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Villains not Victims? An Examination of the Punishment of Vietnamese Nationals Trafficked for Cannabis Cultivation in the United Kingdom.

Introduction

This paper critically examines how Vietnamese nationals trafficked to the United Kingdom (UK) for the purpose of cannabis cultivation are being arrested, prosecuted and convicted for the production of cannabis. This paper explores how such persons are being treated as villains rather than as the victims of crime who require support and protection.

The paper focuses specifically on Vietnamese nationals trafficked for cannabis cultivation because there is a longstanding recognition of a trend of Vietnamese nationals being trafficked to the UK for the purpose of cannabis cultivation. A 2012 report by the UK Human Trafficking Centre highlighted that of the thirty 'potential victims' trafficked for cannabis cultivation in 2011 90% were Vietnamese.¹ Despite evidence highlighting the problem of Vietnamese nationals being trafficked for this purpose many potential Vietnamese nationals are being convicted in criminal proceedings with little evidence of any consideration or concern for the possibility that they may have been trafficked.

The research methodology to collect data on the punishment of Vietnamese nationals trafficked for cannabis cultivation was a content analysis of media reporting on 27 court cases in the UK since March 26th 2015 in which 38 Vietnamese nationals were imprisoned for the cultivation of cannabis in 'cannabis factories.'² All such persons would be subject to being detained an immigration removal centre following the completion of their prison sentence with the strong possibility of deportation from

¹ Serious Organised Crime Agency. (2012) UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011. Available at:

http://www.medaille.co.uk/SOCA_UKHTC_Baseline_Assessment_2011.pdf

² March 26th 2015 was the date that the 2015 Modern Slavery Act became law.

the UK. The deportation of the individuals was discussed in 19 of the cases. The paper identifies and analyses two categories of cases in which Vietnamese nationals were punished for the production of cannabis. The paper will examine specific cases from both of these categories.

The first category is cases where people have been punished because they have not been identified as trafficked despite disclosing multiple trafficking indicators. The second category of cases is where people have been convicted for the offence of the production of cannabis despite being described by solicitors, judges and police as trafficked or enslaved.

The paper examines why people who have multiple strong indicators of trafficking are not being identified as trafficked by law-enforcement and the criminal justice system. The paper argues that the successful identification of people trafficked for cannabis cultivation is undermined by a dominant victim discourse that has created a narrow stereotype of the 'ideal' and 'innocent' victim of human trafficking. It critically examines how the coercion, abuse and exploitation that people have suffered is overlooked and the focus instead is on their consent and ambition to travel to the UK.

The continued dominance of the focus of human trafficking in the UK on sexual exploitation undermines the identification of people trafficked for other forms of exploitation. The popular understanding of human trafficking and a trafficked person remains narrow. People trafficked for forced criminality are outside the popular understanding of trafficking and those trafficked for such criminal purposes continue to be excluded from being formally identified as trafficked persons. This is illustrated in the data on human trafficking collected and published by the National Crime Agency in the UK. The categories of human trafficking included in this data are 'domestic servitude', 'labour exploitation', 'organ harvesting', 'sexual exploitation' and 'unknown exploitation.' There is no category for people trafficked for 'forced criminality.'³

Trafficked Persons?

³ National Crime Agency. National Referral Mechanism. End of Year Summary 2016. 2017. Available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file>

All of the people whose cases are discussed in this paper are described here as trafficked persons. It is necessary to begin with an acknowledgement that I am not aware of the Home Office, the department of the UK government responsible for making a formal decision on whether a person has been trafficked, having formally identified any of those defendants as trafficked. While in 13 of the cases the defendants were informally described as trafficked by responders in law-enforcement and the criminal justice system, in the other 14 cases the defendants were not described as trafficked.

They are referred to as trafficked here because in a large number of the cases the three elements that make up human trafficking, the act, means and purpose, can be identified in the details of the media reports of their court cases. In some of the cases it has not always been possible to identify each element of human trafficking. However they contain such strong trafficking indicators to be included in this study as trafficking cases. In every case it is clear that the defendants were in an exploitative situation. None of the defendants saw any financial reward for their involvement in producing crops of cannabis worth between tens of thousands and hundreds of thousands of pounds. The inclusion of cases where not every element can be identified within the media reporting is justified by the Home Office's own published guidance for officials responsible for formally identifying trafficked persons. This guidance explains, 'It is not the case that by selecting a set number of indicators this will equate to a person being a victim; it could be that just one or a combination of factors that demonstrates that a person may be a victim.'⁴

If it is controversial to label these people as trafficked then it is only because of their involvement in the cultivation of cannabis. In these cases where there are clear and powerful descriptions of the act and means elements of trafficking, if the purpose of exploitation was sexual exploitation it is my belief they would be informally recognised as trafficked with little hesitation or reluctance. In all of the 27 cases the defendants pleaded guilty. In such circumstances there is no reason for them to fabricate stories about their experiences in attempt to be found innocent by a jury and Judge.

⁴ Home Office. National Referral Mechanism: Guidance for child first responders. 2016. Available at: http://www.antislaverycommissioner.co.uk/media/1058/nrm_-_guidance_for_child_first_responders_v20_ext.pdf

Through the methodology a larger number of cases were identified which included details that gave some suggestion of the possibility of trafficking. However the media reporting in these cases did not describe strong trafficking indicators or multiple trafficking indicators. These cases were therefore not included as part of this research.

The Right to non-Punishment

The international instruments on human trafficking include articles that are intended to protect trafficked persons from being punished as criminals for offences directly related to their trafficking situation. The 2005 Council of Europe Convention on Action Against Trafficking in Human Beings is a significant instrument in the European anti-trafficking response. This entered into force in the UK on 1st April 2009. Article 26 of the Convention establishes the ‘non-punishment provision’ which has the intention of providing trafficked persons some protection from being punished for committing criminal offences which they were compelled to do in their situation of trafficking. Article 26 declares,

‘Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.’

The 2011 European Union Directive on preventing and combating trafficking in human beings and protecting its victims also contains a non-punishment provision. Article 8 of this EU Directive declares,

‘Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.’⁵

It is important to recognise the limitations of these two non-punishment provisions. The Convention calls on states to ‘*provide for the possibility* of not imposing penalties’ and the Directive requires states to ‘ensure that competent nationals are *entitled not to* prosecute or impose penalties.’ (emphasis added) These instruments

⁵2011 European Union Directive on preventing and combating trafficking in human beings and protecting its victims. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_thb_l_101_15_april_2011_1.pdf

do not provide automatic immunity from prosecution and conviction for trafficked persons.

In accordance with these instruments the UK government, Scottish government and Northern Ireland Assembly have all introduced legislation that aim to protect trafficked persons from being wrongly criminalised. This includes people trafficked for forced criminality or people compelled to commit a criminal offence or as a consequence of having been trafficked. Section 45 of the 2015 Modern Slavery Act introduced by the UK government provides the ‘Defence for slavery or trafficking victims who commit an offence.’ Section 45 establishes,

‘(1) A person is not guilty of an offence if— (a) the person is aged 18 or over when the person does the act which constitutes the offence, (b) the person does that act because the person is compelled to do it, (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. (2) A person may be compelled to do something by another person or by the person’s circumstances. (3) Compulsion is attributable to slavery or to relevant exploitation only if— (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or (b) it is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.’⁶

In introducing the ‘defence for slavery or trafficking victims’ the Minister for Modern Slavery and Organised Crime, Karen Bradley specifically highlighted that it would be able to protect people trafficked for cannabis cultivation from being punished for the production of cannabis. She explained,

‘The defence will not apply to a number of serious offences – mainly violent and sexual offences – set out in the Bill. However, it will cover the offences that victims of modern slavery are typically forced to commit, such as cannabis cultivation, offences related to prostitution, and immigration offences.’⁷

This paper highlights that despite this acknowledgement that section 45 was introduced with specific consideration to protecting people being trafficked for cannabis cultivation, such persons in England and Wales are continuing to be punished for the cultivation of cannabis. The international instruments and statutory

⁶ Modern Slavery Act. 2015. Available at:

http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf

⁷ Modern Slavery Bill Factsheet: Defence for victims (Clause 45) Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372789/DefenceVictims.pdf

legislation in the UK are not protecting trafficked persons in the UK from being convicted for the production of cannabis.

Punishing those not identified as trafficked

There were 14 cases where the media reporting contained no mention of the defendants having been identified as a potential trafficked person despite descriptions of some or all of the three elements of trafficking, the act, means and purpose, and multiple strong trafficking indicators. These common indicators included the recruitment and transportation of the defendant, the abuse of vulnerability through economic and family situations and language, deception about the nature of the work in the UK, exploitation, bad living conditions, no pay, coercion through imprisonment, debt bondage, actual violence and threats of violence against them and their families.

The consequences of not being identified as trafficked are severe. Trafficked persons will be unable to use the non-punishment provisions provided in legislation throughout the UK or be treated in respect of the rights to non-punishment established in the international instruments on human trafficking if they have not been identified as trafficked. I want to highlight some of the examples of cases where people with strong indicators of trafficking have not been identified as trafficked and have been convicted for the offence of the production of cannabis.

In a court case from February 2017 a Vietnamese man was sentenced to 8 months in prison for the production of cannabis. The defendant's solicitor described to the court the transportation of the defendant to where he was to be exploited, 'further evidence he was being coerced is that he was collected from the station and was taken straight to the property.' The Judge acknowledged the means of coercion of the defendant, speaking directly to the defendant, he stated, 'You were told not to answer the door to anyone and not to leave, under the threat of being found and assaulted.' The defendant's solicitor explicitly addressed the exploitation of his client, telling the court, 'There was undoubted exploitation in this case.'⁸ Despite all three of the

⁸ Kennedy, Rob. (2017) 'Cannabis farmer was shipped from Vietnam to Newcastle then exploited and threatened by gangsters.' *Chronicle Live*. 20 February. Available at: <http://www.chroniclelive.co.uk/news/north-east-news/cannabis-farmer-shipped-vietnam-newcastle-12628561>

elements of trafficking being acknowledged there is no evidence in the media report on the trial that the defendant was recognised as having been trafficked.

In one case from June 2015 a court heard how a 47 year old Vietnamese woman had been forced into prostitution to repay a €4,000 debt she owed to those who transported her to the UK. The court heard that due to her age she was 'unprofitable' working as a prostitute and was pressured into growing cannabis. The woman managed to escape but was recaptured and made to continue growing cannabis under the threat that 'unpleasant things' would happen to her family if she did not cooperate. Her solicitor told the court, "In many ways she has been exploited. The phrase she has used to me is that she is 'paying the price' now." The Judge acknowledged, "I understand the pressures you were under were significant mitigating features." There is no evidence from the media reporting that any of these indicators led to the woman being recognised as potentially having been trafficked. As a consequence this woman was not given the opportunity to access support and protection. Instead of this she was punished with a thirty month custodial sentence.⁹

The details offered in such cases fulfil the requirements of the definition of human trafficking as contained within Article 4 of the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings, the most significant international trafficking instrument for European states,

"Trafficking in human beings" 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.¹⁰

It is necessary to critically consider how and why such trafficking indicators are not leading to responders within law-enforcement and the criminal justice system recognising the defendants as potential trafficked persons. It is argued here that such people are not being identified as trafficked because they do not match the

⁹ Stigant, Gael. (2015) '£136k Doncaster drugs 'gardeners' jailed. *The Star*. 22 June. Available at: <http://www.thestar.co.uk/news/crime/136k-doncaster-drug-gardeners-jailed-1-7318178>

¹⁰ The 2005 Council of Europe Convention on Action Against Trafficking in Human Beings. Available at: <https://rm.coe.int/168008371d>

expectation of the constructed stereotypical victim of trafficking and trafficking situation.

A victim discourse has constructed trafficked persons in a way which seeks to present them as people who deserve compassion and sympathy and support and protection against the context of considerable hostility towards immigration and migrants. The Prime Minister, Theresa May, has promised to create a 'really hostile environment for illegal migration' in the UK. ¹¹

The victim discourse explicitly focuses on the language of 'innocence' and 'innocent' victims of trafficking. For example in a speech in October 2016, Theresa May proclaimed 'Modern day slavery, perpetrated by human traffickers and slave drivers are illegally committing innocent lives to exploitation and abuse.' ¹² A stereotypical 'ideal' and 'innocent' victim has been created which offers a very narrow definition of a 'trafficking victim' and a limited perception of the complexities and scope of the nature of human trafficking. ¹³

The most important way of conveying the innocence of victims of trafficking is the presentation of them as people who did not consent to their movement. The aim is that this will enable them to be recognised as people deserving of support and protection because they were not 'guilty of ambition.' ¹⁴ This focus on consent separates trafficked persons as a distinct category of people who should be protected in stark contrast to undocumented economic migrants who are punished and vilified. Buckland argues the focus on the innocent victim of trafficking also serves as a

¹¹ Kirkup, James and Winnett, Robert. (2012) 'Theresa May interview: 'We're going to give illegal migrants a really hostile reception.' The Daily Telegraph. 22 May. Available at: <http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>

¹² Anti-Slavery Service. Prime Minister's speech. (2016) 12 October. Available at: <https://www.gov.uk/government/speeches/anti-slavery-service-prime-ministers-speech>

¹³ See, Srikantiah, Jayashri. (2007) 'Perfect victims and real survivors: The iconic victim in domestic human trafficking Law.' *Boston University Law Review*. 87, pp.157-211. Munro, Vanessa, E. (2008) 'Of rights and rhetoric: Discourses of degradation and exploitation in the context of sex trafficking.' *Journal of Law and Society*. 35 (2), pp.240-264. Lee, Maggy. (2010) *Trafficking and Global Crime Control*. California: Sage Publications. Hoyle, Carolyn, Bosworth, Mary and Dempsey, Michelle. (2011) 'Labelling the victims of sex trafficking: Exploring the borderland between rhetoric and reality.' *Social and Legal Studies*. 20 (3), pp.313-329.

¹⁴Chapkis, Wendy. (2003) 'Trafficking, migration and the law.' *Gender and Society*. 17 (6), pp.923-937 and Buckland, Benjamin. (2008) 'More than just victims: the truth about human trafficking.' *Public Policy Research*. 15 (1), pp.42-47.

'justification for equally severe punishments meted out to economic migrants, asylum seekers and smuggled people.' ¹⁵

However Article 4(b) of the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings states,

'The consent of a victim of "trafficking in human beings" 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.'

The Convention establishes that a person has been trafficked even if they have given their consent to a situation because the consent is irrelevant if one of the means outlined in Article 4 (a) for gaining this consent has been used.

None of the media reports on the court cases where Vietnamese nationals with indicators of trafficking were convicted for the production of cannabis described the defendants having been kidnapped and physically forced to migrate to the UK. The cases do highlight how consent was gained through the means of fraud, deception, abuse of a position of vulnerability and debt bondage. This should make their consent to agreeing to come to the UK with those who recruited and transported them irrelevant and should be recognised as indicators of trafficking. However law-enforcement responders and those within the criminal justice system have not responded to these people as potential trafficked persons.

There are examples of cases where people who were not identified as trafficked or enslaved were convicted of the production of cannabis and given custodial sentences where the court heard how the defendants had been coerced, exploited and abused but that the defendants had wanted to come to the UK. One such example is a court case from August 2015 in which three Vietnamese men were each sentenced to three years and 3 months, 4 years and 4 and a half years. In sentencing the Judge stated that the men had been exploited but the court heard that the, "lure of the promised land was too much" for one of the defendant's and [he] had travelled to the UK to send money home for his parents and elderly grandparents.' ¹⁶ The abuse of

¹⁵ Buckland. 2008. p42.

¹⁶ 2015. 'Night club cannabis farm gang jailed for 12 years.' *Warrington Guardian*. 13 August. Available at: http://www.warringtonguardian.co.uk/news/13587542.Night_club_cannabis_farm_gang_jailed_for_12_years/

vulnerability of the defendant by those who recruited and transported him to the UK was not recognised as an element of human trafficking.

The victim discourse also emphasises the need to ‘rescue’ victims of trafficking. The UK Government’s Human Trafficking Strategy discusses how law enforcement continues to ‘rescue victims’¹⁷ Faith-based support organisations in the UK have given considerable focus to the need for trafficked persons to be ‘rescued.’ The Salvation Army, contracted by the UK government to support trafficked adults in England and Wales, describes how people who go through their ‘victim support programme’ are ‘transported from their place of rescue to safe and secure accommodation where they will be cared for’¹⁸ The Medaille Trust, a faith-based support organisation describes how, ‘For trafficked victims, being rescued is the start of a long road to restoration and freedom.’ City Hearts, also a faith-based support organisation explains the organisation provides support for, ‘men, women, and families who have been rescued from human trafficking’¹⁹ The faith-based support organisation ‘Hope for Justice’ use the slogan ‘Join the Rescue Mission.’

The focus on rescue reinforces the notion that victims of trafficking do not consent to their movement. It also presents a victim of trafficking as someone who must be physically imprisoned and trapped. The analysis of the media reports on court cases identified that only in 3 of the 27 cases were people physically imprisoned inside the cannabis factories where they were being exploited. The focus on rescuing victims harms the identification of people found in a cannabis factory as having been trafficked when they were not physically imprisoned but were forced to remain within the situation through coercion and an abuse of their vulnerability.

Punishing people identified as trafficked and enslaved

The methodology identified 13 cases where Vietnamese nationals were convicted for the production of cannabis despite being informally identified as trafficked or enslaved. In these cases informal identification as a victim of trafficking did not prevent them from being punished as criminals and did not provide them support

¹⁷ (Home Office. 2011. p21).

¹⁸ The Salvation Army. (2012) Human trafficking specialist victim support service. Available at: <http://www.somersetsurvivors.org.uk/EasysiteWeb/getresource.axd?AssetID=25125&type=full&servicetype=Attachment>

¹⁹ City Hearts. (2012) Support and accommodation. Available at: <http://www.cityhearts.co.uk/anti-trafficking/support-and-accomodation/>

and protection. The responders within law-enforcement and the criminal justice system have simultaneously conceived of those on trial as being both victims of trafficking and people who must be punished.

This duality is most clearly expressed in the remarks of a senior police officer to a journalist following a court case in February 2016 in which two Vietnamese men described in the media report as 'most likely trafficked' were convicted of cannabis production and each sentenced to 22 months in prison. The police officer said to the media, "you have to ask if these people are the villains or the victims." ²⁰ While the police officer asked if the defendants were victims or villains it should be clear that people who have been trafficked for cannabis cultivation who are criminalised, prosecuted and convicted for the production of cannabis are not being treated as victims. Within the cases of people who were informally identified as trafficked but still punished there were cases where Judges offered verbal expressions of pity to the defendants. By sentencing the defendants to long prison sentences their words lacked any value or significance. The practical response of sending the defendants to prison treats them as villains and not as victims. They are made to suffer a continuation of punishment and suffering at both the hands of their traffickers and the state.

In such cases where the Judges expressed sympathy and remorse for what they described as the desperate and sad circumstances of the defendants it may be considered that they lacked recognition and understanding of the possibility of the laws protecting the defendants they identified as trafficked and enslaved from being found guilty and sent to prison.

One example of a case where sympathy was expressed but punishment was delivered is a court case from April 2017 in which two Vietnamese men convicted of the production of cannabis were given 12 month prison sentences by a Judge who described their experiences as 'an example of modern day slavery.' ²¹ The media reporting on this case highlighted unmistakable indicators and elements of

²⁰ Naylor, Martin. (2016) Cannabis farmers 'likely to have been victims' of gang. *The Derby Telegraph*. 17 February. Available at: <http://www.derbytelegraph.co.uk/Cannabis-farmers-likely-victims-gang/story-28747024-detail/story.html>

²¹ Fishwick, Ben. (2017) 'Raid uncovers £400,000 cannabis factory at Havant home tended by trafficking victims.' *The Portsmouth News*. 7 April. Available at: <http://www.portsmouth.co.uk/news/crime/raid-uncovers-400-000-cannabis-factory-at-havant-home-tended-by-trafficking-victims-1-7903483>

trafficking. The media report states, 'Prosecutor James Kellam said it was not uncommon for people from South Asia to be trafficked into the UK and put into 'bonded labour'.' The Judge told the defendants, 'I am satisfied that you were engaged in that by way of pressure, coercion and intimidation and you were clearly in a position whereby you have been exploited.'²² In sentencing the Judge remarked, 'I wish you both well and that this whole unfortunate involvement in this country will come to an end very shortly.'²³

In another case, a Vietnamese woman received a 13 month prison sentence for the production of cannabis following a trial in October 2015. The court heard that she had been trafficked to the UK to grow cannabis to pay off a debt and that her children were in the custody of those who trafficked her to the UK. The Judge described how the defendant who spoke no English had been 'used' by others and described her experiences as a 'sad and troubling case.' Despite this expression the Judge still found the woman guilty and sent her to prison.²⁴

The informal recognition of a person as trafficked or enslaved by those within the criminal justice system or by law-enforcement should enable the possibility for them to be protected from punishment using the non-punishment provisions provided in law throughout the UK. However being given these labels by such responders is distinct from being formally recognised by the Home Office as a trafficked person.

The media search identified a case from October 2015 where a Vietnamese man was sentenced to 14 months in prison for the production of cannabis in which the court ignored the fact that the defendant was in the process of having a decision made on whether he was formally identified as trafficked. The court heard the defendant was deceived about the work he would do in the UK and was locked into the cannabis farm by those controlling him. The defendant showed the court the marks and bruises on his body that he said were the result of the beatings that he been subjected to by those controlling him. The defendant's barrister told the court that the Home Office were examining whether he was a victim of trafficking but it was explained

²² Ibid.

²³ Ibid.

²⁴ (2015) "'Trafficked" woman faces deportation after being found at cannabis farm.' *The Halifax Courier*. 22 October. Available at: <http://www.halifaxcourier.co.uk/news/trafficked-woman-faces-deportation-after-being-found-at-cannabis-farm-1-7530251>

that the Crown Prosecution Service wanted to continue with criminal proceedings against him regardless of the decision.²⁵ This contradicts the CPS' own guidance on human trafficking and smuggling which states that prosecutors should take account of a formal decision on the status of a person as trafficked when considering whether to prosecute the person.²⁶

It is argued here that people are being punished for the production of cannabis despite being recognised as trafficked or as slaves because of the aggravating fact that they are undocumented 'illegal' immigrants. The significance and importance of their status as victims of trafficking is less important than their status as undocumented 'illegal' immigrants. The victim discourse has attempted to overcome the hostility and punitive responses towards undocumented migrants that exists in government policy, legislation and public attitudes by portraying trafficked persons as a special category of people who are deserving of special sympathy and support. However this has ultimately undermined the identification of trafficked persons who do not match the stereotypical portrayal of an innocent victim. The exploitation, abuse and deception is secondary to the primary concern of a person's immigration status.²⁷

The significance of immigration status is best illustrated by recognising that people may be protected from being convicted and imprisoned for offences they committed as a direct consequence of being trafficked but can still be detained in an immigration removal centre. In February 2017 there was widespread national media coverage of a police raid of a former nuclear bunker being used as a cannabis factory. The Detective Inspector leading the police investigation told journalists that the police had identified four Vietnamese nationals inside the cannabis factory they believed to be victims of slavery. He explained, 'No one would do this by choice. This was slave labour. There is no natural light, no running water supplies, water had to be brought in. This is hard, manual labour – it's not just a walk around with a

²⁵ Loweth, Jenny. (2015) 'Illegal immigrant beaten by drug gang-masters and locked in Bradford house to tend to massive cannabis farm.' *Telegraph and Argus*. 8 October. Available at: http://www.thetelegraphandargus.co.uk/news/13810969.illegal_immigrant_beaten_by_drug_gang_masters_and_locked_in_Bradford_house_to_tend_to_massive_cannabis_farm/

²⁶ Crown Prosecution Service. Human Trafficking, Smuggling and Slavery http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/

²⁷ Bhabha, Jacqueline and Zard, Monette. 'Smuggled or trafficked?' *Forced Migration Review*. 2006. Available at: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR25/FMR2502.pdf>

watering can. I was shocked by the scale of it.’²⁸ In March 2017 a newspaper article highlighted that none of those men had been prosecuted because they were recognised as having been trafficked for the purpose of producing cannabis but they were ‘currently in an immigration detention centre.’²⁹

Conclusion

Nobody in the UK has ever been convicted of trafficking people for the purpose of cannabis cultivation. While the criminalisation and punishment of people trafficked for cannabis cultivation treats victims as villains it simultaneously enables those who are responsible for this abuse and exploitation to avoid being punished for their crimes. More trafficked persons are being punished than traffickers.

In some of the court cases in which people have been convicted of the production of cannabis the Judges have raised their disappointment that those responsible for controlling the cannabis farms and the gardeners are not in the court to face justice. For example in February 2017 a Vietnamese man and woman were sentenced to 13 months and 16 months in prison for cannabis production in a court case after having been described by the Judge as trafficked to the UK to work as cannabis gardeners. The Judge expressed disappointment that those ultimately responsible had not been identified, "Cannabis farms are becoming a favoured operation for organised crime gangs as they yield high profits and quick turn-over, and those running them believe the chances of them being caught are low." The Judge added ‘it was a "great pity" the police hadn't been able to identify the people responsible for controlling this cannabis farm.’³⁰ There was no apparent recognition that punishing those found inside the cannabis factories undermines the possibility of identifying such persons and bringing them to justice.

²⁸ Gentleman, Amelia. (2017) ‘Huge cannabis farm 'was staffed by trafficked Vietnamese teenagers.’ *The Guardian*. 25 February. Available at: <https://www.theguardian.com/uk-news/2017/feb/24/huge-cannabis-farm-staffed-trafficked-vietnamese-teenagers>

²⁹ Gentleman, Amelia. (2017) ‘Trafficked and enslaved: the teenagers tending UK cannabis farms.’ *The Guardian*. March 25. Available at: <https://www.theguardian.com/society/2017/mar/25/trafficked-enslaved-teenagers-tending-uk-cannabis-farms-vietnamese>

³⁰ Evans, Jason. (2017) ‘£100,000 cannabis farm discovered in Swansea house by chance.’ *Wales Online*. 14 February. Available at: <http://www.southwales-eveningpost.co.uk/100-000-cannabis-farm-discovered-in-swansea-house-by-chance/story-30133159-detail/story.html>

This paper has shown how people trafficked for cannabis cultivation can receive punishment rather than support and protection. Some trafficked persons have been punished because their indicators of trafficking have not been properly identified and understood because their trafficking experiences are not consistent with the stereotypical trafficking victim. It is necessary that challenges to the dominant victim discourse continue and that there is honest discussion about the realities of the motivations and ambitions of those who find themselves being trafficked.

However this paper has clearly shown that being recognised as having been trafficked for the purpose of committing a criminal offence does not ensure protection from punishment. The punishment of people identified as trafficked and enslaved should be of great concern and requires significant attention to ensure that those within the criminal justice system are aware of and understand the legislation which provides the possibility of preventing such punishment of trafficked persons. Of greatest concern is that the punishment of such persons seems to be accepted on the basis that they had wanted to come to the UK as irregular migrants and that this desire is more significant than the abuse and exploitation they suffered in being compelled to commit criminal acts. This is best illustrated by a Judge who in October 2016 told a Vietnamese man in court, “‘You came here looking for a new life and you found yourself in something approaching modern slavery.’ The Judge sentenced the man to 10 months in prison.”³¹

³¹ ‘Vietnamese man faces deportation after being jailed over Telford cannabis factory.’ (2016) *Shropshire Star*. 12 October. Available at: <http://www.shropshirestar.com/news/crime/2016/10/12/vietnamese-man-faces-deportation-after-being-jailed-over-telford-cannabis-factory/>