



protecting children everywhere

Grosvenor Gardens House, 35 – 37 Grosvenor Gardens
London SW1W 0BS
Tel: +44 (0) 207 233 9887
Fax: +44 (0) 207 233 9869

info@ecpat.org.uk
www.ecpat.org.uk

Dr Mark Egan
Commons Clerk of the Joint Committee on Human Rights
Committee Office
House of Commons
7 Millbank
London
SW1P 3JA

By email: jchr@parliament.uk

13th February 2009

Dear Dr Egan

ECPAT UK submission to JCHR inquiry into Children's Rights

ECPAT UK is pleased to submit this evidence to the JCHR inquiry into Children's Rights. ECPAT UK is a leading UK children's rights organisation campaigning to protect children from commercial sexual exploitation. ECPAT UK represents a coalition of leading UK organisations working for the protection of children's rights; these are: Anti-Slavery International, Jubilee Campaign, NSPCC, Save the Children UK, The Children's Society, UNICEF UK, and World Vision UK. ECPAT UK is a UK registered charity and the UK national representative of the global ECPAT movement with partner organisations in over 70 countries around the world campaigning against the exploitation of children, including child trafficking.

ECPAT UK supports the All Party Parliamentary Group on Trafficking of Women and Children (APPG) by providing guidance, advice and contacts for experts in the UK and internationally. The APPG has been highly successful in raising over 100 parliamentary questions and several debates on human trafficking over the past eighteen months.

ECPAT UK will restrict its remarks to the following subjects identified by the JCHR; child trafficking victims (including ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography); and the criminalisation of children.

ECPAT UK will also be available to provide oral evidence to the Inquiry should it be requested.
ECPAT UK and the Children's Commissioner for Wales will be launching a research report on child trafficking in Wales on 18th March, 2009.

Please do not hesitate to contact me for further information.

Yours sincerely

Christine Beddoe

Director, ECPAT UK

Child trafficking victims (including ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography)

1. In 2006-7 the JCHR undertook a major enquiry into human trafficking to which ECPAT UK submitted oral and written evidence; this report was published in October 2006. ECPAT UK firmly supported the main recommendation from the JCHR's report which was that "a more victim-centred approach to dealing with human trafficking was necessary in order to meet the UK's human rights obligations."
2. ECPAT UK has mapped over twenty-five countries where trafficked children have originated from over the past five years. ECPAT UK's research in London (2002¹, 2004²) and Manchester, Newcastle and West Midlands (2007³), presents a complex picture of child trafficking. The majority of trafficked children are already highly vulnerable in their home country before they become the targets of traffickers. Some children trafficked to the UK have already been exploited and abused, and many appear to have been living in households with adults who do not have parental responsibility. The circumstances of them travelling with traffickers are often the result of being deceived, sold or coerced rather than abduction or kidnapping.
3. Significantly, many children believe they are coming to a better life, some not having any idea they are coming to Europe, and innocently go along with offers of education or employment. Once in the UK children experience exploitation through domestic servitude, forced labour, sexual exploitation, cannabis cultivation, street crime, forced marriage and benefit fraud. ECPAT UK research shows that the vast majority of children appear to come from Africa, China and Vietnam. In Operation Pentameter, launched in 2006 to identify and rescue trafficked women in saunas and brothels around the UK, 84 foreign females were identified as victims of trafficking, 12 of these were under 18: of those 12 children 9 were of African origin and 3 were European. Operation Pentameter II identified 167 victims, including 13 children aged between 14 and 17, who were rescued across Britain and Ireland.
4. On the basis of past research and interviews across local authorities around the UK, ECPAT UK estimates that at any given time a minimum of 600 children, known or suspected of being trafficked, will be in the asylum system or will have been in the asylum system before going missing from local authority care. This represents 10 percent of the Home Office quoted figure of 6,000 total number of unaccompanied asylum seeking children supported by local authorities.⁴ The ECPAT UK figure of 600 children is a very conservative estimate based on limited data.
5. ECPAT UK has welcomed the progress the Government has made recently on trafficking; namely the ratification of the Council of Europe Convention on Action against Trafficking in

¹ Somerset, C (2002) 'What the Professionals Know'. ECPAT UK.

² Somerset, C (2004) 'Cause for Concern'. ECPAT UK.

³ Beddoe, C (2007) 'Missing Out'. ECPAT UK.

⁴ Home Office consultation document 'Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children,' p6 .2007

Human Beings (the Convention) and the withdrawal of the reservation to the UN Convention on the Rights of the Child relating to immigration and nationality.

6. In our experience trafficked children usually arrive in the country either without identification documents or with false documents. In accordance with the Convention [Article 10 (3)] in cases where the age of the trafficking victim is unclear the young person should be given the benefit of the doubt, presumed to be a child and provided with special protection until his or her age is verified. To date there has been no directive or guidance from the Home Office, Department for Children, Schools and Families or the Association of Local Government to Local Authorities on how they are to enforce this Convention requirement. Currently many child victims of trafficking are age assessed by Local Authorities as over 18 based on non-medical grounds. These assessments are routinely and successfully challenged by children's legal advisors. However, during the interim period these children are deemed to be 'age disputed' and this can often lead to inappropriate housing and no protection. There are too many age-disputed cases and the Government must take urgent steps to improve decision-making. In 2005 nearly half (45%) of all asylum applicants presenting as separated children were age disputed and treated as adults.⁵
7. If a trafficked child is assessed to be over 18 by the Home Office during an asylum application they can become subject to the dispersal process, as such child victims of trafficking can be quickly placed around the country in inappropriate accommodation with unknown adults. This process must be reviewed in light of Article 10 of the Convention.
8. ECPAT UK acknowledges that the Government has gone beyond the minimum 30 day figure set in the Convention and set the recovery and reflection time for trafficking victims at 45 days. ECPAT UK believes this should be further extended to 12 months. The current proposals for residence permit for trafficked children are unclear. ECPAT UK considers that a system of renewable residence permit for children must offer greater protection than the currently available systems of discretionary leave until a child is 17 years and 6 months. Indefinite leave to remain must be an option for trafficked children, especially those who are in grave danger of abuse, exploitation and re-trafficking if they are returned to their home country. Immigration status should not be contingent on the child's co-operation with criminal investigations. This incentive approach is at odds with a human rights approach to the treatment of the child.
9. ECPAT UK was pleased that the Government set up the Human Trafficking Centre in 2006. The UK HTC was set up to be "the central point of development of law enforcement expertise and operational coordination"⁶. However we are concerned that the UK HTC is failing to act with the requisite urgency in matters relating to trafficked or suspected trafficked children. A key responsibility for the UK HTC is to develop measures to protect and support victims and it is not clear how this assistance is being provided.

⁵ Crawley, Dr Heaven 'When is a child not a child? Asylum, age disputes and the process of age assessment' (Centre for Migration Policy Research, Swansea University) published by the Immigration Law Practitioners Association (ILPA). 2007

⁶ UK Action plan on tackling Human Trafficking, p9. March 2007

10. UK HTC presents itself a multi-agency centre but there is currently no child protection team within the centre, nor is there a visible child protection policy on the UK HTC website. UKHTC does not appear to fall under Section 11 of The Children Act (2004) placing a duty of care on all UKHTC personnel. ECPAT UK would like to see all UKHTC policies audited against child protection and safeguarding policies, and that competency based training on child protection is mandatory for all staff.
11. ECPAT UK has called for a National Rapporteur on Human Trafficking, with a specific responsibility for children, to be established to act as a focal point on trafficking. The National Rapporteur should have statutory powers to request information from police, immigration authorities, child protection agencies (both government and non-government). The Rapporteur would be responsible for gathering data, analysing trends and emerging issues, independent oversight and making recommendations for improvement in the implementation of the UK Action plan on tackling Human Trafficking.
12. There continue to be no 'safe house' facilities for child victims of trafficking in the UK. Safe accommodation is the central point around which every other service should co-ordinate. ECPAT UK considers the appropriate safe accommodation model to be a holistic and integrated approach with other support services that can provide an interface with specialist legal, interpreting, medical and counselling services. In some cases the child will also require secure accommodation to safeguard them from the threat of traffickers. Young people need to feel safe and secure before disclosing their story or giving evidence. A range of safe accommodation options should be developed including emergency accommodation and specialist foster care with appropriately trained foster carers.
13. The UK signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child (CRC) in 2007. ECPAT UK is pleased that Government announced in September 2008 that ratification was imminent⁷ but would like to see a timetable in place for ratification without further delay.

Criminalisation of children

14. ECPAT UK continues to be disappointed and frustrated at the treatment of trafficked children coerced into criminal activities. As a signatory of the CRC and in the spirit of the 'Every child matters' approach the Government should ensure that trafficked children are treated as victims rather than criminals. The best interest of the child should be the cornerstone of the Government's strategy and action plan for combating child trafficking. ECPAT UK believes that it is wrong to prosecute children for crimes that they are forced into committing or are unaware they are taking part in criminal activity.
15. The Government should follow the recommendations from the Concluding Observations of the UN CRC Committee and " intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest

⁷ DCSF press notice 22nd September 2008, http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0209

appropriate period of time, in compliance with article 37 (b) of the Convention.”
(Recommendation 71, October 2008)

16. ECPAT UK supports the CRC Committee’s recommendations to increase the age of criminal responsibility in the UK. Children in Scotland can be held criminally responsible at the age of eight years old. In England, Wales and Northern Ireland the minimum age is 10. In many of the Nordic countries the age for criminal responsibility is set at 15 and in Belgium it is 18 years old. The Council of Europe’s European Committee of Social Rights (which monitors State compliance with the European Social Charter) as well as the UN CRC Committee and other UN Treaty Bodies have all recommended substantial increases.
17. Current information gathered from local authorities and police suggests that: the trafficking of Chinese children has increased in recent years and coincides with the numbers of Chinese children going missing from local authority care; the trafficking of Vietnamese children for cannabis cultivation has increased and so too the trafficking of Roma children from Romania and Bulgaria for street crime such as bag-snatching.
18. ECPAT UK has been gravely concerned by the number of Vietnamese children who have been prosecuted and convicted for drug and immigration offences following raids of so called ‘Cannabis Factories’. During raids on cannabis factories, often the only people arrested are those who are in the house at the time, tending the plants who are often children who have been trafficked. These children are victims of crime and should be seen as ‘child witnesses’ not as perpetrators, yet case evidence available to ECPAT UK shows children as young as 14, both boys and girls, being convicted for drug offences and immigration offences who have been sentenced and awaiting deportation. The Refugee Council has documented 18 such cases in a yet to be published report. These children spent between 6-24 months in a Young Offenders Institution. Testimonies of children in custody clearly show the patterns of exploitation, coercion, deception and threat but no adult has yet been prosecuted for the trafficking of children into cannabis cultivation.
19. ACPO guidance in 2007 to Chief Constables advised of the potential for child trafficking in cannabis factories and CPS guidance issued in 2007 and updated in 2009 instructs police and prosecutors to refer to the UK HTC for UK HTC to make enquiries regarding identification related to trafficking. The guidance states that ‘where there is clear evidence that the youth has a credible defence of duress, the case should be discontinued on evidential grounds.’ The guidance also states that in cases where the child is believed to be a victim of trafficking, and is believed to have been working under duress, he or she should be protected under child care legislation and could become a prosecution witness. However, many trafficked children are not identified as such and even when they are, support provided is often insufficient. Yet, according to ECPAT UK case referrals arrests and prosecutions continue.
20. It is worth underlining the vulnerability of trafficked children in these situations who have no support from family or friends, often the only contacts they have are their traffickers. These

children will often be unable to speak or understand English and will not have passports or be aware of their immigration status.

21. Rather than the criminalisation of children ECPAT UK would like to see the prosecution of the perpetrators of trafficking. ECPAT UK is concerned about the low numbers of convictions for trafficking offences related to children. The conviction of offenders allows for justice for the victims of trafficking and provides protection from further contact between trafficker and victims and acts as a deterrent. To date there have been 92 convictions for trafficking for sexual exploitation, and four for trafficking for forced labour. In 2008, 19 people were convicted of trafficking for sexual exploitation and, of those, four received suspended sentences. In 2008, there were four convictions for trafficking for the purpose of forced labour. The average length of sentence for the offence of trafficking is 4.69 years and the maximum sentence is 14 years. (3 Feb 2009: Column 174WH)
22. It is important to note that UK legislation for trafficking offences included within The Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act, 2004 is inadequate to deal with the many offences that constitute what we now understand of child trafficking, specifically the trafficking of children for criminal activity; and the trafficking of babies and young children who cannot speak for themselves. The latter is relevant in cases of trafficking for benefit fraud and illegal adoption.
23. Where child trafficking has been prosecuted under 'Facilitation' offences in immigration legislation offenders have received sentences significantly lower than those that have been prosecuted under dedicated trafficking legislation. As 'Facilitation' offences are considered a victimless crime they do not trigger victim unit processes and victims are not ordinarily notified of significant events such as the release of the offender.
24. ECPAT UK is mindful that professionals dealing with victims of trafficking are often unaware of the Code of Practice for Victims of Crime, issued to the Criminal Justice System, in 2005. As a result child victims are not being made aware of their rights and entitlements contained in the Code and the subsequent complaints procedure to the authorities and the Parliamentary Ombudsman.
25. ECPAT UK, along with other children's organisations, believes that a system of guardianship for separated children is the only mechanism that will ensure that all actions and decisions with respect to that child will be made in their best interests. This is particularly important for trafficked children. A Guardian would assist the trafficked child navigate across the boundaries of statutory services, legal advisors and non-government agencies to support the child in every aspect of their wellbeing. ECPAT UK research shows that when trafficked children go missing from local authority care there has been very little cooperation between agencies, and across local and international boundaries, to trace children and make contact with their families. A system of Guardianship is recommended by the Convention and is also supported by the CRC Committee in their concluding observations.

CASE STUDIES

<p>This case study is based on a case to which ECPAT has provided advice and support</p>	<p>Age Assessment case study</p> <p>In 2008 a Local Authority age assessed M who was known to have been trafficked for domestic servitude. At the time of the age assessment M had given her date of birth as 16 and the police, UKBA and specialist support agencies had all accepted her age as 16 years.</p> <p>During the early stages of the police investigation the Local Authority social workers visited suspects to obtain background data on M. These suspects later provided documents obtained from her country of origin that showed a date of birth as over 18.</p> <p>Both suspects have now been arrested on suspicion of trafficking and yet the Local Authority has assessed M to be over 18 on the basis of documents they provided. None of the documents are originals and the Local Authority has stated they have no way of proving if they are fraudulent yet they have used this information to discredit M's own account of her age and thus strengthen the suspects claim that M is not a child. It is known by police and the Local Authority that at least one of the documents was fraudulent. The Local Authority has rejected an independent age assessment provided by a paediatrician showing her age as 16.</p>
<p>This case study is taken from a forthcoming report from the Refugee Council on Cannabis factories and is used with permission</p>	<p>Criminalisation of children case study</p> <p>T was an orphan who had lived in an orphanage since he was about 3 years old. When he was about 8 years old he was taken from the orphanage by a man who fostered him for two years. T did housework and chores for his foster family.</p> <p>When T was about 10 years old, he was told that he and his carer were to leave Vietnam. They left with a group of others and travelled through many countries, eventually arriving in the UK in the back of a lorry.</p> <p>When they arrived, T was left to live on his own for a couple of weeks, after which time his carer returned and took him to a cannabis factory where he was later arrested. T was 17 when he was referred to the Refugee Council. It is not clear exactly how old he was on arrival in the UK, but it appears that several years passed between his leaving Vietnam and arriving in the UK.</p>