

# DEALING WITH VICTIMS OF SLAVERY AND HUMAN TRAFFICKING

*Janice Brennan\**

## I. INTRODUCTION

I am confident that many, if not most, victims of slavery and human trafficking are never found. It is so very hard for them to come forward and to make themselves known to the authorities, some because they cannot physically escape from their captors, some because they are too afraid of the police or the border force, some because they fear punishment for their own illegal entry into the country, some because of a natural desire to protect their family back home from reprisals, some because they are simply too vulnerable or too young.

I gave an example of a prosecution in England of a family of travellers (gypsies) called Connors, who used as slaves homeless, friendless, alcoholic men. Some of those men gave evidence at the trial. It surprised many observers that a few of those men did not consider themselves to be victims. They were so vulnerable that they were grateful to the Defendants for giving them any accommodation at all, even if it was not fit for human habitation. They were grateful to the Defendants for even the scraps of food that they were given, because it was preferable to no food at all. It never occurred to them to go to the police. Had they not been discovered by chance, then they would probably still be the slaves of the Connors family and the Connors family would not now be in prison.

I posed earlier the question of whether the Modern Slavery Act 2015 has achieved its worthwhile goal. The answer is both yes and no. No, because it can only be used once a victim has been found and the Defendant identified and arrested. We cannot prosecute if we do not know that a crime has been committed.

## II. WHAT CAN WE DO TO FIND THE VICTIMS?

The best service that we can provide is, of course, to prevent them becoming victims in the first place. That is easier said than done, but I am convinced that we can do more, especially those of you in countries where children and the vulnerable are at risk of exploitation. We need to educate these potential victims so that they do not succumb to the recruiters from the criminal gangs. They need to be warned of the dangers from people who promise them jobs abroad. Teachers in the schools, elders in the villages, religious leaders – all have a role to play in educating the vulnerable and protecting them from exploitation.

To many people, countries such as the United Kingdom, the United States of America, Australia, Canada and Germany sound like paradise. Everyone is rich, everyone is happy, they think. Of course, many people in those countries are rich and happy, but that does not mean that everyone there is rich and happy. We have our poverty and unemployment and homelessness too, even if it is not at the level of other countries. It is important that people desperate for a better life understand that allowing yourself to be trafficked by a criminal gang is not going to provide that better life. On the contrary, it will guarantee a life of utter misery.

What can we do to help those who are tricked or forced into being trafficked? It seems to me that we need to educate the general public. Law enforcement needs the assistance of ordinary members of the public to act as its eyes and ears. We must encourage everyone to be alert, to look out for possible victims and to report whatever suspicions they have to the police.

## III. WHERE THE NEW LAW HAS SUCCEEDED

It is much more common in my country for victims of human trafficking and slavery to be identified only

---

\* Barrister, United Kingdom.

when they themselves have been arrested on suspicion of the commission of a crime. In those cases, the 2015 Act of Parliament has resulted in some good and very necessary protection for those victims.

Section 45 of the Modern Slavery Act 2015 provides a specific defence for victims who are themselves accused of committing a crime. If the person is over the age of 18 years, then he or she is not guilty of whatever crime they are accused of if:

- a) that person has been compelled to do the act that constitutes the offence;
- b) the compulsion is a result of slavery or exploitation; and
- c) a reasonable person in the same situation and having the same characteristics would have no realistic alternative to doing that act.

Significantly, this defence in section 45 does not apply to all offences. The most serious crimes, such as murder, manslaughter, kidnapping, causing grievous bodily harm, arson, terrorism, causing death by dangerous driving and female genital mutilation, are considered to be so serious that even a victim of human trafficking or slavery should refuse to commit them.

For those offences to which this defence is available, what this section is recognising is that the criminality or culpability of the Defendant may be reduced substantially or even extinguished because no realistic alternative was available to the exploited victim other than to comply with the dominant force of another person or group of people.

If the person accused of the crime is under the age of 18 years, he or she is not guilty if:

- a) that person does the act as a direct consequence of being, or having been,  
a victim of slavery or a victim of exploitation; and
- b) a reasonable person in the same situation and having the same  
characteristics would do that act.

As you would expect it is a more generous test for those under the age of 18. Characteristics means age, sex, and any physical or mental illness or disability. So, for example, a girl aged 15 may be arrested by the police on suspicion of supplying heroin and cocaine. Hidden in her clothes are 45 wraps of heroin and 35 of cocaine. She has been seen on the streets of London selling these wraps to various customers. She declines to answer any questions when interviewed by the police. On the face of it, she appears to be guilty of supplying drugs and faces a significant sentence.

Eventually she finds the courage to tell her legal representatives what has happened. She says that she lived in a poor region of Albania. Her father died when she was 5 years old. She has 7 brothers and sisters and her mother could not afford to feed them all and so she, as the eldest, had to leave school at the age of 8 in order to work in the fields so that there would be money to feed the family. Because she left school early, she can barely read or write. She was smuggled to England on the promise that she would be given a good job and could send money home to her family. In England she was put in a filthy room where she had to live with 15 other girls. They were all threatened with punishment if they did not do as they were told. She was given the drugs and forced to sell them on the streets. If she did not return to the room each day with £1000 in cash, she would be beaten and raped. She was paid just £5 a day, sometimes nothing.

It is likely that a jury would find her not guilty as a result of the section 45 defence. It is also likely that she would not have continued to be prosecuted at all once her true situation was known. In England decisions whether to prosecute a person are made by the Crown Prosecution Service, which is a body wholly independent of the police.

The Crown Prosecution Service applies a four-stage test when deciding whether a Defendant, who claims

to be a victim of human trafficking or slavery, should be prosecuted:

- a) Is there reason to believe that the person is a victim of trafficking or slavery?
- b) Is there clear evidence of duress?
- c) Is there clear evidence of a statutory defence under section 45 of the Modern Slavery Act 2015? and
- d) Is it in the public interest to prosecute?

In the example I gave you of the 15-year-old girl selling drugs, it is highly likely that the Crown Prosecution Service would conclude that she satisfied that four-stage test. In the unlikely event that the Crown Prosecution did decide to continue with the prosecution, I would expect the Court to stop the trial on the basis that to allow it to continue would amount to an abuse of the Court's processes. That is because the Court itself has a duty to protect the rights of victims of trafficking by refusing to permit any prosecution that fails to acknowledge and address both the victim's situation and the United Kingdom's international obligations. The United Kingdom is currently a member of the European Union and, as such, is bound by the European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.

Recital 14 of that Directive states that:

Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States be protected from prosecution or punishment for criminal activities...that they have been compelled to commit as a direct consequence of being subject to trafficking.

Of course, just because a person claims to be a victim of human trafficking or slavery does not mean that it is necessarily true. Sadly, some people are smuggled into the United Kingdom and then choose to commit crimes as an easy way to make money. It would be quite wrong to say that a trafficked person is automatically entitled to immunity from prosecution just because he or she was trafficked. It is necessary, therefore, to look at all the circumstances in order to make sure that only genuine victims are excused from responsibility for crimes committed by them.

A particular problem in the United Kingdom these days is the use of vulnerable children, sometimes younger than 10 years old, by organized criminal gangs.

These are children born in the United Kingdom, who are groomed with money or gifts or who are tricked into incurring a small debt to the gang and who are then forced to sell drugs for the gang or to look after guns and other weapons for the gang. Just because they are born in the United Kingdom and still live in the United Kingdom does not mean that cannot also be victims of slavery or trafficking within the United Kingdom.

In recognition of the seriousness of the problem in the United Kingdom, the Government appointed in 2015 the first Independent Anti-Slavery Commissioner. His task was to seek to secure improvements in law enforcement. His goal was to identify more victims, to prosecute more traffickers and slave masters, to provide better support for victims and to train police better in how to handle victims of sexual exploitation and forced labour.

He was critical of the way in which victims were treated by the United Kingdom's authorities.

It is important to recognise that potential victims are usually targeted because they are especially vulnerable. They may be homeless, addicted to drugs or to alcohol, destitute or isolated and without friends or family. When they are subjected to threats and violence, they become controlled and effectively institutionalised. Accordingly, it is necessary for the authorities, such as the police or the border force, to use great care when dealing with these victims.

There are specific regulations that govern how such victims must be treated by the authorities in order to seek to prevent what we call "secondary victimisation". As far as is possible, there must be no unnecessary repetition of interviews with the victim or any unnecessary questioning about his or her private life. The victim should not have any visual contact with the trafficker.

There are further rules for victims under the age of 18. Interviews should take place as quickly as possible, they should be conducted by a specially trained professional who should conduct all of the interviews with that victim and the interviews should take place in suitable premises that are appropriate for a young person. That young person should also be accompanied by an adult of his or her own choice. In other words, sensible steps should be taken to make the victim feel safe and as comfortable as possible. It is essential that the authorities do not inadvertently cause further trauma to those who are already victims.

The present Anti-Slavery Commissioner, appointed this year, is Sara Thornton, a former Chief Constable of Police. She has a huge task ahead of her and it will be interesting to see what new proposals she will make in order to increase the chance of finding victims and prosecuting the perpetrators.

#### **IV. THE ROLE OF ADVOCATES**

My role as an advocate means that I deal with the cases that get to Court. I both prosecute and defend. It may be that my client, when I defend, seems to be a victim of slavery or trafficking. Or it may be that I am prosecuting someone accused of various crimes and my witness is a victim of slavery or human trafficking. In either case, it is important to remember that many victims take significant risks in revealing what has happened to them. Those of you who are advocates too will know just how very difficult it can be to deal with such vulnerable people at Court. Research suggests that male victims are less likely to report their trafficking and exploitation and so we must be especially careful to look out for the signs that they may suggest that they are victims. Female and child victims in particular can be gravely traumatised as a result of their life experiences and barely able to communicate at all. They often have little trust in authorities or in other people in general. They may not give consistent accounts of what they have suffered because they fear not being believed, or more likely, because they fear being recaptured by the criminal gang. They need high levels of support in order to receive justice.

Of course, it is important to guard against those who wrongly claim to be victims of slavery or trafficking in order to secure accommodation, support and even a residence permit. Some claim to be children, when they are not. It seems to me, though, that it is far more likely that a genuine victim will fail to disclose that he or she is a victim of slavery or human trafficking and so we need to be especially alert in order to give them the protection and the justice that they deserve.

#### **V. WHAT CAN WE DO TO HELP EACH OTHER?**

Slavery and human trafficking are global crimes and we must work together if we are to stand any prospect of success. Life is not fair. There are wealthy countries with systems to support those who are in need; and there are countries which are torn by war, countries which suffer devastating natural disasters such as floods or earthquakes, countries which cannot provide enough food or employment for the population and countries which are still creating an effective system of justice. There will always be people who are desperate to leave their own country and seek a future elsewhere. No matter how much they are warned that criminal gangs will exploit them, rape them, torture them, rob them, put them in unsafe boats or lorries, maybe even kill them, still they will take that chance. Our police forces need to work together if we are to save them and to catch the gangs that abuse them. We need to share intelligence and assist each other with the evidence needed at Court.

Certainly, in my country we need to make much more use of what are called “unexplained wealth orders”. These orders allow us to seize the assets of those who cannot show that their wealth comes from legitimate sources. Criminal gangs make massive profits. It can be incredibly hard to prove exactly what crime they have committed. It is much easier to prove that they did not earn their money lawfully. If we seize their assets, we are at least in some way defeating them.

We are much stronger together in the battle against crime than we can ever be on our own.