,

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<sup>240</sup> J. Mooney and S. Ost, "Group localised grooming: what is it and what challenges does it pose for society and law?", p. 5.

<sup>241</sup> The Children's Society, "Counting lives. Responding to children who have been criminally exploited", July 2019, p. 42.

<sup>242</sup> J. Mooney and S. Ost, "Group localised grooming: what is it and what challenges does it pose for society and law?", p. 5.

<sup>243</sup> The Children's Society, "Counting lives. Responding to children who have been criminally exploited", July 2019, p. 42.

<sup>244</sup> *Ibidem*.

or free access to drugs or alcohol. For example, in the case of child sexual exploitation, groomers find it more useful to target small groups of girls because there are more chances of engaging in conversation and victims perceive themselves as being safe as long as they stick together. Moreover, this perception fuels the feeling of safety, especially when some girls already know the groomers and have connections with them. Thus, friendships among the victims can be manipulated in order to obtain a semblance of trust for the perpetrators, who can easily take advantage of peer pressure to push victims into their net. Friendship can also be considered a double-edged sword for victims, who may validate with their peers involved in the same situation the experiences that they are undergoing, not denouncing in order to not get in trouble.<sup>245</sup>

The next stage of grooming is based on the consolidation of trust and the relationship between victims and perpetrators. Especially in cases of child sexual exploitation, the victim is under the impression of being in a loving relationship with the person who is grooming him or her. The duration of this specific phase depends on the victim's vulnerability: either in this case or in other cases of exploitation, victims are showered with gifts and constantly flattered, they are taken out for meals and they would receive free alcohol or cigarettes. This process is necessary to make the victim trust the groomer and established an exclusive relationship that eventually will transform into something different with almost no effort from the groomer. A testimony of a girl sexually exploited reported:

“We would get free alcohol and cigarettes, food, free taxis. At first, I thought it was great because nothing sexual had happened, I thought I could just get all of this stuff for free. It made me feel like I was pretty. I never thought that they would do what they did to me, because you don't think that would happen. They're just brainwashing you so you think you love them so you do what they say.”<sup>246</sup>

Shaping the relationship on the basis of boyfriend/girlfriend experience gives an advantage to the perpetrator who is able to gradually “de-sensitise the adolescent to sexual

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<sup>245</sup> J. Mooney and S. Ost, “Group localised grooming: what is it and what challenges does it pose for society and law?”, p. 5.

<sup>246</sup> Tom Airey, “Rochdale grooming case: Victim's story”, BBC News, Manchester, May 8, 2012, <https://www.bbc.com/news/uk-england-manchester-17914138>

activity without revealing his true (abusive and exploitative) intentions”.<sup>247</sup> Moreover, the illusion of this relationship isolates the victim from parents or carers, in order to be less likely the case where the person decides to confide in them or the case where they found out about the interactions with the groomer, reporting him to the police forces.<sup>248</sup> In addition, young people who do not know the normal behaviour in a relationship might be induced to think that what they are experiencing is completely normal and they would not want to get in trouble for being close to an older person.<sup>249</sup>

Therefore, isolating the victims by creating secrecy around the relationships is something that can be easily done by the groomer, who can reinforce the connection established with these methods or even by threatening the victim with disclosure, suicide or physical harm.<sup>250</sup> Children and young people may not understand that they are being groomed, as the signs are not always evident. They may experience complex feelings such as love and admiration for the groomer, as well as fear and distress.

Therefore, it is not always straightforward to recognize whether a child is being groomed, however, there may be some tells. Some of these signals involve the child being overly secretive about how and with whom they are spending time, being with an older partner, having new objects, money or gift for which they do not want to provide an explanation, underage drinking, being more upset than usual and having an understanding of sexual behaviour that is not proper for their age.<sup>251</sup>

#### *2.2.4 Online grooming*

Similarly to the phenomenon of grooming that happens offline, online grooming has a lot of analogies with it, however, it involves the use of the internet, including social media, in order to manipulate someone for the purpose of exploitation, by lowering their inhibitions and luring them into a false sense of security due to the initial indirect contact of the screen.

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<sup>247</sup> J. Mooney and S. Ost, “Group localised grooming: what is it and what challenges does it pose for society and law?”, p. 6.

<sup>248</sup> Ibidem.

<sup>249</sup> Ibidem.

<sup>250</sup> “Understanding Grooming”, Coalition for Children, <https://safechild.org/understanding-grooming/>

<sup>251</sup> National Society for the Prevention of Cruelty to Children, Grooming, NSPCC 2022, <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/grooming/>

Today, internet popularity has transformed the way children and young people meet peers, communicate, form friendships and establish relationships. Internet is present in the everyday life, and it is used assiduously by everyone in almost every context: at home, at school and many other places. Being online can be functional for completing homework and doing research, and it can also be used for playing online games or chatting with friends.<sup>252</sup> Nevertheless, the positive connotations that the internet era has provided have come with some risks: on one hand, communication between people that live on the world's opposites allows for the growth of a young person's social life, on the other hand, it introduces the risk of coming into contact with individuals whose aims are questionable and, in most cases, illegal.

As of today, the National Society for the Prevention of Cruelty to Children has noted more than an 80% rise in offences related to online child grooming over the last four years. A number of 6,156 sexual communication offences have been reported in the last year and of those where the gender was revealed were against girls. In 38% of cases, the applications used in order to groom young people were Facebook, Instagram and WhatsApp.<sup>253</sup>

Children are far more vulnerable than other individuals to groomers, since their social skills are not that developed to understand what not acceptable behaviours might be. Moreover, the coronavirus pandemic has caused "an unprecedented rise in screen time",<sup>254</sup> as said by the Global Partnership to End Violence Executive Director Dr. Howard Taylor, who noted how the lockdown measures adopted to slow down the pandemic had a remarkable impact on families, who find themselves compelled to rely on technology and other digital solutions in order to keep children occupied and stimulated, even if not all children have the capacity nor the skills to ensure their safeness online.<sup>255</sup>

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<sup>252</sup> Kamar E., Maimon D., Weisburd D. & Shabat D., "Parental guardianship and online sexual grooming of teenagers: A honeypot experiment", *Computers in Human Behavior*, p.4

<https://doi.org/10.1016/j.chb.2022.107386>

<sup>253</sup> M. Landi, "Warning of 'tsunami of online child abuse' as figures show grooming cases rise", July 6, 2022, Independent, <https://www.independent.co.uk/news/uk/politics/bill-government-freedom-of-information-snapchat-facebook-b2116622.html>

<sup>254</sup> UNICEF, "Children at increased risk of harm online during global COVID-19 pandemic", April 14, 2020, <https://www.unicef.org/press-releases/children-increased-risk-harm-online-during-global-covid-19-pandemic>

<sup>255</sup> Ibidem.



As it happens with offline grooming, young people with vulnerabilities like low self-esteem, poor confidence and the ingenuousness typical of children are more likely to be the target of perpetrators.<sup>256</sup>

In the UK, the lockdown has introduced a change in normal life routines, which meant for young people and children a lot of time spent isolated from friends and the outside world. This shift has translated into the adoption of new daily routines and behaviours and, for young people, more time than ever spent online using social media or other kinds of online resources.<sup>257</sup>

As a consequence, the increasing exposure to the online world led to increased potential harm, due to the unsupervised time children are dedicated to the internet, which can facilitate perpetrators in contacting vulnerable children, moreover, if parents or caregivers have little to no involvement in managing the child's use of the online resources or if they lack the abilities to efficiently moderate the usage.<sup>258</sup>

Staying at home and not having the possibility to go outside due to the pandemic restrictions has also resulted in longer exposure to harm and possible exploitation, however, in cases where young people did not observe COVID-19 preventive measures, the risk of criminal or sexual exploitation is higher. Children's vulnerabilities become thus more pleasing to certain types of abuses, while it is quite evident that other kinds of exploitation, such as county lines, have encountered a slight decrease during the pandemic period.<sup>259</sup>

Children's vulnerabilities can include a lot of different behaviours: they may involve "low self-esteem, susceptibility to persuasion, behaviour difficulties, emotional suffering and immaturity",<sup>260</sup> which are also typical characteristics of victims of sexual abuse that

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<sup>256</sup> Kim-Kwang Raymond Choo, "Online child grooming: a literature review on the misuse of social networking sites for grooming children for sexual offences", Australian Institute of Criminology, Canberra, 2009, <https://www.aic.gov.au/sites/default/files/2020-05/rpp103.pdf>

<sup>257</sup> Eleni Romanou and Emma Belton, "Isolated and struggling. Social isolation and the risk of child maltreatment, in lockdown and beyond". National Society for the Prevention of Cruelty to Children, NSPCC Evidence team, June 2020, p. 12, <https://learning.nspcc.org.uk/media/2246/isolated-and-struggling-social-isolation-risk-child-maltreatment-lockdown-and-beyond.pdf>

<sup>258</sup> Ibidem.

<sup>259</sup> Ibidem.

<sup>260</sup> Whittle, H., Hamilton-Giachritsis, C., Beech, A. and Collings, G, "A review of young people's vulnerabilities to online grooming. Aggression and violent behaviour", 2013, 18(1): pp. 135–146, <https://doi.org/10.1016/j.avb.2012.11.008>

happens in a context outside the internet. Other weaknesses that render young people prone to online grooming could be mental health issues such as depression, which has quite a strong relation to grooming due to the fact that young people affected by this illness spend a lot more time per day than their peers, dedicating more than two hours of screen time every day.<sup>261</sup>

For what concerns child sexual exploitation in the context of online grooming, the offender's scope is to create a strong bond with the targeted child, making him or her feel special and developing trust, which is a fundamental element in the grooming process.<sup>262</sup> When the feelings of trust have been ensured, the groomer might start to desensitize the child to sexual conduct, by making him or her familiarise with sexual elements, and trying to gradually engage the victim in sexual activity.<sup>263</sup> One method used by perpetrators when establishing a relationship with children is the sharing of personal and intimate details about their sex life, in order to make the child feel like a confidante and to make this kind of behaviour normal so that the victim feels safe doing the same or is desensitized to the topic and it is easier to engage in any kind of sexual activity. This result is reachable also by introducing pornography to the child, in order to lower the child's defences. Moreover, pornography is a means able to "sexualise rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them"<sup>264</sup> and as a consequence, these acts become accepted by the victim, who considers them normal rather than recognizing them as abusive behaviour.<sup>265</sup>

As already explained, children are more ingenuous and vulnerable than other people who might fall victim to exploitation. Therefore, they might not be able to recognize the threats of the online world or even the fact that they have been groomed. Perpetrators are always

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<sup>261</sup> Ibidem.

<sup>262</sup> Kim-Kwang Raymond Choo, "Online child grooming: a literature review on the misuse of social networking sites for grooming children for sexual offences", Australian Institute of Criminology, Canberra, 2009, p. 7, <https://www.aic.gov.au/sites/default/files/2020-05/rpp103.pdf>

<sup>263</sup> Ibidem.

<sup>264</sup> Palczewski CH 2001. Contesting pornography: terministic catharsis and definitional argument. *Argumentation and advocacy* 38(1): 1–17 in Kim-Kwang Raymond Choo, "Online child grooming: a literature review on the misuse of social networking sites for grooming children for sexual offences", Australian Institute of Criminology, Canberra, 2009, p. 8.

<sup>265</sup> Kim-Kwang Raymond Choo, "Online child grooming: a literature review on the misuse of social networking sites for grooming children for sexual offences", Australian Institute of Criminology, Canberra, 2009, p. 8.

alert and looking for people to exploit, and to achieve this goal they have various techniques, which the literature has gathered in five different stages.

The first stage is about the targeting of the victim: the groomer identifies the target child, by weighting his or her vulnerabilities, such as low self-esteem, isolation or emotional deprivation, which make the child more likely to be lured into the bait.<sup>266</sup>

In the second place, the offender gains the trust of the victim by bonding with the child, trying to gather the most possible information on his or her needs and how to meet them in order to consolidate the relationship: the aim of the groomer is to become a relevant figure for the victim, who will start to consider the new online acquaintance as a reference point in their life.<sup>267</sup>

The next stage is about filling the needs of the victims, by giving them gifts, attention and affection and successively using the bond created to isolate the child in order to reinforce the connection.<sup>268</sup> By the time the groomer has reached this stage, he or she has already assessed the potential risks that could hinder the grooming process, such as whether the victim's parents or caretakers were conscious of the relationship or if they were used to monitoring the child's online activity.<sup>269</sup> Once the groomer has ensured the absence of any concerns, the aim is to strengthen the bond created with secrecy and exclusivity.<sup>270</sup>

In the cases of child sexual exploitation, the last stage is related to the sexualisation of the relationship, when the groomer starts to introduce sexual elements and there is a mutual exchange of intimate photos<sup>271</sup> and requests made to the victim, who is used to the over-sexualised themes of the conversations and thinks it is normal relationship behaviour.

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<sup>266</sup> Trafficking in America Task Force, "Online Exploitation of Children. The epidemic of online exploitation and our children", 2022, <https://traffickinginamericataskforce.org/online-exploitation/>

<sup>267</sup> Pasca, P., Signore, F., Tralci, C., Del Gottardo, D., Longo, M., Preite, G., Ciavolino, E. (2022). Detecting online grooming at its earliest stages: development and validation of the Online Grooming Risk Scale. *Mediterranean Journal of Clinical Psychology*, 10(1). <https://doi.org/10.13129/2282-1619/mjcp-3248>

<sup>268</sup> Trafficking in America Task Force, "Online Exploitation of Children. The epidemic of online exploitation and our children", 2022.

<sup>269</sup> Pasca, P., Signore, F., Tralci, C., Del Gottardo, D., Longo, M., Preite, G., Ciavolino, E. (2022). Detecting online grooming at its earliest stages: development and validation of the Online Grooming Risk Scale. *Mediterranean Journal of Clinical Psychology*, 10(1).

<sup>270</sup> Ibidem.

<sup>271</sup> Ibidem.

On the other hand, online grooming in relation to child criminal exploitation may present some differences, for instance, how the county lines model has changed with the advent of social media platforms. Reports found that one in four young people are used to seeing advertisements of illicit drugs on sale on their social media: 63% find posts and ‘stories’ on cannabis, which is the most common drug advertised, followed by cocaine (seen by 26%), MDMA/Ecstasy (seen by 24%), Xanax, Nitrous Oxide and Codeine/Lean. Numbers show that 36% of people are not concerned about this kind of advertisement, but this percentage grows significantly with young people under the age of eighteen, where 48% showed no signs of concern about the online selling of drugs. These numbers also indicate a correlation between the chances of seeing advertisements for drugs on social media and the number of hours users spend on these platforms: finding drugs for sale on one’s dashboard is 29% for users who open social media applications every hour, in contrast with 14% for those who use these apps once a day.<sup>272</sup>

Dealers usually advertise their drugs through posts, videos and stories, showing what types they have available, and the price and quantity they are selling. Buyers are used to contacting the dealers by commenting on their posts or privately, thanks to private messages on either social media or chats like WhatsApp that have encrypted messaging functions. The design of social media platforms has supported dealers in expanding their businesses and targeting buyers. The search bar and the hashtags can provide a better identification of the demand of drug users, to which dealers will respond accordingly.<sup>273</sup>

The frequency of drug advertisements online has normalised its use and the familiarity of the setting, which an application used every day – or every hour – can offer, has rendered the sales much more persuasive to the customer. Young people in the UK are constantly pestered by these contents related to the sale of illicit drugs, which is a remarkable risk when one lacks quality education on the topic.

As a consequence of this relentless exposure to drug advertisements, young people may find attractive the lifestyle that dealers slyly render public by posting images of cash, expensive items and overall apparently unaffordable luxury. This method is very efficient in luring victims and recruiting young people, which find themselves groomed through

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<sup>272</sup> L. McCulloch & S. Furlong, “DM for Details. Selling Drugs in the Age of Social Media”, Volteface, September 2019, p. 4, <https://www.drugsandalcohol.ie/31036/1/DM-for-Details-1-5-2.pdf>

<sup>273</sup> Ibidem.

social media platforms without realizing it:<sup>274</sup> these applications have indeed changed the county lines model, which now no longer requires the movement of children from urban hubs to rural areas in order to deal drugs, while children who live in those rural areas can be groomed into selling illicit substances through the use of social media.<sup>275</sup>

Moreover, these online platforms offer more opportunities for criminal groups to groom young people from a plethora of locations and different backgrounds<sup>276</sup>: the National Crime Agency reports have shown how young people who fall victim to exploitation through the county lines model have been groomed both face-to-face and through social media, which offer to the perpetrators a better understanding of children's and young people's vulnerabilities and permit them to identify the most adequate targets.<sup>277</sup>

In addition, selling drugs through social media is also used to gain a certain social status, that, once acquired and made 'social', can be difficult to shake off. Therefore, it can be difficult for young people to leave behind this world once they have entered it: there are specific settings in the applications used to sell drugs that permit groomers to track their victims' locations, for example 'SnapMaps', which is a feature of Snapchat, that allows users to get access to the live location of other users. In particular, accessing locations is extremely useful to criminal groups who need to monitor young people they have groomed and exploited into the drug trade, keeping track of their movements and making sure they are still dealing on their account, even if they might be a lot of miles away.<sup>278</sup>

Hence, the advertisement of drugs on social media platforms has changed completely the perception that was accompanying the usage of drugs and the dealing of them, which was considered intimidating to most. Now, on the contrary, it is something that is not abnormal or difficult to access, but dealing drugs is becoming more and more accepted among friends of the online community. Some interviews with young people have reported that:

“On social media it feels like everyone is your friend so that may be why people do it over social media because you have more connections.

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<sup>274</sup> Ibidem.

<sup>275</sup> Ibidem.

<sup>276</sup> The Children's Society, Child Exploitation Online, <https://www.lincolnshire.gov.uk/downloads/file/3656/tcs-online-exploitation-briefing>

<sup>277</sup> L. McCulloch & S. Furlong, “DM for Details. Selling Drugs in the Age of Social Media”, *Volteface*, September 2019, p. 71.

<sup>278</sup> Ibidem.

So it feels safer because they're your friends?

Yes, definitely because the whole picture of a drug dealer has changed."<sup>279</sup>

Relationships between the dealer and the buyer have evolved thanks to the media, and they have developed even before the actual transactions. Dealers can cunningly make appear a side of themselves on their socials, which can pass as authentic to those young people who will perceive their figure as safer than a dealer standing in the corner of a street.

Another interviewer reported that:

"It's almost like there is a connection, they would never sell me off to the police or something because we're friends. It's almost like you build a bond and a relationship with your dealer so you wouldn't necessarily want to expose them or anything like that because you don't see them as a dealer, as a bad person. You see them more as a friend or they're just trying to make extra money on the side."<sup>280</sup>

The normalisation of this phenomenon has put young people at risk of exploitation, in particular, when they choose to start dealing drugs because of poor economic opportunities or because of their background. In addition, once a young person has been exploited, it becomes difficult to report the dealers to the police, as there is the perception that buyers are also complicit in activities that could be traced and they might be more vulnerable to criminalization and fear of not being treated as victims of criminal exploitation.

A testimony of a young boy trafficked for the purpose of criminal exploitation defines states that "kids are sold dreams, that's what County Lines is".<sup>281</sup> In particular thanks to the lockdown which allowed a remarkable increase in the time spent online, recruitment became a lot easier: groomers use X-box, Instagram, music videos, and Snapchat to lure young people and they use PayPal to carry out payments. The testimony reported in the Mirror continues with the story of this young boy who was seventeen years old when made his first County Lines trip. He recalled how he was installed in a flat with other kids

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<sup>279</sup> Ibidem.

<sup>280</sup> Ibidem.

<sup>281</sup> R. W. Jones, "Drugs gang groomed me and I left at 22 with no job, no identity and severe depression", *Mirror*, August 5, 2021, <https://www.mirror.co.uk/news/uk-news/drugs-gang-groomed-left-22-24697483>

with burner phones, drugs and weapons: their job was that of dealing “Class A” drugs, meaning cocaine, crack and heroine. At that time, he reported of being completely desensitised to violence. He described the job as:

“Usually, it is five to 10 days. You are working 6 am to 6 am, 24 hours, it’s very minimal sleep, on a floor or a settee. You go down to make the sale, and the money comes back up to the flat. Everyone is given a phone without internet so the police or gangs can’t track you. You don’t know where you are, you are lost really. It’s stressful. Maybe there is already a gang in that county. Maybe there are undercover police. The flats we would use would belong to someone’s girlfriend or an addict. Or we would be ‘cuckooing’ with someone who was vulnerable. I wanted to leave but it’s not that simple.”<sup>282</sup>

### *2.2.5 Gangs and children missing*

There are different understandings of what can constitute a gang, however, the Government provided a definition based on the Centre for Social Justice’s report:

“A relatively durable, predominantly street-based group of young people who (1) see themselves (and are seen by others) as a discernible group, (2) engage in a range of criminal activity and violence, (3) identify with or lay claim over territory, (4) have some form of identifying structural feature, and (5) are in conflict with other, similar, gangs.”<sup>283</sup>

Moreover, the Serious Crime Act 2015 updates the existing definition contained in Section 34 of the 2009 Act which defined gang-related violence as:

“Violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a group that:

- (a) consists of at least 3 people;
- (b) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group; and
- (c) is associated with a particular area”<sup>284</sup>

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<sup>282</sup> Ibidem.

<sup>283</sup> “Dying to Belong. An In-depth Review of Street Gangs in Britain”, A Policy Report by the Gangs Working Group, February 2009, The Centre for Social Justice, p.21,

<https://www.centreforsocialjustice.org.uk/wp-content/uploads/2009/02/DyingtoBelongFullReport.pdf>

<sup>284</sup> Serious Crime Act 2015, Organised, Serious and Gang-Related Crime, part 3, Chapter 9, Explanatory Notes, at Section 51,

<https://www.legislation.gov.uk/ukpga/2015/9/notes/division/3/3/2/7/data.xht?view=snippet&wrap=true>

The Explanatory Notes of the Serious Crime Act 2015 integrate this definition by stating that gangs do not always have a name, an emblem or other characteristics to which they are related, however, there could be a group of individuals that operate together and engage in criminal activities, in particular drug dealing offences, without recognizing themselves with common features. Besides, gangs involved in the drug trade market can operate in various areas that are not necessarily associated with a specific gang.<sup>285</sup>

Although defining gangs might be complicated, they can be distinguished into three different groups. Peer Groups are the least worrisome, due to the fact that it is quite normal for children and young people to gather and socialise together in public spaces, and it is rare that this kind of behaviour leads to something more serious than “low level youth offending”<sup>286</sup>. On the other hand, street gangs have a higher level of violence. They engage in criminal activities, claim over territories – not to be intended as purely geographical – and usually have some kind of identification. Street gangs have conflicts with other similar gangs. Ultimately, organised crime groups differ from the other two, despite having some common features with street gangs: the latter can indeed be dealing drugs on the account of an organised crime group, which has a major level of both criminality and organisation.<sup>287</sup>

Research suggested that young people may choose to be involved in gangs for different reasons. First, they could be searching for protection from other rival gang members, they could join behind the suggestion of friends, therefore pushed by peer pressure, or they could also decide to protect the territory they perceive as their own, hence the effective participation in a gang could provide them with a feeling of belonging and with a certain social status and respect among their peers.<sup>288</sup>

Therefore, child criminal exploitation can look like a combination of pull and push factors: the former consist of all those activities that make the young person act in illicit ways in order to gain either accommodation, food, status or protection. They could decide to join a gang in order to receive money or drugs and often it is through drugs that the

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<sup>285</sup> Ibidem.

<sup>286</sup> “Gang Activity, Youth Violence and Criminal Exploitation Affecting Children (CCE)”, Doncaster Safeguarding Children Partnership Online Procedures, Trix, [https://doncasterscb.proceduresonline.com/p\\_ch\\_affected\\_gang\\_act.html#3.-understanding-why-young-people-join-gangs-or-are-at-risk-of-criminal-exploitation](https://doncasterscb.proceduresonline.com/p_ch_affected_gang_act.html#3.-understanding-why-young-people-join-gangs-or-are-at-risk-of-criminal-exploitation)

<sup>287</sup> Ibidem.

<sup>288</sup> Ibidem.



groomer manages to hook the child. The latter can be a result of a situation from which young people want to distance themselves, such as environments that do not meet their needs and where there is high family conflict or the absence of attachment figures.

However, another factor that could pull young people and children into gangs is the control that gang members practice on them: the majority of children who enter criminal exploitation are doing so unwillingly despite it appears the contrary. They are brainwashed by their fellow gang members and they do not recognize of being victims of their coercive methods or their own desperation. This behaviour often results in them taking full accountability for their offences, such as possessing and dealing of drugs, which makes it even more complicated for police authorities to understand their status as victims of criminal exploitation.<sup>289</sup>

Moreover, peer grooming is not unusual among young people, who find themselves groomed by their peers in schools or through social media platforms.<sup>290</sup> For instance, music video production can be manipulated by criminal groups in order to criminally exploit children. This is possible thanks to specific music genres such as trap or drill music, which tend to promote drug culture. The result is the association of a certain ‘glamorous’ lifestyle with the dealing of drugs, which become appealing to young people, as the interviews provided by the Children’s Society reported:

“I think it is the drill music. That's been used quite a lot to portray quite a glamorous lifestyle, lots of money, popular. They've got...a good presence on social media. In terms of the county lines”.<sup>291</sup>

“There's a big problem there in that disconnect because drill music is not even a word really associated with drugs, it's just a platform or a genre used to glamorise it of some sort but nobody knows what it is. So then to talk about the slang used in that drill music i.e. OT which means out of town, if a child tells you they're doing country that means they're not in another country but they're across, they're out of their city doing unsolicited drugs. This is all there in popular culture; most songs now have these themes going through them that while most songs are of a certain genre so we'll go with the drill and the grime.”<sup>292</sup>

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<sup>289</sup> Ibidem.

<sup>290</sup> Ibidem.

<sup>291</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 43.

<sup>292</sup> Ibidem.

Luring young people and children into gang involvement is not something limited to a certain kind of music. Young people can be attracted by the lifestyle of their peers who are part of organised groups and they could decide to act accordingly. As one young boy reported:

“The older boys had everything. Everything. I mean the top of the range phone, top of the range clothes, top of the range haircut. Everything would be the best and everybody wants it. They would be walking around the estate with their trainers, and you would think, how did he get that? He’s not older than me. I go to my mum “Can you get me some trainers?” She goes “Alright then son, how much are they?” “£130” she’s like “I can buy you three pairs of shoes and an outfit for less than that.” I thought rare, if I’m not gonna get it from my mum who am I gonna get it from? I have to get it for myself, so from when I was 13, 14, I been my own man.”<sup>293</sup>

Gang members are usually males, but reports have shown that female membership was more present at an early age, from ten to fifteen years old, while males were the predominant gender from fifteen years old going forwards. Girls in gangs can play four different roles: the one of a ‘foot soldier’, in order to set up rival organised criminal groups, the one of a ‘carrier’ to hold and hide weapons or drugs, the ‘mother figure’ and the ‘girlfriend’, which is almost exclusively a sexual role. Girls are often exploited and raped by gang members, because their role makes them perceived as sexual accessories.<sup>294</sup> In a Guardian article, a girl described the different roles that female members could play in mixed gangs:

“There are the girlie-girls who dress very provocatively, wear lots of bling and makeup and are expected to sleep with any and every gang member, although their ambition is to be chosen by the leaders of the pack. This way they are protected from gang rape, and they get free weed and trainers. But once the gang is bored of them sexually, they are labelled whores and kicked out. Most end up addicted to crack, selling sex on the streets.”<sup>295</sup>

Gangs are associated with violence and even though young girls are usually not part of that, they are not in safer positions than their male counterparts because of sexual exploitation which they can experience, sometimes even without recognizing it. They

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<sup>293</sup> R. Sturrock & L. Holmes, “Running the Risks: The links between gang involvement and young people going missing”, Catch 22, in partnership with Missing People, p.33.

<sup>294</sup> “Dying to Belong. An In-depth Review of Street Gangs in Britain”, A Policy Report by the Gangs Working Group, February 2009, The Centre for Social Justice, p. 74.

<sup>295</sup> A. Neustatter, “Blood Sisters”, *The Guardian*, July 4, 2008, <https://www.theguardian.com/lifeandstyle/2008/jul/04/women.ukcrime>

often do not identify the abuse they are subjected to due to the fact that they idolise their partner, who is the person able to provide them with protection, financial security, and social status, all things they did not know before being a part of the gang, moreover, this relationship can also nudge them towards criminal compliance.<sup>296</sup>

Research made evident that girls are not the majority of subjects when it comes to child criminal exploitation. Therefore, there is an apparent disparity between young people being exploited with the county lines model and those who fall victim to other types of exploitation. However, this distinction is not to be intended as hermetically defined: in the interviews of the Children's Society practitioners the evidence shows how most of the time criminal and sexual exploitation are two sides of the same coin. The percentage of boys and girls involved in county lines activities is around 80-20 for the boys, and even if one might think that girls predominantly suffer from sexual exploitation, the main reason they find themselves involved in gangs is criminal exploitation: gangs might indeed use their female members for the recruitment of others. Moreover, there is a difference in the response that authorities have when approaching young people involved in criminal exploitation: it is easier to assume that girls might be victims of sexual exploitation and not be related to criminal activities, whereas for boys this is not the automatic reaction.<sup>297</sup>

For this reason, it is necessary to be cautious when labelling young people as associates of gangs or criminal groups, as the risk of slipping into the insinuation that this lifestyle was chosen and not just a result of exploitation is easy. Sometimes, the difference cannot be discerned even by the victims themselves, as they may believe in being conscious of their choices, while the truth is that their actions are the results of a grooming process that made them enter a gang.<sup>298</sup> Studies have suggested that young girls who enter gangs have been subjected to neglect and abuse, and the introduction to the gang is perceived as “a process of seduction rather than coercion”,<sup>299</sup> where a girl might follow the steps of an

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<sup>296</sup> Glover Williams A, Finlay F., “County lines: how gang crime is affecting our young people”, *Arch Dis Child*, October 12, 2018, p.1, DOI:10.1136/archdischild-2018-315909

<sup>297</sup> The Children's Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 31.

<sup>298</sup> Glover Williams A, Finlay F., “County lines: how gang crime is affecting our young people”, *Arch Dis Child*, October 12, 2018, p.1, DOI:10.1136/archdischild-2018-315909

<sup>299</sup> J. Pitts, Edited by M. Melrose & J. Pearce, “Critical Perspectives on Child Sexual Exploitation and Related Trafficking”, Palgrave MacMillan, 2013, p. 29.

older sister or brother, or start a relationship with a gang member. Being part of a gang becomes the “rational choice”<sup>300</sup> between the limited options available, however, young girls hardly become full members: their roles are usually limited to that of girlfriends or, when they do take part in criminal activities, like dealing and transporting drugs, they are used thanks to the fact that they are less likely to be detected by police.<sup>301</sup>

County lines gangs tend to use local Caucasian children, as they are cheaper to employ and it is easier to control them, in addition, it is more likely they will pass undetected by police authorities. There are specific terms to identify members of gangs: ‘clean skins’ are young people without criminal records, who are usually recruited through social media platforms or targeting vulnerable kids. These children are groomed into becoming gang members and exploited in different ways. They will not involve police authorities to eventually denounce their situation in order to avoid being criminalized and due to the fear of retaliation by their fellow gang members and perpetrators. Moreover, young people may be set up in robberies or other criminal activities, which will fuel their belief of being in debt with their groomers and as a consequence, they will need to remain in the gang in order to repay that debt.<sup>302</sup> Other terms used by gang members to refer to their fellows are ‘teenies’, which indicates young boys below the age of ten years old who are exploited to transport goods, and ‘runners’, used in relation to young boys between the age of twelve and fifteen whose aim is to deal and move drugs.<sup>303</sup>

The discourse about gangs cannot be separated from the topic of missing children, despite the link between the two is still not entirely explored by the literature. The UK Missing Persons Unit report 137,841 missing child incidents in the years 2020 and 2021.<sup>304</sup> The Association of Chief Police Officers/College of Policing defines as missing “anyone whose whereabouts cannot be established and where the circumstances are out of character or the context suggests the person may be the subject of crime or at risk of harm

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<sup>300</sup> Ibidem.

<sup>301</sup> Ibidem.

<sup>302</sup> Glover Williams A, Finlay F., “County lines: how gang crime is affecting our young people”, *Arch Dis Child*, October 12, 2018, p.2, DOI:10.1136/archdischild-2018-315909

<sup>303</sup> Ibidem.

<sup>304</sup> National Crime Agency, UK Missing Persons Unit, “Missing Persons Data Report 2020/21. Reporting period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021”, August 1, 2022, p. 8.

to themselves or another”<sup>305</sup> and as absent “a person not at a place where they are expected or required to be”.<sup>306</sup>

Despite reports providing a wide understanding of the reasons behind the phenomenon of missing children, generally, the topic of gang involvement is still not comprehended in the discourse. However, it is possible to notice some similarities in the demographics of the groups of young people who go missing and those who are introduced to gangs.

One of the first elements that combine gang involvement and missing children is the peak ages of running away, which is certified at fifteen years old, about the same age of young people who become gang members. Another factor that shows a link between the two phenomena concerns the difficult family environment that children can experience and which can lead to both of the results that are being taken into consideration. Moreover, children in care are estimated to be three times more likely to go missing and the same numbers apply to those children who live through family changes. Overall, young people who are used to conflictual environments in their home and who experience poor relationships with their kin fall into the categories of people with a high chance of either going missing or becoming involved in gangs. As a matter of fact, research demonstrated that parental supervision was essential in preventing gang involvement and that parents who are aware of their children’s relationships and who know their peers are less likely to have children join and remain in criminal gangs.<sup>307</sup>

One of the pull factors toward gang involvement consists of the trigger that the actual engagement with gang activities could represent for young people. Indeed, for children who are already detached from parents or carers or those who have already experienced living on the streets, it is usually easier to leave home and run away and, in most cases, being part of a gang facilitated the process, due to the emotional support that fellow gang members could provide children, along with a physical place to stay and protection from other rival gangs or from living on the streets.<sup>308</sup>

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<sup>305</sup> Association of Chief Police Officers and College of Policing, *Interim Guidance on the Management, Recording and Investigation of Missing Persons*, London: College of Policing, 2013.

<sup>306</sup> *Ibidem*.

<sup>307</sup> R. Sturrock & L. Holmes, “Running the Risks: The links between gang involvement and young people going missing”, *Catch 22*, in partnership with Missing People, p.13.

<sup>308</sup> *Ibidem*.

There is also another element that is added to the equation between gangs and missing children, which is child sexual exploitation. Young girls that are involved in gangs are particularly prone to this risk: research from the Office of the Children’s Commissioner showed that going missing was one of the key indicators for child sexual exploitation in gangs.<sup>309</sup>

The risks that children who go missing and those who consequently become gang members are not to be undervalued. It is estimated that one in nine young people has experienced harm while on the run, and in addition, children usually are compelled to survival strategies while in these situations: 12% of young people missing had stolen things in order to survive and 9% had resort to begging. When it comes to the involvement of gangs, the new relationship as a gang member makes the child more prone to offences, antisocial behaviour and drug abuse. The engagement in this kind of environment can have a serious impact on the child’s life and disrupt his or her education, making extremely difficult the transition toward adulthood.<sup>310</sup>

Data have demonstrated that all those factors concerning criminal activities and financial gain, such as the drug trade, were a remarkable pull factor for young people missing from home and those involved in gangs. County lines are a phenomenon that perfectly corresponds to these activities: individuals who are being groomed into the drug dealing market and recruited in order to travel from urban areas to counties can be missing from home for either short or long periods of time. The Missing People report shows the words of some children who went missing:

“My mum still doesn’t know about it to this day! I’d still be a dead man if I told her now. It was in the summer holidays, I was about 15, everyone was out, there was loads of illegal raves going on ... but you can’t go to those raves unless you’ve got money ... So one of the older boys said we’ll go to [City X] and we’ll stay there for a week and a half and I’ll pay you £2000, so I’m like that’s good money, so I went there.”<sup>311</sup>

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<sup>309</sup> Ibidem.

<sup>310</sup> Ibidem.

<sup>311</sup> R. Sturrock & L. Holmes, “Running the Risks: The links between gang involvement and young people going missing”, Catch 22, in partnership with Missing People, p.27.

This young man went missing during a summer holiday, without anyone knowing. The journey and his staying away were organised by older gang members who provided him with a flat and the routes to take in order to sell drugs.

As already stated, children are often trafficked without realizing it: they do not possess the maturity to discern a good idea from a bad one, and they could consider activities like dealing drugs a good opportunity to make money. On the other hand, organised criminal groups are well aware of the opportunity they have when exploiting children, as the cost is next to nothing, while the gain, on the contrary, is maximum.

Having said that, the relationship between gang involvement and children missing is not exclusively unidirectional. This means that gangs could be either a pull factor, involving children who go missing and recruiting them, or a push factor. The explanation for the latter is provided by the fear of debt and repercussions, which young people may face and for which they decide to go missing in order to escape the gang's threats. Missing People surveys have highlighted that 10% of children missing mentioned fear as a push factor which led them to flee.

Another element that falls into the category of push factors is debt. The fear of the consequences of not repaying debt push young people to suddenly escape in order to avoid repercussions. This can happen if someone has been coerced into drug dealing against their will or if they do not want to engage anymore in those kinds of activities. Indeed, debt is also used to secure children in that environment in order to exploit them. A testimony from the Missing People survey reported:

“There was one girl we were working with, she'd been asked to carry some cannabis from A to B, not an overall incredible amount. But then she was robbed en route ... it turned out the same guys that gave her the drugs to carry, their friends were the ones that carried out the robbery ... they wanted to get this girl sexually, so by doing this, they had another coercion tactic over her.”<sup>312</sup>

As a consequence, fear of retaliation can push young people into going missing in order to escape paying off the debt or just to be undetected by their fellow gang members.<sup>313</sup>

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<sup>312</sup> Ibidem.

<sup>313</sup> Ibidem.

Research has indicated that going missing is something that affects both sexes, nonetheless, there are some differences that can be highlighted when referring to the relation that exists between gang involvement and missing from home. On one hand, fear of debt and retaliation can be experienced by both genders, as the phenomenon of going county dealing drugs. On the other hand, missing episodes related to relationships between gang members and sexual exploitation tend to refer to girls.

As a matter of fact, young girls can be subjected to the effects of gang involvement, despite not being formally part of a gang, thanks to their relationships with people that are part of organised criminal groups. These cases often present an overlap with criminal sexual exploitation, which can affect girls who are ‘socialising’ with people belonging to gangs.<sup>314</sup>

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<sup>314</sup> Ibidem.



## Chapter III – UK RESPONSE TO VICTIMS OF TRAFFICKING IN CRIMINAL PROCEEDINGS

### 3.1 Challenges to the identification of trafficked children

Child trafficking is a complex phenomenon that requires a multifaceted approach by various stakeholders. British newspaper headlines continue to report cases of children that have been trafficked and criminally or sexually exploited: for instance, in 2019, the Children’s Commissioner for England assessed that about 27.000 children were experiencing a high risk of gang exploitation.<sup>315</sup>

Albeit today there is more understanding of the phenomenon of child trafficking and exploitation, children and young people are still misidentified and sometimes treated as criminals and perpetrators rather than victims of abuse. Moreover, the failed identification of a child victim of exploitation benefits the offenders: taking into consideration criminal organised groups and gangs, these people will continue to target children and groom them without risks, as they feel secure in the fact that children will not be identified as victims, as they will lack the support that should be guaranteed and provided by the authorities in order to disclose the exploitation.<sup>316</sup>

As the previous chapter demonstrated, children are targeted due to the fact that they are far more vulnerable than others to trafficking and exploitation. However, the safeguarding response is not always adequate: reports show that local authorities and police do not have the suitable tools in order to assess the vulnerabilities of victims and the signs of child exploitation. Therefore, local responses lack the ability to intervene properly, as the police fail to identify county lines and children exploitation flags, which leads to important barriers to the management of risk and to the highly required victim-focused approach.<sup>317</sup>

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<sup>315</sup> E. James, “Exploited and Criminalised. What can the Police, Crime Sentencing and Courts Bill do to ensure that children who are criminally exploited receive the care and support they need?”, Barnardo’s, October 2021, p.4, <https://www.barnardos.org.uk/sites/default/files/2021-10/Exploited%20and%20Criminalised%20report.pdf>

<sup>316</sup> Ibidem.

<sup>317</sup> J. Caluori, M. Corlett & J. Stott, “County Lines and Looked After Children”, Crest Advisory, November 2020, p. 7, [https://b9cf6cd4-6aad-4419-a368-724e7d1352b9.usrfiles.com/ugd/b9cf6c\\_83c53411e21d4d40a79a6e0966ad7ea5.pdf](https://b9cf6cd4-6aad-4419-a368-724e7d1352b9.usrfiles.com/ugd/b9cf6c_83c53411e21d4d40a79a6e0966ad7ea5.pdf)

Sometimes, the police fail to recognize child criminal exploitation and move to prosecute children despite the fact that they have been already referred to the National Referral Mechanism, which is considered “useless” for children victims of criminal exploitation.<sup>318</sup> Albeit the National Referral Mechanism does not guarantee the child protection from being prosecuted, the young person can appeal to Section 45 of the Modern Slavery Act:

“A person is not guilty of an offence if -

[...]

(c) the compulsion is attributable to slavery or to relevant exploitation, and

(d) a reasonable person in the same situation as the person and having the person’s relevant characteristics would have no realistic alternative to doing that act.”<sup>319</sup>

However, there are many cases in which this section was not considered: the Crest report interviewed some police officers, who explained how prosecuting children is associated with the overlapping between victims and offenders. Indeed, when considering young people’s backgrounds, they usually have been involved in organised criminal groups or gangs for many years: the element of time is crucial when considering whether they should be acknowledged as victims or perpetrators. If they have been criminally exploited a lot of time before the moment they are being prosecuted, they could not be considered victims of exploitation as they have now settled in their criminal groups.<sup>320</sup>

For this reason, it is fundamental that services intervene as soon as possible in a young person’s life when he or she is at a high risk of exploitation. When these interventions fail, a child may no longer be acknowledged as the victim and therefore, it is crucial that these kinds of situations are effectively recognized by the statutory service, such as social care, education and health, in order to prevent exploitation at its origin, before it evolves into a matter that the police need to take care of and, as a consequence, before the justice system sees children as offenders, once they become entrenched.<sup>321</sup>

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<sup>318</sup> Ibidem.

<sup>319</sup> Modern Slavery Act, Part 5, Protection of victims, ss 45 (c, d), <https://www.legislation.gov.uk/ukpga/2015/30/part/5/enacted>

<sup>320</sup> J. Caluori, M. Corlett & J. Stott, “County Lines and Looked After Children”, Crest Advisory, November 2020, p. 59.

<sup>321</sup> Ibidem.

In consequence, intervening at the right time is crucial. Children and young people often come to the attention of police authorities because of a crime committed, however, there is still little understanding and a general lack of awareness about the criminal exploitation that these children have been subjected to. Moreover, professionals have reported that young people come into contact with statutory agencies once the exploitation is already a part of their lives: in these cases, it is normal for law enforcement to have precedence over the safeguarding response.<sup>322</sup>

The workers of Barnardo's charity have interviewed practitioners on this issue, who confirmed that the criminalisation of the young person is the first and occurring response that a child experiments despite being a victim of exploitation. The signs that could indicate that young people are suffering from abuse or that they have been trafficked for the purpose of exploitation are often overlooked, and the only notable element in these cases is the offending behaviour of the young individual.<sup>323</sup>

The National Programme Manager for Child Sexual Exploitation at Barnardo's Scotland, Daljeet Dagon, explains the issue with child criminal exploitation:

“Whilst our knowledge and awareness about how we can pro-actively intervene in the recruitment, grooming and widespread violence and criminal exploitation that our children and young people face is limited, they often get missed or assessed out of the system at early stages – only later identified after numerous exploitative incidences resulting in trauma responses and physical injury. Often when they are identified they are treated through a youth justice lens problem with agencies finding it difficult to hold a child protection perspective for a child who may be “viewed” as harming others or committing crimes.”<sup>324</sup>

Child criminal exploitation is a cross-country phenomenon in the UK, thus it is necessary for agencies to share information in order to tackle this issue. For instance, as county lines are managed by criminal groups who use public transport in order to cross borders for the purpose of exploitation, the British Transport Police could have a fundamental role when

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<sup>322</sup> The Children's Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 6, [www.childrenssociety.org.uk/information/professionals/resources/counting-lives](http://www.childrenssociety.org.uk/information/professionals/resources/counting-lives)

<sup>323</sup> E. James, “Exploited and Criminalised. What can the Police, Crime Sentencing and Courts Bill do to ensure that children who are criminally exploited receive the care and support they need?”, Barnardo's, October 2021, p. 8.

<sup>324</sup> Barnardo's Scotland Blog, “Criminal exploitation of Children is never the fault of the child”, April 23, 2021, <https://www.barnardos.org.uk/blog/barnardos-scotland-criminal-exploitation-children-never-fault-child>

it comes to the identification of child criminal exploitation and the prevention of this phenomenon.<sup>325</sup>

### 3.2 The National Referral Mechanism

The Organization for Security and Co-operation in Europe (OSCE) defines a National Referral Mechanism as:

“a co-operative, national framework through which governments fulfil their obligations to protect and promote the human rights of victims of trafficking, coordinating their efforts in a strategic partnership with civil society organizations, survivor leaders and the private sector”<sup>326</sup>

The National Referral Mechanism is a framework established for the identification of victims of human trafficking and for ensuring they receive adequate support.<sup>327</sup>

It was created in 2009, after the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, through which the UK needs to comply with minimum standards for what concerns the protection of trafficking victims.

National Referral Mechanisms have become operational in most of the OSCE States and beyond the OSCE region, contributing to a net of anti-trafficking mechanisms whose scope is to ensure protection and support to survivors of trafficking. Nevertheless, because of how they have spread, they also have remarkable differences and they lack uniformity in how they interpret and implement national laws and procedures. Therefore, there are gaps such as delays or failure in the identification of victims, which leads to poor support for victims.<sup>328</sup>

The National Referral Mechanism includes various agencies and it has different stages.

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<sup>325</sup> E. James, “Exploited and Criminalised. What can the Police, Crime Sentencing and Courts Bill do to ensure that children who are criminally exploited receive the care and support they need?”, Barnardo’s, October 2021, p. 9.

<sup>326</sup> OSCE, “National referral mechanisms. Joining efforts to protect the rights of trafficked persons. A practical handbook – second edition”, OSCE & ODIHR, 2022, p.19, [https://www.osce.org/files/f/documents/f/5/510551\\_0.pdf](https://www.osce.org/files/f/documents/f/5/510551_0.pdf)

<sup>327</sup> E. James, “Exploited and Criminalised. What can the Police, Crime Sentencing and Courts Bill do to ensure that children who are criminally exploited receive the care and support they need?”, Barnardo’s, October 2021, p. 9.

<sup>328</sup> OSCE, “National referral mechanisms. Joining efforts to protect the rights of trafficked persons. A practical handbook – second edition”, OSCE & ODIHR, 2022, p.19.

The staff designated as the first responder in critical situations is responsible for the compilation of the referral form, which will later be considered by the competent authority within the Home Office. If there is a situation where there is a possible risk of modern slavery, then the first respondent has to refer the case to the National Referral Mechanism, even if there is no certainty that the person involved is an actual victim of trafficking.<sup>329</sup> When the presumed victim is an individual under eighteen years old, it is not necessary to ask for consent to be referred into the National Referral Mechanism process. The first responder organisations responsible for referring the potential victims are police authorities, certain parts of the Home Office such as UK Visas and Immigration, Border Force, the National Crime Agency, and other non-statutory organisations like Barnardo's, Unseen and the National Society for the Prevention of Cruelty to Children. The role of the first respondent is to identify potential victims and the flags of modern slavery, in order to collect useful data on what has happened to them. Hence, they need to carry out the referral and contact the competent authority to assist with the Reasonable and Conclusive Grounds decisions.<sup>330</sup> These authorities are trained specialist who have the task to establish whether an individual is indeed a victim of trafficking. They are based in the UK Human Trafficking Centre, which is a part of the Serious Organised Crime Agency and the UK Border Agency.<sup>331</sup>

Therefore, the “reasonable grounds” is a decision made by a “competent authority”, such as the UK Human Trafficking Centre, UK Visas and Immigration and Immigration Enforcement, within five working days. The competent authority has the power to decide whether or not there are reasonable grounds to believe that a person who is being referred to the National Referral Mechanism is actually a victim of trafficking, and they take this decision on the basis of the “suspect but cannot prove” test.<sup>332</sup>

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<sup>329</sup> Home Office, “National referral mechanism guidance: adult (England and Wales)”, May 19, 2022, Crown, <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

<sup>330</sup> Ibidem.

<sup>331</sup> Home Office Government, “Human Trafficking: the Government’s Strategy”, Crown, 2011, p. 10, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97845/human-trafficking-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf)

<sup>332</sup> Home Office, “Review of the National Referral Mechanism for victims of human trafficking”, November 2014, p. 14, [https://www.antislaverycommissioner.co.uk/media/1062/review\\_of\\_the\\_national\\_referral\\_mechanism\\_for\\_victims\\_of\\_human\\_trafficking.pdf](https://www.antislaverycommissioner.co.uk/media/1062/review_of_the_national_referral_mechanism_for_victims_of_human_trafficking.pdf)

On the other hand, the “conclusive grounds” refers to a decision taken once there has been a balance of probabilities that indicated that there is an adequate amount of information in order to decide whether the individual is a trafficking victim. It is the task of the competent authority to take a conclusive grounds decision.<sup>333</sup> When the outcome of the decision is positive, victims of trafficking are able to benefit from additional forty five days of support, however, it is estimated that the National Referral Mechanism has a low rate of success for victims despite the increasing number of referrals per year. Moreover, it is not unlikely that victims experience delays in the process and in the assistance that has been guaranteed them. On the contrary, if the decision is negative because there are not enough information collected in order to demonstrate that the person is a victim, then the individual is more likely to be re-trafficked into an exploitative situation.<sup>334</sup>

For this reason, first respondents need to include adequate information when completing the referral of a potential victim, in order to “enable a decision on whether the subject has ‘reasonable grounds’ for being treated as a victim of trafficking.”<sup>335</sup> The ‘reasonable grounds’ decision also considers the haziness of certain situations, when there is a suspect of trafficking, however, there are scarce possibilities to prove it.<sup>336</sup> Usually, the presumed victim’s behaviour, the circumstances and the responses to questions are the indicators that first respondents need to look at when assessing the role of the victim. Consequently, after the reasonable ground decision, a conclusive decision is reached in order to confirm or deny the status of trafficking victim to the individual referred to the National Referral Mechanism.

Having said that, it is important to notice that there is no possibility to put a stop to a criminal proceeding against children who are facing drug related offences, unless the process for a referral to the National Referral Mechanism has started and a decision has been made. However, the decision that the National Referral Mechanism provides has not an official status in a criminal court: a positive and definitive grounds decision has not

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<sup>333</sup> Ibidem.

<sup>334</sup> S. Ahmad, “The National Referral Mecanism: The UK State’s Inadequate Support For Modern Slavery Vicitms”, *Human Rights Pulse*, November 16, 2021, <https://www.humanrightspulse.com/mastercontentblog/the-national-referral-mechanism-the-uk-states-inadequate-support-for-modern-slavery-victims>

<sup>335</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 25.

<sup>336</sup> Ibidem.

the power to bring the case to a halt. One example is the case of *R v Brecani*, in which the Court of Appeal stated that the evidence of a positive ground decision could not be presented before the jury as evidence due to the fact that:

“It was an opinion based on matters of fact the jury could assess in the normal way. [...] Therefore, if Brecani wished to rely on s.45 (of the Modern Slavery Act) he should have advanced admissible evidence and the prosecution would have had the opportunity to challenge that evidence, the burden being on them to disprove it beyond reasonable doubt.”<sup>337</sup>

This means that the referral process, once reached a decision, will exclusively advise whether a victim has been trafficked or not, and that children and young people may experience criminal proceedings for their offences and, at the same time, go through processes in order to identify them as victims of trafficking, which can also result in being condemned for their offences and only later being recognised as a trafficking victim, once the National Referral Mechanism process is concluded.<sup>338</sup>

Identification of the victim is crucial for a series of reasons: firstly, being referred and then successfully identified as a victim of trafficking is the first step for the individual to be removed from the exploitative environment. If, however, the situation causing harm persists, the non-identification or misidentification of the potential victim hinders the individual from being able to access help and the support necessary to recover from the abuse.<sup>339</sup>

When a person is recognized as a victim of trafficking, due to the fact that agencies have found that there are reasonable grounds to believe it, then the individual can obtain the needed assistance, which includes a period of at least forty five days of recovery, during which there cannot be taken action to eventually repatriate or remove the victim.<sup>340</sup>

However, the referral mechanism presents some issues. Taking into consideration Section 52 of the Modern Slavery Act 2015, where it is stated that:

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<sup>337</sup> St Phillips Barristers, “Modern Slavery and NRM decisions”, January 11, 2022, <https://st-philips.com/modern-slavery-and-nrm-decisions/>

<sup>338</sup> The Children’s Society, “Counting lives. Responding to children who have been criminally exploited”, July 2019, p. 25.

<sup>339</sup> M. Davis, “The Legal Obligations of the United Kingdom to Identify Victims of Human Trafficking”, *Wolverhampton Law Journal*, p. 19, available at: <https://ssrn.com/abstract=3402086>

<sup>340</sup> *Ibidem*.

“If a public authority to which this section applies has reasonable grounds to believe that a person may be a victim of slavery or human trafficking it must notify –

(a) The Secretary of State, or

(b) If regulations made by the Secretary of State require it to notify a public authority other than the Secretary of State, that public authority.”<sup>341</sup>

This Section states that the public authority, due to the reasonable grounds decision, has to necessarily obtain more information from the potential victim, which therefore involves some kind of identification of the individual as a victim. However, the statutory duty applies exclusively to public authorities, while the first responders are not included, and the legislation fails to mention the exact differences in the roles of these two figures. For this reason, first responders, due to the fact that the statutory duty does not apply to them, do not have the obligation to inform the public authorities. As a consequence, there may be the case where the first responder decides to not refer the potential victim to the National Referral Mechanism or misidentifies the individual, putting the person at risk of being re-trafficked, since the system failed to refer them to public authorities.<sup>342</sup>

Having said that, the number of referrals into the National Referral Mechanism has grown steadily over time. In particular, the introduction of the Modern Slavery Act 2015 has certainly helped with this development, due to the increase in awareness and publicity in tackling trafficking and the expansion of the National Referral Mechanism to cover all modern slavery.<sup>343</sup> In particular, there are more and more referrals of child victims, as a consequence of the growing attention that recently has been paid to the phenomenon of child sexual exploitation and child criminal exploitation, more specifically drug-related offences.<sup>344</sup>

In 2019, the number of children referred to the National Referral Mechanism was 4.450, and children constituted almost half of all the potential victims of trafficking (43%). In March 2021, the data remained the same, as the percentage of child referrals was still at 43%, with criminal exploitation as the most common kind of exploitation among young

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<sup>341</sup> Modern Slavery Act 2015, Part 5, Protection of victims, Section 52.

<sup>342</sup> M. Davis, “The Legal Obligations of the United Kingdom to Identify Victims of Human Trafficking”, *Wolverhampton Law Journal*, p. 19.

<sup>343</sup> E. Cockbain & K. Olver, “Child Trafficking: Characteristics, Complexities, and Challenges”, Elsevier Inc., 2019, p.9, <https://doi.org/10.1016/B978-0-12-815344-4.00006-4>

<sup>344</sup> *Ibidem*.



people and children (52%). Usually, potential children victims are usually recognized as such when referred, as the proportion of positive conclusive decisions is stated at 95%, so the majority of children should be able to access the support needed.<sup>345</sup>

However, as stated above, there is not the certainty that all people that have been referred to the National Referral Mechanism are confirmed as victims of trafficking, and the data provided by this system do not offer a full picture of what child trafficking looks like in the UK. According to the National Society for the Prevention of Cruelty to Children report, it is complicated to identify the extent of child trafficking due to its clandestine nature, and in addition, not all cases of trafficking that are identified as such are later referred to the mechanism, or, if they do are referred, the trafficking indicators can possibly be not evident.<sup>346</sup> Moreover, there are critics concerning the law enforcement response to modern slavery, as police authorities often lack “consistent training on human trafficking, confidence in identifying potential victims, and a good understanding of the indicators of human trafficking”.<sup>347</sup>

Nonetheless, the increasing number of referrals, most of which are concerning children being criminally exploited, have highlighted some fractures in the National Referral Mechanism system.<sup>348</sup> The Independent Anti-Slavery Commissioner report has brought out some concerns about the quality of the decisions taken by the referral system and the time needed to reach them, which often present great delays, that have doubtlessly a huge impact on the safeguarding response for the potential victims.<sup>349</sup> Dame Sara Thornton, the independent anti-slavery commissioner, had commented on this issue saying that she had “grave concerns” about the growing number of referrals. Moreover, she reported:

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<sup>345</sup> E. James, “Exploited and Criminalised. What can the Police, Crime Sentencing and Courts Bill do to ensure that children who are criminally exploited receive the care and support they need?”, Barnardo’s, October 2021, p. 15.

<sup>346</sup> National Society for the Prevention of Cruelty to Children, “How safe are our children? The most comprehensive overview of child protection in the UK”, NSPCC, 2017, p. 74, [https://artsworld.org.uk/wp-content/uploads/crm/57b1aabe65807\\_how-safe-children-2016-report.pdf](https://artsworld.org.uk/wp-content/uploads/crm/57b1aabe65807_how-safe-children-2016-report.pdf)

<sup>347</sup> E. Cockbain & K. Olver, “Child Trafficking: Characteristics, Complexities, and Challenges”, Elsevier Inc., 2019, p.10.

<sup>348</sup> ECPAT & IASC, “A review of what works in multi-agency decision making and the implications for child victims of trafficking”, Independent Anti-Slavery Commissioner, August 2020, p. 17, <https://www.antislaverycommissioner.co.uk/media/1451/iasc-and-ecpat-rapid-evidence-assessment-august-2020.pdf>

<sup>349</sup> Ibidem.

“The number of victims I’ve met who have been waiting two or three years, for a process that is meant to take 45 days, is very troubling. And when you talk to people you get this sense of life on hold, in limbo, but also the effect on their self-esteem, their health – both mental and physical. I’ve now got to the stage where I cannot continue to hear about victims waiting so long and not say anything about it [...] I am concerned that the system that is set up to support and have a positive impact is actually having a negative impact in certain cases.”<sup>350</sup>

Thornton also reported how the attempts to restrain child trafficking and exploitation are hindered by the non-compliance of the Home Office when asked to provide data in particular on children and young people who are flagged to the National Referral Mechanism several times, which could help with understanding the phenomenon of re-exploitation and how to tackle it more efficiently.<sup>351</sup>

Moreover, the independent anti-slavery commissioner strongly asked for a shift in the decision-making process on child trafficking cases, as she thought that it would be far more effective to remove this procedure from the Home Office which operates through the National Referral Mechanism, and to devolve it to local authorities, which could be better-suited support for children and young people victims of trafficking.<sup>352</sup> Thornton reasoned that this move could be useful as children’s services usually already know young victims and they have better knowledge and the advantage of familiarity with the child case as compared to National Referral Mechanism authorities who are “making a decision 100 miles away”.<sup>353</sup>

Furthermore, the ECPAT UK has conducted a survey in order to examine the attitude of frontline professionals on the National Referral Mechanism concerning children victims of trafficking and modern slavery. The survey’s aim was to investigate the perception of professionals towards the effectiveness of this system in relation to children’s cases and it highlighted how the majority of frontline professionals believe that it is necessary to revise the referral system.<sup>354</sup>

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<sup>350</sup> M. Bulman, “Children coerced into drug trafficking face cycle of exploitation due to failings in system, warns slavery tsar”, March 01, 2020, <https://www.independent.co.uk/news/uk/home-news/county-lines-slavery-child-trafficking-drugs-protection-sara-thornton-a9365906.html>

<sup>351</sup> Ibidem.

<sup>352</sup> Ibidem.

<sup>353</sup> Ibidem.

<sup>354</sup> ECPAT & IASC, “A review of what works in multi-agency decision making and the implications for child victims of trafficking”, Independent Anti-Slavery Commissioner, August 2020, p. 18.

The survey was sent to practitioners including local authorities, police, NGOs, education and health organisations, the immigration system and criminal justice system.<sup>355</sup>

As a matter of fact, only 6% of professionals had a positive attitude toward the National Referral Mechanism, while 54% of them thought that changes were fundamental. The survey discloses how there is an overall lack of awareness about the mechanism and how there are major concerns about the safeguarding of children and the decision process.<sup>356</sup>

What is needed for the National Referral Mechanism to become a more effective system of identification is better coordination and cooperation between professionals, “from statutory agencies, civil society and other relevant organisations, working collaboratively in a multi-agency setting to share information to identify victims and provide the best safeguarding solutions”.<sup>357</sup>

There is still an overall lack of awareness about the indicators of child trafficking, which may hinder the process of referring a potential victim through the National Referral Mechanism. Local authorities such as police, social services, and non-governmental organizations need to ensure that their staff is adequately trained to face trafficking situations and educated on the issue.<sup>358</sup>

### 3.3 Section 45 defence: the case of DPP-v-M and R-v-Brecani

Individuals who are forced to commit crimes as a result of having been trafficked are not to be considered victims. The international community has recognized this issue and has established a ‘principle of non-prosecution or non-punishment for status offences’.<sup>359</sup> The

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<sup>355</sup> ECPAT UK, “Time to transform. Results of a survey of frontline professionals on the National Referral Mechanism for child victims of trafficking and modern slavery”, Every Child Protected Against Trafficking, November 2017, p.2, <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=cdb8012-7267-41ee-ad51-1569beddb095>

<sup>356</sup> Ibidem.

<sup>357</sup> K. Hyland, Independent Anti-Slavery Commissioner, Letter to Sarah Newton MP on improved National Referral Mechanism, January 20<sup>th</sup>, 2017, <http://www.antislaverycommissioner.co.uk/media/1114/letter-to-sarah-newton-mp-on-the-national-referral-mechanism.pdf>

<sup>358</sup> Home Office, “Review of the National Referral Mechanism for victims of human trafficking”, November 2014, p.63, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/467434/Review\\_of\\_the\\_National\\_Referral\\_Mechanism\\_for\\_victims\\_of\\_human\\_trafficking.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf)

<sup>359</sup>

Recommended Principles and Guidelines on Human Rights and Human Trafficking states at principle seven that:

“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”<sup>360</sup>

Therefore, the non-punishment principle has been applied to several international and national instruments, and its threshold for application covers all stages of the criminal justice system, as well as non-criminal proceedings. Thus, the application of the principle of non-punishment should not be hindered by the consent that the victim has provided when trafficked: consenting to criminal offences, when compelled to do so, is not something that should undermine the credibility of the victim.<sup>361</sup> In order to correctly comply with this principle, one must be aware of the “crime behind the crime”.<sup>362</sup>

At the national level, the principle can be implemented by statutory defences, as in the case of the United Kingdom: these instruments are legal defences concerning the situation in which a person victim of trafficking may experience, consequently having committed a crime.<sup>363</sup>

States should be responsible for providing effective guidance in order to establish a solid base on which the statutory defence can be put into action, both for those who might use this defence and for those who are on the other side of the justice system.<sup>364</sup> Naturally, parameters vary from state to state, however, in the case of the United Kingdom, the principle of non-punishment is represented by Section 45 of the Modern Slavery Act 2015. This statutory defence is provided for persons, adults and young people, who affirm that the criminal offences they have committed are a consequence of trafficking, slavery,

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<sup>360</sup> Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, OHCHR, E/2002/68/Add. 1, p.1, <https://www.ohchr.org/sites/default/files/Documents/Publications/Traffickingen.pdf>

<sup>361</sup> The Inter-Agency Coordination Group against Trafficking in Persons, “Non-punishment of victims of trafficking”, ICAT, Issue 08/2020, p.5, [https://www.unodc.org/documents/human-trafficking/ICAT/19-10800\\_ICAT\\_Issue\\_Brief\\_8\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/ICAT/19-10800_ICAT_Issue_Brief_8_Ebook.pdf)

<sup>362</sup> A. Gallagher & K. Skrivankova, “Human Rights and Trafficking in Persons. 15<sup>th</sup> Informal ASEM Seminar on Human Rights, Asia-Europa Meeting, 24-26 November 2015 Montreux, Switzerland, p. 72, [https://beta.asef.org/images/docs/Background%20Paper%20-%2015th%20Seminar%20\(Final\).pdf](https://beta.asef.org/images/docs/Background%20Paper%20-%2015th%20Seminar%20(Final).pdf)

<sup>363</sup> The Inter-Agency Coordination Group against Trafficking in Persons, “Non-punishment of victims of trafficking”, ICAT, Issue 08/2020, p.3-4.

<sup>364</sup> Ibidem.

forced labour or forced servitude, thus they should not be held legally responsible for those crimes.<sup>365</sup> Therefore, when invoking this defence, the jury considers whether a reasonable person, with the same characteristics, would have acted in the same way, due to the lack of realistic alternatives.<sup>366</sup> However, s45 is not available to all offences: Schedule 4 of the Modern Slavery Act provides a list of offences whose scope falls out of the statutory defence established in order to enact the principle of non-punishment, such as murder, kidnap, and possession of a firearm.<sup>367</sup>

For those who might want to use the s45 defence, it is more advisable to engage with the National Referral Mechanism. As previous paragraphs have explained, the referral is made to a Single Competent Authority, who has the responsibility to assess, through the conclusive ground decision, whether an individual is a victim of trafficking in human beings.

However, the conclusive ground decision does not legally determine whether the prosecution should continue or stop in favour of the individual who has now gained the status of the victim according to the National Referral Mechanism. To the present day, there are some issues relating to the admissibility of a conclusive ground decision in a criminal proceeding. In order to explain this matter, it is necessary to refer to recent court judgements that relate to the statutory defence and the decisions taken by the Competent Authority.

When the defendant makes use of the s45 defence, the court needs to assess whether the conclusive ground decision reached thanks to the National Referral Mechanism is admissible as evidence in the trial.<sup>368</sup> In the case of DPP v M, the victim was a fifteen-year-old boy, who was found in possession of a knife and Class A drugs (cocaine). When he was arrested in 2019, he was away from his home and in the company of other two

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<sup>365</sup> A. Gallagher & K. Skrivankova, “Human Rights and Trafficking in Persons. 15<sup>th</sup> Informal ASEM Seminar on Human Rights, Asia-Europa Meeting, 24-26 November 2015 Montreux, Switzerland, p. 71.

<sup>366</sup> Modern Slavery Act 2015, Part 5, section 45 (1), <https://www.legislation.gov.uk/ukpga/2015/30/section/45/enacted>

<sup>367</sup> C. Topolski, “R v Breani – the end of s.45 modern slavery defences?”, Crucible Law, May 27, 2021, <https://crucible.law/insights/r-v-breani-the-end-of-s45-modern-slavery-defences>

<sup>368</sup> J. Caluori, “Long read: No Right Move? Developing decision making for criminally exploited children”, Crest, November 8<sup>th</sup>, 2021, <https://www.crestadvisory.com/post/no-right-move-devolving-decision-making-for-criminally-exploited-children>

males.<sup>369</sup> He had no previous history of offending and he was found in an area of London where he did not have contacts, besides the other two boys who were already known to the police for being gang members and for usually carrying knives.<sup>370</sup> When M was referred to the National Referral Mechanism, the Single Competent Authority decided that, on a balance of probabilities, M was indeed a victim of trafficking, having been recruited and transported away from his home for the purpose of criminal exploitation.<sup>371</sup> At the trial, it was established that the conclusive grounds decision taken by the Single Competent Authority was “admitted as agreed facts”<sup>372</sup> and that such a decision could be “admissible as a matter of law in criminal trials”.<sup>373</sup> The High Court took into consideration the principles of expert evidence and stated:

“We consider that the District Judge was entitled to receive and admit the findings of the SCA as evidence that M had been recruited and harboured such that he had been trafficked within the meaning of the 2015 Act and that he was a victim of criminal exploitation. The SCA decision maker had expertise in relation to those issues. The judge was entitled to consider the findings and assess the extent to which they were supported by evidence. Insofar as appropriate, she would have been able to reduce the weight she gave to the findings. However, that is a question of weight rather than admissibility. In fact, the SCA decision was based on a proper evidential foundation and it was not contradicted by other material available to the judge.”<sup>374</sup>

The defence lawyer of M stated that not considering the Single Competent Authority decision, in this case, would have had a great impact on the evidence available in order to make the judgement.<sup>375</sup> As a consequence, the defendant was pronounced not guilty after making use of Section 45 of the Modern Slavery Act.<sup>376</sup>

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<sup>369</sup> Child trafficking in the UK 2021: a snapshot, Independent Anti-Slavery Commissioner & ECPAT UK, December 2021, p.14, <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=23b51868-f257-49bc-b779-a5059bd65a04>

<sup>370</sup> S. March, “Trafficking victim conclusive grounds decision admissible evidence at trial”, December 21<sup>st</sup>, 2020, UK Human Rights Blog, <https://ukhumanrightsblog.com/2020/12/21/trafficking-victim-conclusive-grounds-decision-admissible-evidence-at-trial/>

<sup>371</sup> Ibidem.

<sup>372</sup> Child trafficking in the UK 2021: a snapshot, Independent Anti-Slavery Commissioner & ECPAT UK, December 2021, p.14.

<sup>373</sup> Ibidem.

<sup>374</sup> Director of Public Prosecutions v M [2020] EWHC 3422 (Admin) (15 December 2020), Neutral Citation Number: EWHC 3422 (Admin), Judgment Approved by the court for handing down, December 15<sup>th</sup>, 2020, Royal Courts of Justice, <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3422.pdf>

<sup>375</sup> J. Caluori, “Long read: No Right Move? Developing decision making for criminally exploited children”, Crest, November 8<sup>th</sup>, 2021.

<sup>376</sup> Child trafficking in the UK 2021: a snapshot, Independent Anti-Slavery Commissioner & ECPAT UK, December 2021, p.14.

Nevertheless, one year later the Brencani case overturned the DPP v M decision. Although the similarity between the two cases, the result was the opposite, which sparked some debate in the legal community. The case R v Brencani concerns an appellant, who was seventeen years old at the time, who was “convicted of conspiracy to supply cocaine”<sup>377</sup> on March 2020 and thus condemned to three years of detention. There were thirteen co-defendants, ten who pleaded guilty, two of them convicted and one pronounced not guilty. B made use of the statutory defence s45, based on the fact that he was trafficked from Albania and that his involvement in criminal behaviour was a consequence of having been exploited for criminal purposes. Moreover, he also contended that a reasonable person in the same conditions and with the same relevant characteristics would have pursued the same actions.<sup>378</sup>

Usually, if the Crown reckons that a trial is in the public interest and there is no abuse of process towards the presumed victim, thus, the defence is used to admit evidence collected through the conclusive grounds decision in order to support the s45 defence. This is the reason why the judgement of the Court of Appeal has caused discussions among professionals, as it reached the conclusion that the conclusive ground decision of the Single Competent Authority cannot be admitted as evidence in a criminal proceeding, and that case workers cannot provide expert evidence of their findings, through the conclusive ground decision, as they do not meet the requirements of experts of modern slavery.<sup>379</sup>

Moreover, the Court of Appeal held that the decision taken by the Single Competent Authority is not in accordance with the Criminal Procedures Rules. Therefore, if caseworkers are not to be considered experts, their conclusive grounds decisions cannot be considered expert reports.<sup>380</sup>

The Court stated that:

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<sup>377</sup> Ibidem.

<sup>378</sup> S. Mennim & T. Ward, “Expert Evidence, Hearsay and Victims of Trafficking. R v Brencani [2021] EWCA Crim 731”, *The Journal of Criminal Law*, 2021, Vol. 85(6) 471–476, DOI:10.1177/00220183211050226 journals.sagepub.com/home/clj

<sup>379</sup> C. Topolski, “R v Brencani – the end of s.45 modern slavery defences?”, *Crucible Law*, May 27, 2021.

<sup>380</sup> M. Munro Kerr, “Modern Slavery after DS and Brencani – What does a conclusive grounds decision mean for a criminal case?”, June 30, 2021, One Pump Court, London, <https://www.onepumpcourt.co.uk/news/modern-slavery-after-ds-and-brencani-what-does-a-conclusive-grounds-decision-mean-for-a-criminal-case/>



“In respectful disagreement with the Divisional Court in *DPP v M* we do not consider that case workers in the Competent Authority are experts in human trafficking or modern slavery (whether generally or in respect of specified countries) and for that fundamental reason cannot give opinion evidence in a trial on the question whether an individual was trafficked or exploited. It is not sufficient to assume that because administrators are likely to gain experience in the type of decision-making they routinely undertake that, simply by virtue of that fact, they can be treated as experts in criminal proceedings. [...] Moreover, none of the requirements of CrimPR 19, designed in part to ensure that the person giving evidence is an expert, understands he or she is acting as such and understands the obligations of an expert to the court, were complied with.”<sup>381</sup>

Therefore, due to this decision, it has been reported that there may be some issues on the behalf of trafficked young people who are counting on the use of the s45 defence.<sup>382</sup> However, albeit the conclusive ground decision may not be admissible in court, if there is the possibility of presenting the material underlying the decision, this would be sufficient in order to invoke the statutory defence of Section 45 of the Modern Slavery Act, as it could be regarded as fresh evidence.<sup>383</sup>

It can be understood how the Court raised some scepticism about the expertise of junior civil servants, who are not, in fact, experts in human trafficking. Nonetheless, it can be argued that the bar to qualify as an expert for someone who is used to dealing with crime is not that high, as it is usual, e.g. for police officers, to provide evidence on the basis of their experience and knowledge of local gangs, drug dealing patterns and the modus operandi of offenders.<sup>384</sup> Moreover, the Criminal Procedures Rules states that expert evidence needs to be reliable to be admitted in a criminal proceeding, but it is not exactly clear to which extent the level of reliability is pushed.<sup>385</sup>

However, on the *R-v-Brecani* case, the Conclusive Ground decision quoted:

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<sup>381</sup> Court of Appeal (2021), Case of *R v Brecani* [2021] EWCA Crim 731, para 54, <https://www.bailii.org/ew/cases/EWCA/Crim/2021/731.html>

<sup>382</sup> Child trafficking in the UK 2021: a snapshot, Independent Anti-Slavery Commissioner & ECPAT UK, December 2021, p.15.

<sup>383</sup> M. Munro Kerr, “Modern Slavery after DS and Brecani – What does a conclusive grounds decision mean for a criminal case?”, June 30, 2021, One Pump Court, London.

<sup>384</sup> S. Mennim & T. Ward, “Expert Evidence, Hearsay and Victims of Trafficking. *R v Brecani* [2021] EWCA Crim 731”, *The Journal of Criminal Law*, 2021, Vol. 85(6) 471–476, DOI:10.1177/00220183211050226 [journals.sagepub.com/home/clj](https://journals.sagepub.com/home/clj)

<sup>385</sup> *Ibidem*.



“We have now assessed their case in more detail and based on the evidence we received, have decided there are Conclusive Grounds to accept they are the victim of modern slavery.

#### Our Decision

We found the following types of exploitation occurred:

1. Forced Criminality in Albania from 2016 – 2019
2. Forced Criminality in Albania and the UK in 2019”<sup>386</sup>

Albeit the positive conclusive ground decision, the Single Competent Authority had no access to supplemental evidence provided to the Crown Prosecution Service, such as the downloads from the appellant’s mobile phone, which highlighted some inconsistencies with previous comments. Therefore, the Court stated that the content of the phone along with cell site evidence were enough to weaken the s45 defence under the Modern Slavery Act.<sup>387</sup>

Another element that did not benefit the appellant’s case was the rejection of the expert witness of the defence team, due to the fact that the Court was not persuaded that Mr Craig Barlow had the necessary knowledge of modern slavery relating to the Breçani case. Mr Barlow has provided long reports where he assessed that the appellant’s case was consistent with him being a victim of trafficking and having been forced to commit criminal offences. In order to comply with the standards of the Criminal Procedures Rules, Mr Barlow had offered the Court his description as an independent forensic social worker and criminologist, along with his academic and professional background.

Nonetheless, it has been observed that the Court was provided with limited details of what constituted Mr Barlow’s experience and, due to the circumstances, the judge did not consider enough the conclusions reached by the expert witness concerning the appellant, since, according to the Court, the facts that Mr Barlow possessed were based on misinformation: the appellant’s phone and the appellant’s travel history were telling a different story from the one that Mr Barlow provided.<sup>388</sup> Given the fact that there was no reconsideration of the expert’s conclusion based on the digital evidence, the Court found his opinion not admissible.

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<sup>386</sup> Court of Appeal (2021), Case of R v Breçani [2021] EWCA Crim 731, para 12.

<sup>387</sup> Ibidem, para 38.

<sup>388</sup> Ibidem, para 74.

Following this conclusion, Mr Barlow was not given the possibility to respond to the judgement in order to rectify the incorrect statements about his expertise. He complained to the Court of Appeal that:

“The Judgement stated that Dr. Barlow had not completed his PhD Research, despite him clearly stating in his report that the research was complete.

The Judgement referred to his knowledge being based upon research that he had 'undertaken into the trafficking of children for the purposes of Criminal Exploitation as part of a PhD Course'.<sup>389</sup> As a consequence of the complaint, the judgement was amended and stated that Mr Barlow had in fact completed his PhD research since it was pointed out that his CV and case work had not been previously put before the attention of the Court.<sup>390</sup>

In conclusion, practitioners should not be deterred from making use of the statutory defence s45 under the Modern Slavery Act, however, it is undeniable that this judgement has held back this possibility to some extent. Therefore, there is the necessity, when using the s45 defence, to instruct the expert witness who needs to have expertise in the specific area of human trafficking and who needs to fully comply with Criminal Procedures Rules. Another element that the defence may find viable is the option of the abuse of process argument, which is tackled by the case R-v-AAD, AAH, AAI. Moreover, even if the Crown Prosecution Service may not consider the conclusive ground decision and proceed with the prosecution, it still needs to have a “rational basis for departing from the positive decision”.<sup>391</sup> In addition, despite the difficulties that the defendant may encounter because of the “evidential burden”<sup>392</sup> that is to discharge, the Crown Prosecution Service has to cooperate and engage with the National Referral Mechanism and its decisions, because if there is suspicion of a defendant being a victim of trafficking, it is crucial to refer it to the mechanism.<sup>393</sup>

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<sup>389</sup> Craig Barlow News, “Court of Appeal Amends Judgement In Brecani-v-R Following Complaints About Inaccurate Statements”, Craig Barlow, <https://craigbarlow.co.uk/news/>

<sup>390</sup> Ibidem.

<sup>391</sup> B. Ramsey, “Legal update: What is the state of the Modern Slavery Act 2015 following the recent Court of Appeal decisions?”, Central Chambers 2020, <https://www.centralchambers.co.uk/legal-update-what-is-the-state-of-the-modern-slavery-act-2015-following-the-recent-court-of-appeal-decisions/>

<sup>392</sup> Ibidem.

<sup>393</sup> Ibidem.

## CONCLUSION

For the purpose of this thesis, it seems befitting to conclude this research by considering the Group of Experts on Action against Trafficking in Human Beings' (GRETA) report on the situation in the United Kingdom relating to human trafficking and delve into the group of experts' recommendations.

Child trafficking in the United Kingdom has reached a disturbing peak. Almost half of the referrals of the National Referral Mechanism were children and the majority of young people who are exploited for criminal purposes comes from "county lines" activity.<sup>394</sup>

On one hand, the increase in child referrals is a clear sign of a better understanding of trafficking and exploitation. On the other hand, GRETA highlighted some issues in the identification and assistance of children who are victims of trafficking.<sup>395</sup> Some of the concerns that GRETA has identified relate to the gaps in knowledge about the National Referral Mechanism among professionals, lack of coordination and information sharing between the mechanism and child protection processes. There is an overall need to strengthen the multi-agency approach, as the non-governmental organizations which GRETA discussed with collectively deemed the National Referral Mechanism not efficient for children and young people: the mechanism is often subjected to delays in the identification of potential victims and, as for adult people, children may have to wait for a long time before the Single Competent Authority reaches a conclusive ground decision.<sup>396</sup>

GRETA has recommended UK authorities to ensure that the National Referral Mechanism meets the needs of child victims of trafficking, taking more steps toward better cooperation between local agencies and the referral system. Moreover, it is crucial that professionals working with children and young people receive adequate training in order to have better capability to deal with potential victims.

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<sup>394</sup> Council of Europe: Group of Experts on Action against Trafficking in Human Being, Evaluation report, United Kingdom: access to justice and effective remedies for victims of trafficking in human beings, Third evaluation report, Strasbourg, October 20, 2021, p. 72, <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>

<sup>395</sup> Ibidem.

<sup>396</sup> Ibidem.

For what concerns the issue of the statutory defence introduced through the cases analysed in the last chapter, GRETA's report noted that Schedule 4 of the Modern Slavery Act contains a rather extensive list of offences which do not fall under the Section 45 defence, thus giving "a rather narrow interpretation of the non-punishment principle".<sup>397</sup> Moreover, when referring to the "reasonable person" test in order to determine whether an individual with the same characteristics would have acted in the same way the defendant did, this test presents subtly an element of compulsion that should not be considered in a child case. Furthermore, GRETA found out that the non-punishment principle is not that known among prosecutors or police, which often leads to the criminalisation of children victims of trafficking. Another issue raised relating to Section 45 is the fact that once this defence is raised by the individual, the burden of proof falls on the prosecution who needs to prove that the defendant is not a victim of trafficking. However, if the prosecution fails to do so, then the burden of proof falls on the defendant. Therefore, this different allocation of the burden of proof could actually hamper the application of the non-punishment provision.<sup>398</sup> Indeed, with the Brencani judgement, it is much more complicated for the defendant to prove his or her status as victim of trafficking, due to the fact that the conclusive ground decision taken by the Single Competent Authority is not admissible as evidence in court. Therefore, raising the Section 45 as defence is now more challenging since the defendant cannot rely on the recognition of the status of trafficking victim appointed by the decision of the National Referral Mechanism.

In the last chapter of this thesis, the Brencani decision and its relative consequences have been examined. The research that has been conducted has shown that GRETA's concerns about the victim's criminalization are fair. In fact, there is a problem when the judge is in favour of prosecuting the defendant, because the decision taken by the Single Competent Authority is not deemed admissible as evidence to the court. In this case, the court is not challenging the relation between the conditions raised by the Section 45, in order to understand if the defendant falls into their scope. It is the very decision that established the status of victim of the individual that is being contested. Therefore, the National Referral Mechanism has been stripped of its value in criminal proceedings. Indeed, before

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<sup>397</sup> Ibidem.

<sup>398</sup> Ibidem.

the Brecani judgement, the Single Competent Authority's decision was the starting point for raising the Section 45 defence. During the trial, it was assessed to which extent the criminal offences committed by the defendant were related to the exploitation. However, with the Brecani judgement, the conclusive ground decision has been undermined.

It can be argued that this judgement is fair, on the basis of the different thresholds that are held by the Single Competent Authority and the court. The reason of this difference is due to the fact that the National Referral Mechanism was not originally meant for criminal proceedings, but its scope was that of a system for the identification and support of victims of trafficking. However, it has become pretextual to criminal proceedings, hence the involvement of this mechanism should comprise Single Competent Authorities that are considered expert on human trafficking matters. Moreover, it can also be debated that the competence of judges on trafficking in human beings does not exceed the specific education that Competent Authorities have in those issues. The training provided may be not the most comprehensive, however it might be more appropriate for what concerns victims identification.

This paper has attempted to show what challenges victims of trafficking have to face following the Brecani decision. On the basis of this research, it has been noted that one viable solution to the problem of victim criminalisation in criminal proceedings could include the admissibility of a conclusive ground decision in a trial from the beginning of the process, except for cases where new evidence discards that decision.

Therefore, this thesis has highlighted the need for a better cooperation between agencies. For this reason, it is appropriate to introduce a model that could be of benefit of the issues treated and that could respond positively to the critics moved by GRETA.

In 2018, the United Kingdom opened a Child House, "The Lighthouse", situated in North London, as a pilot based on the Barnahus model. GRETA approved this project as it is one of the first multidisciplinary services meant for children victims of abuse and sexual exploitation. It aims at filling the gaps identified in the emotional and health support offered to young people.<sup>399</sup>

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<sup>399</sup> Ibidem.

The Child House is a model that takes after similar examples that have been adopted internationally. One of these is the Child Advocacy Centre, a US model from 1980 that was meant to respond to the problems associated with child sexual exploitation and abuse, such as the lack of therapeutic services, insufficient conviction rates, and not adequate investigation processes.<sup>400</sup> Another model that inspired the pilot for The Lighthouse is the Barnahus model – from a Scandinavian word for “children’s house” - which innovated the US approach.<sup>401</sup> Barnahus puts together under the same roof law enforcement, criminal justice, services for children’s protection, and medical and mental health workers in order to cooperate and evaluate the child’s case. The approach is multidisciplinary: both forensic interview and medical examination of the child take place, along with the police investigation and the involvement of the prosecutor, judge and lawyer of the accused. It will be also considered the need for therapeutic and family support. It is a child-friendly justice approach, grounded on an evidence-based protocol, on the evidentiary validity of the child’s statements in order to avoid repetition during court proceedings, and on medical evaluation and psychological support.<sup>402</sup>

The Nordic Barnahus model is inserted into national systems, as it aims to be an integral part of the national justice and child protection services. The goal is to provide for “coordinated, instead of parallel and overlapping, criminal and welfare procedures” all under one roof,<sup>403</sup> which should also be the aim of the United Kingdom. As the Breconi case demonstrated, the judgement has done the opposite of contributing to a more coordinated approach between the National Referral Mechanism and criminal proceedings. However, the Icelandic Barnahus model has produced positive results and therefore it has been applied to other countries such as Sweden, Norway and Denmark. Now, also the UK, through their pilot project, is engaging with the Barnahus network. The service they provide through The Lighthouse helps children and young people who have undergone abuse and sexual exploitation. The service puts the child at the centre, ensuring his or her best interest and providing a coordinated approach through medical,

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<sup>400</sup> L. Conroy et al., “The Lighthouse: London’s Child House Initial Evaluation Report”, MOPAC Evidence & Insight, December 2018, p. 6, [https://www.london.gov.uk/sites/default/files/childhouse\\_jan19\\_report.pdf](https://www.london.gov.uk/sites/default/files/childhouse_jan19_report.pdf)

<sup>401</sup> Promise Barnahus Network, About Barnahus. Barnahus, A Scandinavian word for “children’s house”, Promise, <https://www.barnahus.eu/en/about-barnahus/>

<sup>402</sup> Ibidem.

<sup>403</sup> Ibidem.

social care, police and psychological support.<sup>404</sup> Indeed, the core of the Barnahus model is the belief that the child's disclosure might be the key to examining child abuse for criminal and for protective purposes. This strategy brings advantages if the child has been trafficked or is involved in criminal proceedings, as the child's own testimony could be the only evidence upon which a prosecution may be successful.<sup>405</sup>

Reports state that The Lighthouse has been proven to be a successful model and it has produced positive outcomes. GRETA has welcomed this pilot and further suggested that the United Kingdom should broaden its application in order to strengthen the protection of children victims of trafficking.<sup>406</sup> UK authorities should take into consideration the Barnahus model as in The Lighthouse and incorporate in its scope not only children victims of sexual abuse and exploitation, but also children and young people trafficked for the purpose of criminal exploitation. This multiagency model could help strengthen the identification process and the protection that should be guaranteed to children victims of trafficking.

For the reason of this thesis, trafficking in children for the purpose of both sexual exploitation and criminal exploitation has been considered. Looking at the United Kingdom as a case study, it is evident that there are some issues that need to be tackled and solved by authorities, namely the National Referral Mechanism and its use relating to Section 45. On one hand, this system is apt to identify victims of trafficking, but on the other hand, it has the necessity to be taken into more serious consideration during criminal proceedings. Reports show that there are still too many victims of trafficking that are not being correctly identified: the pilot project based on the Barnahus model that has been briefly presented in this conclusion could represent a viable solution and a valid approach in order to address this issue.

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<sup>404</sup> Promise Barnahus Network, "The Lighthouse: A safe space for child sexual abuse victims in the UK", July 2, 2020, Promise, <https://www.barnahus.eu/en/the-lighthouse-a-safe-space-for-child-sexual-abuse-victims-in-the-uk/>

<sup>405</sup> N. Finch & R. O'Donnell, "In need of targeted support. The role of Barnahus in identification and investigation of child trafficking and the support and assistance provided to victims", The Council of the Baltic Sea States Secretariat, June 2021, Stockholm, p. 11.

<sup>406</sup> Council of Europe: Group of Experts on Action against Trafficking in Human Being, Evaluation report, United Kingdom: access to justice and effective remedies for victims of trafficking in human beings, Third evaluation report, Strasbourg, October 20, 2021, p. 58.

## BIBLIOGRAPHY

- “About GRETA – the Group of Experts against Trafficking in Human Beings.” Council of Europe: Action against Trafficking in Human Beings. Accessed October 7, 2022. <https://www.coe.int/en/web/anti-human-trafficking/greta>.
- “Barnahus: A Scandinavian word for “children’s house” Promise Barnhaus Network. Accessed October 7, 2022. <https://www.barnahus.eu/en/about-barnahus/>.
- “Charter of Fundamental Rights of the European Union (2000/C 364/01),” *Official Journal of the European Communities* (December 18, 2000).
- “Child Sexual Exploitation. Definition and a guide for practitioners, local leaders and decision makers working to protect children from sexual exploitation.” Department for Education (February 2017).
- “Children at increased risk of harm online during global COVID-19 pandemic.” UNICEF, April 14, 2020. Accessed October 7, 2022. <https://www.unicef.org/press-releases/children-increased-risk-harm-online-during-global-covid-19-pandemic->
- “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.” General Assembly resolution 317 (IV). 2 December 1949.
- “Council Framework Decision on Combating Trafficking in Human Beings.” *Official Journal L 203* (July 19, 2002).
- “Council of Europe Convention on Action against Trafficking in Human Beings.” *Council of Europe Treaty Series 197* (2005).
- “County lines and criminal exploitation.” The Children’s Society. Accessed October 7, 2022. <https://www.childrensociety.org.uk/what-we-do/our-work/child-criminal-exploitation-and-county-lines/what-is-county-lines>.
- “Court of Appeal Amends Judgement In Breani-v-R Following Complaints About Inaccurate Statements.” Craig Barlow. Accessed October 7, 2022. <https://craigbarlow.co.uk/news/>.
- “Court of Appeal.” Courts and Tribunals Judiciary, September 15, 2022. <https://www.judiciary.uk/courts-and-tribunals/court-of-appeal-home/>.



- “Criminal exploitation of Children is never the fault of the child.” Barnardo’s, April 23, 2021. Accessed October 7, 2022. <https://www.barnardos.org.uk/blog/barnardos-scotland-criminal-exploitation-children-never-fault-child>.
- “Criminal Procedures Rules and Practice Directions 2020.” Criminal Procedure Rule Committee and Ministry of Justice. October 5, 2020.
- “Gang Activity, Youth Violence and Criminal Exploitation Affecting Children (CCE).” Doncaster Safeguarding Children Partnership Online Procedures. Accessed October 7, 2022. [https://doncasterscb.proceduresonline.com/p\\_ch\\_affected\\_gang\\_act.html#3.-understanding-why-young-people-join-gangs-or-are-at-risk-of-criminal-exploitation](https://doncasterscb.proceduresonline.com/p_ch_affected_gang_act.html#3.-understanding-why-young-people-join-gangs-or-are-at-risk-of-criminal-exploitation).
- “Modern Slavery and NRM decisions.” St Phillips Barristers, January 11, 2022. Accessed October 7, 2022. <https://st-philips.com/modern-slavery-and-nrm-decisions/>.
- “Modern slavery: Theresa May vows to defeat evil.” *BBC News UK*, July 31, 2016. Accessed October 7, 2022. <https://www.bbc.com/news/uk-36934853>.
- “Online Exploitation of Children: The epidemic of online exploitation and our children.” Trafficking in America Task Force. Accessed October 7, 2022. <https://traffickinginamericataskforce.org/online-exploitation/>.
- “Structure of the Courts & Tribunals System.” Courts and Tribunals Judiciary, September 1, 2022. <https://www.judiciary.uk/about-the-judiciary/our-justice-system/court-structure>.
- “The Lighthouse: A safe space for child sexual abuse victims in the UK.” Promise Barnhaus Network, July 2, 2020. Accessed October 7, 2022. <https://www.barnahus.eu/en/the-lighthouse-a-safe-space-for-child-sexual-abuse-victims-in-the-uk/>.
- “Understanding Grooming.” Coalition for Children. Accessed October 7, 2022. <https://safechild.org/understanding-grooming/>.
- “Victims are waiting too long for decisions. The time has come for more radical reform.” Independent Anti-Slavery Commissioner, February 21, 2020. Accessed October 7, 2022. <http://www.antislaverycommissioner.co.uk/news-insights/iasc-blog-victims-are-waiting-too-long-for-decisions-the-time-has-come-for-more-radical-reform/>.

- “Who are the Judiciary?” Courts and Tribunals Judiciary. Accessed October 7, 2022. <https://www.judiciary.uk/>.
- Ahmad, Saamiya. “The National Referral Mechanism: The UK State’s Inadequate Support For Modern Slavery Victims.” *Human Rights Pulse*, November 16, 2021. Accessed October 7, 2022. <https://www.humanrightspulse.com/mastercontentblog/the-national-referral-mechanism-the-uk-states-inadequate-support-for-modern-slavery-victims>.
- Airey, Tom. “Rochdale grooming case: Victim’s story.” BBC News, May 8, 2012. Accessed October 7, 2022. <https://www.bbc.com/news/uk-england-manchester-17914138>.
- Alderson, Kirsty et al. “Child sexual exploitation, poly-victimisation and resilience.” *Journal of Criminological research, policy and practice* 8, no.1 (December 2021): 53-74.
- Barlow, Craig, Alicia Kidd, Simon T. Green and Bethany Darby. “Circles of Analysis: A Systemic Model of Child Criminal Exploitation.” *Journal of Children’s Services* (2021).
- Beckett, H., D. Holmes and J. Walker. “Child sexual exploitation: Definition and Guide for Professionals – Extended text.” University of Bedfordshire and Research in Practice (February 2017).
- Beddoe, Christine. “Missing out. A study of child trafficking in the North-West, North-East and West Midlands.” *ECPAT UK* (January 2007): 5-43.
- Broad, Rose and Nick Turnbull. “From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK.” *European Journal on Criminal Policy and Research* 25 (2019): 119–133.
- Bulman, May. “Children coerced into drug trafficking face cycle of exploitation due to failings in system, warns slavery tsar.” *Independent UK*, March 01, 2020. Accessed October 7, 2022. <https://www.independent.co.uk/news/uk/home-news/county-lines-slavery-child-trafficking-drugs-protection-sara-thornton-a9365906.html>.
- Caluori Joe, Corlett Molly & Stott James. “County Lines and Looked After Children”, Crest Advisory (2020). Accessed October 7, 2022. <https://b9cf6cd4-6aad-4419-a368->

[724e7d1352b9.usrfiles.com/ugd/b9cf6c\\_83c53411e21d4d40a79a6e0966ad7ea5.pdf](https://724e7d1352b9.usrfiles.com/ugd/b9cf6c_83c53411e21d4d40a79a6e0966ad7ea5.pdf)

Caluori, Joe. “Long read: No Right Move? Developing decision making for criminally exploited children.” Crest, November 8, 2021. Accessed October 7, 2022. <https://www.crestadvisory.com/post/no-right-move-devolving-decision-making-for-criminally-exploited-children>.

*Child trafficking in the UK 2021: a snapshot*. Independent Anti-Slavery Commissioner and ECPAT UK, December 2021.

Cockbain, Ella and Kristen Olver. “Child Trafficking: Characteristics, Complexities, and Challenges.” In *Child Abuse and Neglect: Forensic Issues in Evidence, Impact and Management*, 95-116. Elsevier Inc., 2019.

Conroy, Lynne et al. “The Lighthouse: London’s Child House Initial Evaluation Report”, MOPAC Evidence & Insight (2018). Accessed October 7, 2022. [https://www.london.gov.uk/sites/default/files/childhouse\\_jan19\\_report.pdf](https://www.london.gov.uk/sites/default/files/childhouse_jan19_report.pdf)

Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49. Accessed October 7, 2022. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Council of Europe, Explanatory Report on the Convention on Action against Trafficking in Human Beings, ETS 197, 16.V.2005 (2005).

Court of Appeal (2021), Case of R v Brecani [2021] EWCA Crim 731, Accessed October 7, 2022. <https://www.bailii.org/ew/cases/EWCA/Crim/2021/731.html>

Davis, Matthew. “The Legal Obligations of the United Kingdom to Identify Victims of Human Trafficking.” *Wolverhampton Law Journal* (2019): 11-30.

Director of Public Prosecutions v M [2020] EWHC 3422 (Admin) (15 December 2020), Neutral Citation Number: EWHC 3422 (Admin), Judgment Approved by the court for handing down, December 15<sup>th</sup>, 2020, Royal Courts of Justice, Accessed October 7, 2022. <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3422.pdf>

Ecker, Emma. “Breaking down Global Estimates of Human Trafficking: Human Trafficking Awareness Month 2022.” Human Trafficking Institute, January 12, 2022. Accessed October 7, 2022. <https://traffickinginstitute.org/breaking-down->

[global-estimates-of-human-trafficking-human-trafficking-awareness-month-2022/](#).

ECPAT & IASC. *A review of what works in multi-agency decision making and the implications for child victims of trafficking*, Independent Anti-Slavery Commissioner (2020). Accessed October 7, 2022. <https://www.antislaverycommissioner.co.uk/media/1451/iasc-and-ecpat-rapid-evidence-assessment-august-2020.pdf>

ECPAT UK. *Time to transform. Results of a survey of frontline professionals on the National Referral Mechanism for child victims of trafficking and modern slavery*. Every Child Protected Against Trafficking (2017). Accessed October 7, 2022. <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=cdb8012-7267-41ee-ad51-1569beddb095>

EU (European Union) (2011) 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, Brussels: European Union.

European Parliament Resolution on trafficking in human beings, Resolution A4–0326/95, January 18, 1996.

*Evaluation report, United Kingdom: access to justice and effective remedies for victims of trafficking in human beings*. Council of Europe: Group of Experts on Action against Trafficking in Human Being. Strasbourg, October 20, 2021.

Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, CETS 197. Accessed October 7, 2022. <https://rm.coe.int/16800d3812>

Finch Nadine & O'Donnell Rebecca. *In need of targeted support. The role of Barnahus in identification and investigation of child trafficking and the support and assistance provided to victims*. The Council of the Baltic Sea States Secretariat. Stockholm (2021). Accessed October 7, 2022. <https://childrenatrisk.cbss.org/publications/in-need-of-targeted-support/>

Gallagher Anne & Skrivankova Klara “*Human Rights and Trafficking in Persons. 15<sup>th</sup> Informal ASEM Seminar on Human Rights*”. Asia-Europa Meeting. Montreux,

- Switzerland (2015). Accessed October 7, 2022. <https://asef.org/wp-content/uploads/2020/10/Background-Paper-15th-Seminar-Final.pdf>
- Gallagher, Anne T. *The International Law of human trafficking* (Cambridge University Press, 2010).
- Global estimates of modern slavery: Forced labour and forced marriage*. International Labour Office (ILO) and Walk Free Foundation. Geneva, 2017.
- Glover Williams, Alessandra and Fiona Finlay. "County lines: how gang crime is affecting our young people." *Archives of Diseased Childhood* (July 19, 2019): 730-732.
- Group of Experts on Action against Trafficking in Human Beings (GRETA), *Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties*, Strasbourg, November 21, 2014, at Rule 3-5, Accessed October 7, 2022. <https://rm.coe.int/native/16805a983c>
- Hidden in plain sight: A scoping study into the sexual exploitation of boys and young men in the UK. Policy Briefing*. Barnardo's. August 2014.
- HM Government. *Human Trafficking: The Government's Strategy*. Crown (2011). Accessed October 7, 2022. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97845/human-trafficking-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf)
- HM Government. *Serious Violence Strategy* (2018). Accessed October 7, 2022 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)
- Home Office, *A typology of modern slavery offences in the UK*, Research Report 93 (2017). Accessed October 7, 2022. <https://www.antislaverycommissioner.co.uk/media/1190/a-typology-of-modern-slavery-offences.pdf>
- Home Office. *Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015*. Crown (2017). Accessed October 7, 2022. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

- [chment\\_data/file/610015/110417\\_-\\_statutory\\_guidance\\_part\\_2\\_-\\_GLAA\\_updates- Final.pdf](#)
- Home Office. Modern Slavery Act 2015 – Statutory Guidance for England and Wales ver1.02. Accessed October 7, 2022. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
- Home Office. *National referral mechanism guidance: adult (England and Wales)*. Crown (2022). Accessed October 7, 2022. <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>
- Home Office. *Review of the National Referral Mechanism for victims of human trafficking* (2014). Accessed October 7, 2022. [https://www.antislaverycommissioner.co.uk/media/1062/review\\_of\\_the\\_national\\_referral\\_mechanism\\_for\\_victims\\_of\\_human\\_trafficking.pdf](https://www.antislaverycommissioner.co.uk/media/1062/review_of_the_national_referral_mechanism_for_victims_of_human_trafficking.pdf)
- Independent Anti-Slavery Commissioner. *Letter to Sarah Newton MP on improved National Referral Mechanism* (2017). Accessed October 7, 2022. <http://www.antislaverycommissioner.co.uk/media/1114/letter-to-sarah-newton-mp-on-the-national-referral-mechanism.pdf>
- International Convention for the Suppression of the White Slave Traffic (1910). Accessed October 7, 2022. [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-9&chapter=7&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-9&chapter=7&clang=en).
- International Labour Organisation. *Note on the Additional Legal Instrument Against Trafficking in Women And Children*, A/AC.254/CRP.14, Vienna (1999). Accessed October 7, 2022. <https://www.ilo.org/public/libdoc/igo/1999/479829.pdf>
- James, Emma. *Exploited and Criminalised. What can the Police, Crime Sentencing and Courts Bill do to ensure that children who are criminally exploited receive the care and support they need?* Barnardo’s (October 2021).
- Jones, Ros Wynne. “Drugs gang groomed me and I left at 22 with no job, no identity and severe depression.” *Mirror UK*, August 5, 2021. Accessed October 7, 2022.

<https://www.mirror.co.uk/news/uk-news/drugs-gang-groomed-left-22-24697483>.

- Kamar, Eden, David Maimon, David Weisburd and Dekel Shabat. “Parental guardianship and online sexual grooming of teenagers: A honeypot experiment.” *Computers in Human Behavior* 137 (December 2022): 1-7.
- Kim-Kwang Raymond Choo. “Online child grooming: a literature review on the misuse of social networking sites for grooming children for sexual offences”. *Australian Institute of Criminology*. Canberra (2009). Accessed October 7, 2022. <https://www.aic.gov.au/sites/default/files/2020-05/rpp103.pdf>
- Landi, Martyn. “Warning of ‘tsunami of online child abuse’ as figures show grooming cases rise.” *Independent UK*, July 6, 2022. Accessed October 7, 2022. <https://www.independent.co.uk/news/uk/politics/bill-government-freedom-of-information-snapchat-facebook-b2116622.html>.
- Mantouvalou, Virginia. “The UK Modern Slavery Act 2015 Three Years On.” *The Modern Law Review* 81, no.6 (18 November 2018): 1017–1045.
- March, Samuel. “Trafficking victim conclusive grounds decision admissible evidence at trial.” UK Human Rights Blog, December 21, 2020. Accessed October 7, 2022. <https://ukhumanrightsblog.com/2020/12/21/trafficking-victim-conclusive-grounds-decision-admissible-evidence-at-trial/>.
- McCulloch Liz & Furlong Scarlett. “DM for Details. Selling Drugs in the Age of Social Media”. *Volteface* (2019). Accessed October 7, 2022. <https://www.drugsandalcohol.ie/31036/1/DM-for-Details-1-5-2.pdf>
- Melrose, Margret and Jenny Pearce. *Critical Perspectives on Child Sexual Exploitation and Related Trafficking*. Palgrave MacMillan, 2013.
- Mennim, Sean and Tony Ward. “Expert Evidence, Hearsay and Victims of Trafficking. R v Breani [2021] EWCA Crim 731.” *The Journal of Criminal Law* 85, no.6 (2021): 471–476.
- Mooney, Jamie-lee and Suzanne Ost. “Group localised grooming: what is it and what challenges does it pose for society and law?” *Child and Family Law Quarterly* 25, no.4 (2013): 425-450.
- Munro Kerr, Margo. “Modern Slavery after DS and Breani – What does a conclusive grounds decision mean for a criminal case?” *One Pump Court*, June 30, 2021.



- Accessed October 7, 2022. <https://www.onepumpcourt.co.uk/news/modern-slavery-after-ds-and-breani-what-does-a-conclusive-grounds-decision-mean-for-a-criminal-case/>.
- Muraszkiewicz, Julia Maria. *Protecting victims of human trafficking from liability. The European Approach*. Palgrave Macmillan, London, 2019.
- National Crime Agency. *County Lines Drug Supply, Vulnerability and Harm 2018* (2018). Accessed October 7, 2022. <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking/county-lines>
- National Crime Agency. *Assessment "County Lines Drug Supply, Vulnerability and Harm 2018"*. NAC(19)095 (2019). Accessed October 7, 2022. <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/file>
- National Crime Agency. UK Missing Persons Unit, *Missing Persons Data Report 2020/21. Reporting period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021* (2022)
- National Society for the Prevention of Cruelty to Children (NSPCC). "Child Sexual Exploitation", Accessed October 7, 2022. <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/child-sexual-exploitation/>
- National Society for the Prevention of Cruelty to Children (NSPCC). "How safe are our children? The most comprehensive overview of child protection in the UK" (2017). Accessed October 7, 2022. [https://artswork.org.uk/wp-content/uploads/crm/57b1aabe65807\\_how-safe-children-2016-report.pdf](https://artswork.org.uk/wp-content/uploads/crm/57b1aabe65807_how-safe-children-2016-report.pdf)
- National Society for the Prevention of Cruelty to Children (NSPCC). *Grooming* (2022). Accessed October 7, 2022. <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/grooming/>
- Neustatter, Angela. "Blood Sisters." *The Guardian*, July 4, 2008. Accessed October 7, 2022. <https://www.theguardian.com/lifeandstyle/2008/jul/04/women.ukcrime>.
- NPCC. Association of Chief Police Officers and College of Policing. *Interim Guidance on the Management, Recording and Investigation of Missing Persons*, London: College of Policing (2013). Accessed October 7, 2022. <https://www.npcc.police.uk/documents/crime/2013/201303-cba-int-guid-missing-persons.pdf>



- Office of the High Commissioner for Human Rights (OHCHR). *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. E/2002/68/Add. 1. Accessed October 7, 2022. <https://www.ohchr.org/sites/default/files/Documents/Publications/Traffickingen.pdf>
- OSCE. *National referral mechanisms. Joining efforts to protect the rights of trafficked persons. A practical handbook – second edition*. OSCE & ODIHR (2022). Accessed October 7, 2022. [https://www.osce.org/files/f/documents/f/5/510551\\_0.pdf](https://www.osce.org/files/f/documents/f/5/510551_0.pdf)
- Palczewski, Caterine Helen. “Contesting pornography: terministic catharsis and definitional argument.” *Argumentation and advocacy* 38, no.1 (2001): 1–17.
- Pasca, Paolo et al. “Detecting online grooming at its earliest stages: development and validation of the Online Grooming Risk Scale.” *Mediterranean Journal of Clinical Psychology* 10, no.1 (2022): 1-24.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000) United Nations. New York.
- Ramsey, Benjamin. “Legal update: What is the state of the Modern Slavery Act 2015 following the recent Court of Appeal decisions?” Central Chambers. Accessed October 7, 2022. <https://www.centralchambers.co.uk/legal-update-what-is-the-state-of-the-modern-slavery-act-2015-following-the-recent-court-of-appeal-decisions/>.
- Ravlik, Maria. *The Fight against Human Trafficking. Drivers and Spoilers*. Palgrave Macmillan, 2020.
- Research on the sexual exploitation of boys and young men. A UK scoping study Summary of findings*. Barnardo’s. August 2014. Accessed October 7, 2022. [https://www.nuffieldfoundation.org/sites/default/files/files/cse\\_young\\_boys\\_summary\\_report.pdf](https://www.nuffieldfoundation.org/sites/default/files/files/cse_young_boys_summary_report.pdf)
- Rijken, Conny. “Legal Approaches to Combating the Exploitation of Third-Country National Seasonal Workers.” *The International Journal of Comparative Labour Law and Industrial Relations* 31, no.4 (2015): 431-451.

- Romanou, Eleni and Belton, Emma. *Isolated and struggling. Social isolation and the risk of child maltreatment, in lockdown and beyond*. National Society for the Prevention of Cruelty to Children. NSPCC Evidence team. June 2020. Accessed October 7, 2022. <https://learning.nspcc.org.uk/media/2246/isolated-and-struggling-social-isolation-risk-child-maltreatment-lockdown-and-beyond.pdf>
- Setter, Chloe. “*Child trafficking in the UK.*” In *The Modern Slavery Agenda. Policy, politics and practice in the UK*. Policy Press, 2019.
- Spapens, Toine, et al. (2014). TRACE. *A Report Concerning the Macro and Micro Analyses of Human Trafficking*. TRACE Project.
- Stone, Nigel. “Child Criminal Exploitation: ‘County Lines’, Trafficking and Cuckooing.” *Youth Justice* 18, no.3 (2018): 285–293.
- Sturrock, Rachel and Holmes, Lucy. *Running the Risks: The links between gang involvement and young people going missing*. Catch 22, in partnership with Missing People. Accessed October 7, 2022. [https://www.basw.co.uk/system/files/resources/basw\\_33409-8\\_0.pdf](https://www.basw.co.uk/system/files/resources/basw_33409-8_0.pdf)
- The Center for Social Justice. “*It still happens here: fighting UK slavery in the 2020s*”, Justice and Care, London (2020). Accessed October 7, 2022. <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2020/07/It-Still-Happens-Here.pdf>
- The Centre for Social Justice. *Dying to Belong: An In-depth Review of Street Gangs in Britain*. Policy Report by the Gangs Working Group (2009).
- The Children’s Society. Victim Support and National Police Chiefs’ Council. *Children and young people trafficked for the purpose of criminal exploitation in relation to county lines. A toolkit for professional* (2018). Accessed October 7, 2022. <https://www.childrenssociety.org.uk/sites/default/files/2021-01/exploitation-toolkit.pdf>
- The Children’s Society. “Child Criminal Exploitation – PCSC Bill” (2021). Accessed October 7, 2022. [https://www.childrenssociety.org.uk/sites/default/files/2021-06/Child\\_criminal\\_exploitation\\_definition\\_Report.pdf](https://www.childrenssociety.org.uk/sites/default/files/2021-06/Child_criminal_exploitation_definition_Report.pdf)
- The Children’s Society. Child Exploitation Online, Accessed October 7, 2022. <https://www.lincolnshire.gov.uk/downloads/file/3656/tcs-online-exploitation-briefing>

- The Criminal Procedures Rules 2020. Accessed October 7, 2022. <https://www.legislation.gov.uk/uksi/2020/759/rule/19.1/made>
- The Crown Prosecution Service (2022). Accessed October 7, 2022. <https://www.cps.gov.uk/>
- The Inter-Agency Coordination Group against Trafficking in Persons, “Non-punishment of victims of trafficking”, ICAT, Issue 08/2020, Accessed October 7, 2022. [https://www.unodc.org/documents/human-trafficking/ICAT/19-10800\\_ICAT\\_Issue\\_Brief\\_8\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/ICAT/19-10800_ICAT_Issue_Brief_8_Ebook.pdf)
- Todres, Jonathan. “Widening our lens: Incorporating essential perspectives in the fight against human trafficking.” *Michigan Journal of International Law* 33 (2011): 53-76.
- Topolski, Clea. “R v Brecani – the end of s.45 modern slavery defences?” *Crucible Law*, May 27, 2021. Accessed October 7, 2022. <https://crucible.law/insights/r-v-brecani-the-end-of-s45-modern-slavery-defences>.
- Townsend, Mark. “Kings of cocaine: how the Albanian mafia seized control of the UK drugs trade.” *The Guardian*, January 13, 2019. Accessed October 7, 2022. <https://www.theguardian.com/world/2019/jan/13/kings-of-cocaine-albanian-mafia-uk-drugs-crime>.
- Turner, Alexandra, Lucy Belcher and Iryna Pona. *Counting lives. Responding to children who have been criminally exploited*. The Children’s Society. July 2019.
- UK Parliament. Serious Crime Act 2015. Organised, Serious and Gang-Related Crime. Explanatory Notes. Accessed October 7, 2022. <https://www.legislation.gov.uk/ukpga/2015/9/notes/contents>
- UK Parliament. Sexual Offences Act 2003. Accessed October 7, 2022. [https://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga\\_20030042\\_en.pdf](https://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf)
- UN and Council of Europe. *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*. Joint Council of Europe/United Nations study. Strasbourg (2009). Accessed October 7, 2022. <https://rm.coe.int/16805ad1bb>
- UN Commission on Human Rights. *Report of the Special Rapporteur, Ms Radhika Coomaraswamy, on violence against women, its causes and consequences, on*

- trafficking in women, women's migration and violence against women.* UN Doc. E/CN.4/2000/68 (2000).
- UN General Assembly. "Traffic in Women and Girls," UN Doc. A/RES/49/166 (1994).
- UN General Assembly. "Traffic in Women and Girls: Report of the Secretary-General," UN Doc. A/50/369 (1995).
- UN Office on Drugs and Crime. *The Protocol for Human Trafficking.* Accessed October 7, 2022. <https://www.unodc.org/unodc/en/human-trafficking/protocol.html>.
- UN Office on Drugs and Crime. *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2006).
- UN Office on Drugs and Crime. *United Nations Convention Organized Crime Convention Against Transnational Organized Crime and the Protocols Thereto* (2004).
- Whittle, Helen, Catherine Hamilton-Giachritsis, Anthony Beech and Guy Collings. "A review of young people's vulnerabilities to online grooming." *Aggression and violent behaviour* 18, no.1 (January-February 2013): 135–146.
- Winterdyk, John, Benjamin Perrin and Philip Reichel. *Human Trafficking Exploring the International Nature, Concerns, and Complexities.* CRC Press Taylor & Francis Group, 2012.