

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Review Meeting

Migration: Human Rights Protection of Smuggled Persons

Geneva, 25-26 July 2005

HUMAN SMUGGLING, MIGRATION AND HUMAN RIGHTS
A UK PERSPECTIVE

Sue Conlan

© 2005, International Council on Human Rights Policy
ICHRP commissioned this document as a Working Paper.
ICHRP has not edited it and is not responsible for its accuracy or for the views and opinions expressed.
ICHRP welcomes the re-use, re-publication and re-distribution of this paper, appropriately cited.

INTRODUCTION

"[The] traditional tolerance [of the people of this country] is under threat. It is under threat from those who come and live here illegally by breaking our rules and abusing our hospitality...The challenge for the Government is to maintain public confidence in the system by agreeing immigration where it is in the country's interests and preventing it where it is not"

Tony Blair, February 2005¹

1. Immigration is a controversial subject. Proponents of immigration control, regardless of political persuasion, will attempt to steal the spotlight in an effort to demonstrate their ability to control the borders and limit the numbers of new arrivals. The common theme is that if there are restrictions on those coming in, and particularly if they are prevented from settling, then those who manage to get through will more easily find a welcome and a home.
2. In such a climate it is difficult to introduce facts into the debate. That is particularly true when phrases such as "asylum seeker", "illegal immigrants" and "illegal workers" are used synonymously as terms of abuse. There is in fact no legal definition of "illegal immigrant" or "illegal worker" and the term "asylum seeker" only exists in law in order to define who is eligible for support whilst their case is considered. But the popular use of such terms makes it appear as though very disparate groups of people can in fact be dealt with by one set of policies, laws or procedures.
3. This paper attempts to provide an understanding of the framework of immigration control in the UK and its impact upon the experience of real people, focusing in particular on those, including

¹ Home Office (2005) 'Controlling our Borders: Making Migration work for Britain', p.5

children, who expose themselves to the control of a person or agency in an attempt to reach a safe haven, start a new life for themselves or just find a temporary place to work. Through case studies, it examines their motivations for leaving their own country, their vulnerability during the journey and their reception on or after their arrival in the UK. It does so within the context of the political and legal framework that has been developed under the current Labour administration.

4. The Home Office White Paper, 'Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum', was published when the Human Rights Bill was going through parliament. In the introduction, the Bill was described by the Home Secretary as "a landmark in the development of a fair and reasonable relationship between individuals and the state in this country"² and it was therefore a "backdrop" to the proposals concerning asylum and immigration set out in the White Paper. The White Paper itself clearly stated: "Any strategy for immigration control must, as well as reflecting operational requirements, satisfy fundamental policy principles. Chief among these are respect for human rights and race equality"³
5. The question that this paper therefore addresses is whether the system of immigration control in the UK has really achieved a balance between concerns about protection of the state and the protection of the individual from human rights abuses.
6. This paper draws upon in-depth and unstructured interviews with people who have all arrived in the UK by irregular means alongside interviews or consultations with representatives of a Chinese community organisation; lawyers specialising in immigration, asylum and criminal law; an academic specialising in migration; a journalist who has investigated Chinese smuggling operations; a nurse working with migrant workers; professional organisations concerned with asylum seekers, refugees, migrant workers, torture and trafficking victims; and the Immigration Service. In addition, information has also been gathered through a meeting of and information circulated through other immigration practitioners and of community activists working with trade unions or with migrants and refugees.

THE UK SYSTEM OF IMMIGRATION CONTROL

The Policies

7. Home Office policy statements over the last 7 years have concentrated upon abuse of the immigration system. This is firstly by people themselves arriving, entering or remaining in the UK unlawfully and 'illegal workers' (including failed asylum seekers) and, secondly, the involvement of 'organised crime' in the transportation of people to the UK and in their exploitation.⁴
8. The solutions identified in the same statements are two-fold: a tougher approach to abuse (referred to below as negative measures) and a more flexible approach to the needs of individuals who require protection (including refugees and trafficking victims) and to the demands of the UK economy (positive measures).
9. The negative measures include laws or practices which:
 - deter or prevent people from travelling to the UK who do not meet the criteria to qualify as refugees;

² Home Office (1998) Preface.

³ Home Office (1998) para. 2.1

⁴ The full set of Home Office papers referred to in this paper are set out in the Bibliography

- prevent the arrival of other ‘inadmissible passengers’;
 - disrupt the organisers who profit from the exploitation of those who are smuggled or trafficked, including employers of ‘illegal workers’;
 - introduce new or increase the existing penalties for those who enter or remain unlawfully, particularly the organisers of such offences;
 - increase the removal of those in the UK unlawfully.
10. The positive measures include laws or practices which:
- provide a “seamless asylum process from induction to integration or return”;
 - improve protection for refugees in their regions of origin;
 - increase the use of refugee re-settlement programmes;
 - provide protection and support for the victims of ‘trafficking’;
 - create legal migration routes to meet the demands of the UK labour market and economy;
 - integrate into British society those allowed to settle in the UK.
11. Some of these policy statements have required the introduction of new laws or the strengthening of existing laws; others have simply led to a change in practice.

The legal framework

12. Immigration control is governed principally by the Immigration Act 1971. The 1971 Act gives power to the Home Secretary to introduce immigration rules which provide a much clearer statement of the controls governing arrival, entry, residence and removal.
13. Since 1993 it has been the trend to introduce new legislation in the field of immigration and asylum at least every 3 years, producing widespread changes that barely have time to take effect before more restrictive laws are brought in.⁵ There have therefore been new Acts in 1993, 1996, 1999, 2002 and 2004. In addition, the Human Rights Act 1998 came into force in October 2000, making it unlawful for a public authority to act in a way which contravenes the Human Rights Convention.
14. It was the 1993 Act which gave primacy to the Refugee Convention, stating that “nothing within the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the [Refugee] Convention”.⁶ That has since been given a very restrictive interpretation. As Macdonald and Webber have stated: “In layman’s language, refugees are people seeking asylum in a foreign country because of war, civil war or other catastrophic events in their own. It is only in the artificial world of the 1951 Convention ... that generalised catastrophe disqualifies, rather than qualifies, a person from the status of refugee. It is partly this mismatch between ‘legal’ or ‘Convention’ refugees and ‘actual’ or ‘*de facto*’ refugees which has allowed western European governments to enact even more restrictive measures against refugees, often irresponsibly described as ‘bogus’ or ‘abusive’. Over the past decade the word ‘asylum’ has almost lost its meaning under the weight of political scaremongering to which it has been subject”.⁷
15. Article 31(1) of the Refugee Convention prevents a State from imposing penalties on refugees for their illegal entry or presence under certain restrictions and therefore provides a defence to a

⁵ The full list of legislation, referred to in this paper by date only, is set out in the Bibliography

⁶ section 2, 1993 Act

⁷ Macdonald & Webber, para. 12.1, p. 465

refugee (including a person claiming to be a refugee). The UK previously had the practice of prosecuting asylum seekers who were in possession of false documents. The practice was considered in the High Court in the case of *Adimi*⁸ where the “court held that where illegal entry or the use of false documents or delay [in claiming asylum and coming forward to the authorities] can be attributed to a *bona fide* desire to seek asylum, whether here or elsewhere, that conduct should be considered covered by Article 31(1)”⁹. This defence was incorporated into legislation as section 31 of the 1999 Act.

16. The emphasis upon deterrence, prevention and disruption were particular features of the 2002 Act following the White Paper, ‘Secure Borders, Safe Haven’. In his introduction to the White Paper, the Home Secretary stated: “The Government, and those agencies and organisations delivering nationality, immigration and asylum services, need to demonstrate that they know what they are doing and that they are doing it well. Only in this way will we be able to expose the nonsense of the claim that people coming through the Channel Tunnel, or crossing in container lorries, constitute an invasion when it patently demonstrates how difficult people are finding it to even reach this country”¹⁰.
17. The 2002 Act introduced new criminal offences (effective from February 2003) to ‘dissuade’ those who are involved in the facilitation of travel to the UK from taking the risk. One of the new offences is ‘Assisting unlawful immigration to a member State’ (now s 25 of the 1971 Act). A second new offence specifically referred to the assistance given to asylum seekers to travel to the UK, regardless of whether their intention or practice was to enter the UK unlawfully. The offence is committed if the person “knowingly and for gain facilitates the arrival of an individual ... who he knows or has reasonable cause to believe ... is an asylum seeker”¹¹. The maximum prison sentence on conviction is 14 years. The principal aim of the new offence is to prevent the arrival in the UK of those who wish to claim asylum. If it was concerned with illegal entry or smuggling, it would only be an offence in those circumstances and not, for example where the application for asylum is made at the port. The Act also introduced an offence of being in possession of an “immigration stamp”, in other words the facility to produce a forged stamp to give the appearance of an authentic stamp given by a person acting lawfully to grant leave to enter or remain in the UK.
18. The laws on trafficking have been further strengthened in the 2004 Act with the introduction of a new offence extending the exploitation to include, for example, victims of behaviour contrary to Article 4 of the Human Rights Convention (slavery and forced labour)¹². However, there is no indication of the nature or level of support and protection that victims of the new offence will receive.
19. Under the 1996 Act (section 8) it is an offence to employ a person over the age of 16 who does not have permission to enter or remain in the UK, has permission which is invalid or expired or who is restricted or prohibited from working as a condition of their stay. It has not yet been used to prosecute an employer although in 2004 alone, there were 1600 enforcement operations against illegal working which picked up 3300 illegal workers¹³. Section 25 of the 1971 Act (facilitating illegal entry) has been used in some cases against employers but no information is available to elaborate upon this. The Home Office is now moving into co-operation with other government departments in the investigation of illegal employment practices, for example, with the Inland Revenue and the Health and Safety Executive, based upon the evidence that

⁸ *R v Uxbridge Magistrates Court ex p. Adimi* [1999] INLR 490

⁹ Macdonald & Webber, para. 12.11, p. 474

¹⁰ Home Office (2002), p. 4

¹¹ section 25A 1971 Act as introduced by section 143 2002 Act

¹² section 4 2004 Act

¹³ Home Office (2005), para. 60., p. 26

employers who take on illegal workers are also likely to be in breach of other statutory responsibilities.

20. The 2002 Act amended section 8 of the 1996 Act by requiring employers to retain, copy, record and if necessary produce a document for all employees to demonstrate that they had permission to live in the UK and/or permission to work. From 1 May 2004 (to coincide with the enlargement of the European Union) an employer now has to take 3 steps to ensure that they are not liable for employing someone illegally: firstly, check that the prospective employee has the necessary document(s) to work and/or be in the UK (from a specified list of documents); secondly, satisfy themselves that the prospective employee is the rightful holder of the document(s) presented; and, thirdly, copy or scan the documents to keep with the employee's records. These documents can subsequently be presented as evidence to show that the employer took all the required steps to ensure that the employee had the right to be in and work in the UK.
21. The 2002 Act also amended the 1971 Act by significantly extending the powers to immigration officers to investigate the commission of "immigration employment offences", in other words, where there is suspicion that an employer is employing workers who either do not have the right to work or to live in the UK.
22. The 2004 Act introduced the new offence of entering the UK without a passport (section 2). It is specifically targeted at individual asylum seekers and refugees and not at the 'agents' who facilitate their travel but with an expectation that it will lead to a change of practice with people at least retaining the document they travelled on even if it false or otherwise not valid. Neither the policy nor press statements explain why most agents, who have no obligation to the person travelling on a false document but every reason not to expose themselves, will have any interest in the recipient of their services ending up with a criminal conviction. Their responsibility ends when the person arrives in the UK.
23. Nevertheless, since September 2004, it has been an offence not to have, at a leave or asylum interview, a valid immigration document which satisfactorily establishes identity and nationality (either for the individual applicant and/or their family members). However, it is a defence that the person has a "reasonable excuse" for not being in possession of an immigration document, or to produce a false document and prove it was used "for all purposes in connection with his journey to the UK" or to prove that no document was ever held "at any stage since he set out on the journey". The Act goes on to define what constitutes a "reasonable excuse", stipulating that it does **not** include "complying with the instructions or advice given by a person who offers advice about, or facilitates, immigration into the UK" unless "it is unreasonable to expect non-compliance with the instructions or advice". The maximum prison sentence on conviction is 2 years.
24. The Court of Appeal had an opportunity to consider the new offence under section 2 for the first time on 3 February 2005 when the appeal of an 18 year old Chinese woman came before the court. Bei Bei Wang pleaded guilty in the Crown Court to entering the UK without a passport, having arrived at Heathrow on 8 October 2004 without a passport and a ticket. She was sentenced to 10 months' detention in a young offenders' institution and recommended for deportation. She had travelled for 6 months after leaving China through several countries in the company of an agent who kept the passport except when she had to show it to the immigration authorities. She had been sentenced on the basis that her guilt had been established solely because it was unreasonable for her to have followed the instructions of the agent. At the time that the case came before the Court of Appeal, Bei Bei Wang's asylum application was still waiting for a decision.

25. The court took the view that “a custodial sentence is inevitable when an offence of this kind is committed – not least because these offences have the real potential to undermine the whole system of immigration control... the dominant consideration is the public interest requirement of imposing a deterrent sentence in these circumstances”.¹⁴ However, taking into account a number of factors including her age the sentence was reduced to 2 months. In addition, the recommendation for deportation was quashed: “given she is a young woman of good character, in our view the commission of this sole criminal offence did not provide a sustainable basis for the judge to conclude that her continued presence in this country is to its detriment”.¹⁵
26. In addition, the same Act makes it imperative for a decision-maker to take into account “as damaging credibility” behaviour which includes failure to produce a valid passport. Significantly, the same section also stipulates that credibility is damaged by failing to “take advantage of a reasonable opportunity” to claim asylum in a “safe third country”. Given the inability of most refugees to travel direct from the country where they fear persecution, it is almost inevitable that they will have travelled through one or more third countries, some of whom are signatories to the Refugee Convention.
27. As for the laws designed to increase the removal of failed asylum seekers it is only necessary to refer to 3 provisions in the 2004 Act to illustrate the policy. Firstly, the power now exists to withdraw support from an individual or couple with children who fail to make a voluntary departure, leaving the family either destitute or forced to leave; secondly, the failure of an individual to co-operate with deportation or removal (which may include attending their country’s embassy to make a travel document application) is now a criminal offence attracting a maximum prison sentence of 2 years; thirdly, an individual may be required to co-operate with electronic tagging as an alternative to detention and as a means of keeping track of a person through the asylum process and thereby more easily effecting removal at the end. Failure to co-operate may lead to detention and possibly prosecution.
28. Any plans the Home Office previously held for the integration of those recognised as refugees has since been undermined by the proposal in ‘Controlling our Borders’ to limit the leave granted to refugees to 5 years with the possibility of removal to their country at the end of that period if the situation which gave rise to the need for protection no longer exists.
29. As well as the domestic legislation outlined above, the UK is also signatory to a number of international instruments which have a bearing upon both human rights obligations and which contain a framework for consensus and co-operation on an international level.

The International Framework

30. For the purposes of this study, the most important international instruments are those which are intended to provide a safe haven for refugees, a framework for human rights, the promotion of the rights of migrant workers and the protection for the state and victims from smuggling.
31. The UK participated in the drafting of the UN Convention on the Status of Refugees which was passed at Geneva in July 1951. The scope of the original Convention, drafted in the aftermath of the Second World War, restricted the definition of refugees to those caught up in events before 1951. Its scope was extended by the 1967 Protocol. The Convention defines refugees and the duties of protection owed to them by the countries where they have relocated. Significantly, for the purposes of this study, the UK representative at the Geneva conference said that “fleeing

¹⁴ *R v Bei Bei Wang* [2005] EWCA Crim 293, para. 10, judgement of Fulford, J.

¹⁵ Judgement, para. 16

persecution was itself good cause for illegal entry”.¹⁶ The ‘Refugee Convention’, as it is frequently referred to, was effectively incorporated into British law in the 1993 Act.

32. The UK was also actively involved in the drafting of the Convention on the Protection of Human Rights and Fundamental Freedoms which was passed in November 1950. Even before the ‘European Convention on Human Rights’ (ECHR) became part of British law in October 2000, with the introduction of the Human Rights Act 1998, it was argued and relied upon, not least in the field of immigration and asylum. The ECHR is intended to give effect to and maintain and promote “the core values of a democratic society: pluralism, openness and broadmindedness, the rule of law, freedom of expression”.¹⁷
33. The UK is also a signatory to the Convention on the Protection of the Rights of All Migrant Workers and their Families passed in 1990 and which came into force in July 2003. Significantly the Convention includes provision for both irregular and undocumented workers. As the UN press release announcing its entry into force stated: “The Convention seeks to play a role in preventing and eliminating the exploitation of migrant workers throughout the entire migration process. In particular, it seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in an irregular or undocumented situation. It provides a set of binding international standards to address the treatment, welfare and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the part of sending and receiving States”.¹⁸ It has not yet been ratified by the UK government.
34. The most recent international instrument to which the UK is a signatory is the “Protocol Against the Smuggling of Migrants by Land, Sea and Air”, one of 2 protocols known as the Palermo Protocols. It was passed in December 2000, just 6 months after 58 Chinese nationals died from suffocation in the back of a lorry which arrived at Dover. Even the dead can apparently still be described as “illegal immigrants”. The Protocol, which came into force on 28 January 2004, is a supplement to the UN Convention Against Transnational Organized Crime. The Preamble to the Protocol recognises the “significant increase in the activities of organized criminal groups in the smuggling of migrants...which bring great harm to the States concerned” and, at the same time, that there is a “need to protect migrants with humane treatment and full protection of their rights”. Therefore, the ‘Statement of purpose’, as set out in Article 2 of the Protocol, states:

“The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote co-operation among State Parties to that end, while protecting the rights of smuggled migrants.”
35. States which have ratified the Protocol are required to strengthen legislation to prevent smuggling, placing emphasis on “the criminalization of the smugglers and the organized criminal groups behind them”.
36. The importance to which the UK Government has given the issue of smuggling can be seen both in the practices that have been developed in particular from 2000 onwards as well as in the increase in the criminal offences in legislation passed from 2002.

¹⁶ Quoted in Guy Goodwin-Gill’s article in UNHCR’s Global Consultations on International Protection, see Bibliography

¹⁷ Macdonald & Webber, para. 8.4, p. 257

¹⁸ UN Press Release, 19.3.03

What is “human smuggling”?

37. “People smuggling is the facilitation of illegal entry; entering the UK in breach of immigration law either secretly or through deception. Those who are smuggled are invariably complicit and are effectively customers availing themselves of the smugglers’ services”¹⁹
38. The popular perception of ‘smuggling’ is the entry of individuals or groups quite literally “in the back of a lorry” or the nearest equivalent. In fact, the concept of smuggling is much wider than that.
39. The Palermo Protocol itself describes smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3). It goes on to describe ‘illegal entry’ to mean “crossing borders without complying with the necessary requirements for legal entry into the receiving State”.
40. An ‘illegal entrant’ is defined in UK legislation to mean a person “unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or entering or seeking to enter by means which include deception by another person” and includes a person who has already entered in that way.²⁰
41. In other words, a person could have entered with a false passport or travel document, or arrived with a valid passport but with a visa which was obtained by deception (e.g. purporting to be a student when they are actually coming to work in the UK) or evaded immigration control completely by not presenting themselves to an immigration officer (including people who are quite literally hidden from view in the back of a lorry). Individuals can take this action of their own volition and organisation but, as far as smuggling is concerned, this action would have been taken with the assistance of a third party.
42. Smuggling, at least in theory, is distinct from trafficking, which involves an exploitative relationship or connection either between the trafficker or a third party and the trafficked person. According to the Home Office *Toolkit*,²¹ “‘deception’ and ‘coercion’ both play a major part in trafficking”. As a result of these added factors, whatever the motivation which leads to the use of a smuggler, one of the most significant differences in respect of the 2 classifications is the perception of a trafficked person as a victim. This is in contrast with the view of a smuggled person as a criminal or at least a person complicit in an unlawful act. The relatives of the 58 Chinese people who died in June 2000 were denied compensation by the Criminal Injuries Compensation Appeals Panel because those who died were “voluntarily involved in an unlawful act”.
43. In practice in the UK, the only trafficked persons who are treated as victims are adult women involved in prostitution.
44. The term ‘smuggler’ implies an illicit activity intended by its very nature to by-pass legitimate controls. It can be misleading and it is not a term that is used by people who make use of the services of such a person or organisation. For many coming to the UK, they see the ‘smuggler’ as an agent, providing an unavoidable method of, for example, leaving a dangerous situation or taking up the opportunities to work abroad. Their knowledge that the activities of the agent are illegal is invariably an indication of the risks they are forced to take or their desperation and not a

¹⁹ Home Office (2002), para. 5.2, p. 75

²⁰ Section 33 1971 Act

²¹ UK Government Crime Reduction Toolkit: trafficking of people
www.crimereduction.gov.uk/toolkits/tp00.htm

desire to encourage the illegality. Their perception of the agent or those they meet en route from one stage to another, despite their fears and experience, often does not match the portrayal of such people by the authorities. In the course of this study, some of the comments that have been used include the following:

“I considered the agent an angel not a human being”

“Show me that man so that I can say thank you”

45. That is not to suggest benevolence on the part of all agents or their representatives, just that the person who has reached safety or achieved their desired result may well respect the importance of the part played by the agent. Even those who know the dangers are not necessarily deterred but simply take precautions.
46. In addition, agents are not always unknown, shadowy figures operating in a clandestine manner. They may simply be friends, relatives or acquaintances. In such circumstances, those that have come are often unwilling to provide any information which might lead to the identification of those who have helped and may therefore lead them to fabricate an account of their journey to the UK.

The implementation of immigration control in the UK

47. This section examines first of all the practice of immigration control as it operates to primarily protect the state. That is then examined within the context of the experience of such controls from the perspective of the people who arrive in the UK by irregular means.

The Practice of Protection

48. Immigration control is exercised by officials employed by or operating on behalf of the Home Office. Control can be exercised before a person has even started their journey to the UK, at the point of arrival or after they have entered (whether or not that entry is lawful). Out of recognition that it is far harder to expel a person after arrival than it is to prevent arrival, immigration controls have increasingly focused upon those who, for whatever reason, wish to travel to the UK before they have even started their journey. The result has been that it is exceptionally difficult, and for many such as refugees, those coming under the ‘managed migration’ schemes or other labour migrants it is impossible, to travel to the UK without exercising deception. In addition, for those willing to fill a gap in the UK labour market which is not met by one of the programmes of the ‘managed migration’ scheme, the ability to come lawfully is limited. Invariably that means making use of the ‘services’ of an agent with their contacts and knowledge to progress the journey to the UK. The harder it is to come to the UK, the greater the power of those who are able to provide illegal methods of accessing visas schemes or providing means to travel. The greater the power, the more money to be made. The more money to be made, the greater the likelihood that the ‘smuggling business’ will attract the attention of organised criminals whose illegal activities extend beyond the movement of people.
49. The increase in the unlawful entry of people to the UK has led to the necessity of introducing new criminal offences aimed at those who profit from the exploitation of those who are smuggled. In practice, the offences have punished the individual or family who has been smuggled as much as and quite possibly more than those involved in ‘organised crime’.

Controls to prevent arrival in the UK

50. The methods of exercising control and preventing a person travelling to the UK include the following: visa requirements, pre-clearance schemes, airline liaison officers, fines on carriers, and immigration officers at points of departure.

Visa requirements

51. If nationals of a particular country show an inclination to choose the UK as their country of destination, even if it is for a temporary purpose only, they will become subject to a requirement to obtain a visa before travelling, usually from the British post in their own country. Even those passing through in-transit are now required to obtain a transit visa.

The most recent refugee-producing country to be subjected to a visa requirement is Zimbabwe. The requirement was imposed in November 2002 at the height of the controversy regarding Robert Mugabe's rule of the country and when Zimbabwe was excluded from the Commonwealth because of its poor human rights record

52. To qualify for a visa, the applicant has to satisfy the requirements of a particular category within the immigration rules, e.g. visitor, student, dependent relative, work permit holder, seasonal agricultural worker, etc. For a refugee or a person who is leaving their country due to a humanitarian crisis, there is no appropriate category under which they can apply. Their only option, if they have a valid passport, is to apply for a visa by exercising deception, concealing their true reason for wanting to travel to the UK.
53. For a person coming to work due to demands in the UK labour market, the possibility of obtaining a visa for work-purposes is limited. An option therefore, if a passport is held, is to apply to come to the UK in some other category e.g. as a student and then work after arrival without any other authority.

Pre-clearance schemes

54. For nationals of countries where there is no obligation to obtain a visa, pre-clearance schemes have been used to prevent people boarding planes and seeking permission to enter the UK on arrival (including making an application for asylum). In the words of the UK Government, such schemes send "a clear message that the UK is determined to increase the effectiveness of our overseas controls and to disrupt the activities of those involved in organised abuse of our immigration laws".²²

In July 2001, a scheme was introduced in Prague with co-operation between the governments of the Czech Republic and the UK with a view to identifying and preventing the travel of people who would claim asylum in the UK. More than 90% of those prevented from travelling were members of the Roma community. In a judgement given by the House of Lords on 9th December 2004, the Lords found that the operation at Prague Airport was "inherently and systematically discriminatory"²³

²² Home Office (2002), para. 6.9, p. 94

²³ Quoted in Liberty Press Release, 9.12.2004

Airline Liaison Officers

55. Airlines have responsibilities to ensure that passengers arriving in the UK have the proper documentation to enable them to pass through immigration control, including co-operation with immigration officials. To enable them to fulfil their responsibilities there has been a gradual increase in the deployment of Airline Liaison Officers (ALOs). In 1997, the Home Office recorded a total of 13,000 passengers arriving with inadequate documentation.²⁴ In 2004, ALOs helped airlines prevent 30,000 people from travelling, including 800 children. According to the Immigration Minister, the network of ALOs “has had a significant impact helping to disrupt the activities of people traffickers (*sic*), target undocumented travellers and prevent unaccompanied and improperly documented children being sent to the UK”.²⁵

Fines on carriers

56. Since 1997 airlines and ferry companies have been liable to fines, now set at £2000, for every passenger brought to the UK without proper documentation. The fines were subsequently extended to hauliers and rail freight companies. To avoid the possibility of a fine, staff acting on behalf of the companies can refuse to carry passengers if they are not satisfied that the person travelling is either entitled to the document they hold or, for example, does not have the proper visa or entry clearance.

Immigration Officers operating abroad

57. There have been an increasing number of Immigration Officers deployed in France and Belgium with the power to refuse entry to people travelling to the UK even before arrival. The scheme was first introduced in France but extended to Belgium due to its success in severely limiting the number of people arriving at Waterloo International Station and claiming asylum.

Controls to prevent entry and enforce removal

58. Immigration Officers (IOs) operating at the ports are responsible for determining the entitlement of people to enter the UK. Passengers arriving without proper documentation or who do otherwise qualify within the immigration rules will be refused. Therefore, with the exception of those claiming to be refugees (whose applications are determined by the Home Office), they have decision-making and enforcement powers. As part of increased security measures, they now have available at some ports technology in the form of iris and facial recognition to both assist passengers who are regular arrivals to pass through controls more quickly but also, more importantly, to detect those who are considered to be an “immigration or security threat”. It is proposed that the current voluntary system operating at some ports will become standard on a compulsory basis throughout the UK.
59. In addition, they also help identify those abusing immigration control, such as those seeking to enter illegally. Abuse of the system also includes destroying documents used to travel to or gain entry, even if those documents are false and do not assist in identifying the person who has come.
60. On 22 September 2004, the new criminal offence of failure to possess a valid travel document on arrival or at a leave or asylum interview (if applying in-country) came into force. In introducing

²⁴ Home Office (1998), para. 5.19

²⁵ Home Office Press Release, 21.2.05

the new measure, the Home Secretary stated: “Many criminal traffickers (*sic*) will tell people to destroy their documents and mislead the authorities. At the end of the process we then have to try and obtain a travel document...we are sending a clear signal to people coming into this country. If you are a genuine asylum seeker you have nothing to fear by retaining your documents. If you destroy those documents we will penalise you and it will have an adverse impact upon your claim for asylum”.²⁶ Whilst the offence also applies to those who have already entered the country, the vast majority of people already charged with this offence are new arrivals (161 out of 172 arrests by January 2005)²⁷. The Home Office guidance regarding the new offence states: “The offence is intended to discourage persons from destroying or disposing of their immigration documents en route to the United Kingdom. In particular, to discourage them from doing so in order to conceal their identity, age or nationality in an attempt to increase the chances of success of a claim or application or to make consideration of their claim or application more difficult and/or to thwart removal”.²⁸ The punishment of asylum seekers, some of whom may already have experienced imprisonment and torture, appears to be the effect of the new provision, even if it is not the stated aim.

61. Despite the controls which exist abroad and at the ports, people succeed in entering or remaining in the UK unlawfully. This includes ‘illegal entrants’ but also people who stay beyond their leave, for example, a visitor who remains for more than 6 months, or a student who breaches their conditions of stay, for example, by working full-time during their studies. Some of these may have used the services of an agent to obtain their visa or entry. The risks that people take are sometimes exacerbated by the abusive, inhuman or degrading treatment they receive in the UK.
62. IOs operating in enforcement units around the UK now have extensive powers of entry, search, seizure and arrest for immigration or immigration-related offences. Although very few offenders are prosecuted, IOs also have administrative powers of detention and removal. To assist in maintaining contact with asylum seekers and to address suspicions of abuse in the asylum system, applicants are required to carry a biometric identity card, known as an Application Registration Card (ARC), the falsification of which is a criminal offence under the 2002 Act. The ARC indicates whether or not the holder has permission to work with the intention of preventing asylum seekers from obtaining employment. Most asylum seekers do not have permission to work, the concession being withdrawn in July 2001 for a variety of reasons: to prevent asylum being used as a back door to work in the UK; to prevent them becoming integrated and productive members of the community; and to restrict them to the limited support provided by the national support system (paid at the rate of just 70% of a subsistence benefit) to make the UK a less attractive place to claim asylum.
63. In addition to the above, a number of projects or schemes have been specifically developed to enhance the ability of the UK to address the problems of those who are being smuggled or trafficked into the UK

Project Reflex

64. Project Reflex was established in May 2000 under the auspices of the National Crime Squad in response to the increasing involvement of organised crime in illegal immigration. Its remit is to conduct investigations to disrupt and prosecute organised crime groups involved in both trafficking and smuggling. It was operational from the end of 2001 and is the project credited with the disruption of criminal activities and was successful in securing 38 convictions and

²⁶ Home Office Press Release Ref. 293/2004, 16.9.04

²⁷ Action Point from APSG meeting 18.1.05. In a Home Office Press Release dated 22.2.05 it was reported that 208 people had been charged and 107 convicted.

²⁸ Guidance quoted in judgement of Fulford, J. in Bei Bei Wang, para. 4

disrupting 38 networks between April 2003 and April 2004.²⁹ Prior to that, the National Criminal Intelligence Service established an Organised Immigration Crime Section in November 1997 engaged in targeting criminal networks involved in bringing people illegally to the UK and the Intelligence Section of the Immigration and Nationality Directorate was involved in major investigations focusing on illegal immigration networks moving people from France to the UK.

65. Reflex is a multi-agency task force which includes the Immigration Service, the Foreign and Commonwealth Office, the National Criminal Intelligence Service, British Transport Police and the Metropolitan Police. The Home Office White Paper of July 2004, 'Confident Communities in a Secure Britain', described the core aims of Reflex as being "to raise the risks that the criminals must take, render illegal business unprofitable and reduce opportunities for them to exploit communities".³⁰ It is likely that the Project or its responsibilities will become part of the work of the Serious Organised Crime Agency being established to start work in 2006.
66. If Project Reflex succeeds in raising the risks for the smuggler, then it inevitably raises the risks to the person reliant upon their services, exposing them to increasing dangers.
67. In addition, if the risks are higher for the smuggler then the financial cost to the smuggled person will also be greater. With the increase in technology to detect people hidden in vehicles, there are now fewer attempts to bring people into the UK clandestinely. Instead, for example, the 'choice' is to travel direct. But the numbers that can be brought in that way and the sophisticated technology needed to provide appropriate documents means that the price of the journey has increased. The authorities are also alert to the possibility that new ways of trying to bring people illegally into the country will be tried as other avenues are restricted. As the Home Office 5 year plan for asylum and immigration, 'Controlling our Borders', states: "As major ports become harder to breach, there is a risk that small ports will increasingly be targeted.... we will increase our mobile capability for intelligence-led checks at small ports and increase co-operation with the Coastguard to deter illegal arrival along the coast".³¹ It is well known to any government concerned with smuggling, that the loss of life by people attempting to arrive illegally by sea is greater than using any other mode of transport.

Seamless asylum process

68. There is no description in the policy statements about what exactly constitutes a "seamless asylum process" but there are essential elements identified partly from statements, law and practice. It will be noted that the process starts with "induction" and is completed by either "integration or return", most notably the latter. The induction process includes 'screening' which involves fingerprinting and information gathering about the journey and mode of entry to the UK. This may lead to detention, prosecution or both. It is also the basis on which a decision is made about entitlement to financial support and accommodation from the National Asylum Support Service (NASS), further information about which is contained below. The 'detention estate' has gradually grown since 1997, with organisations recently expressing concern about the increasing number of children in detention facilities.
69. Screening is invariably followed by a requirement to complete and submit, within 14 days, a Statement of Evidence Form (SEF) setting out not only personal and family details but also full details of the person's reasons for claiming asylum. The form must be completed in English and submitted with all supporting documents upon which the asylum seeker wishes to rely with, where appropriate, an English translation. The SEF is followed shortly thereafter with a

²⁹ Home Office (2005), para. 46, p. 25

³⁰ Home Office (2004), p. 121

³¹ Home Office (2005), para. 59, p. 26

substantive interview, which is usually without a legal representative present due to the withdrawal of public funding for such purposes. The interview leads to a decision, most often a refusal. Rights of appeal follow but for some, for example those claiming asylum from countries on a 'safe' list, the appeal can only be exercised after they have left the UK. For those remaining in the UK there will be an increasing use of electronic tagging as an alternative to detention and as a requirement of temporary residence in the community. In addition, appeal rights have been severely curtailed and new limitations are due to commence in April 2005.

70. All of this is done either whilst the person is detained, dispersed or close to destitution (due to the limitation on the availability of NASS support to those who claim asylum "as soon as reasonably practicable") and without any real hope of accessing quality legal advice and assistance. 'Dispersal' is a process whereby an asylum seeker (and their dependants) can be required to move to any part of the UK at short notice as a condition of receiving support, with the possibility of further re-location at any time. It is a form of forced internal migration which leads to forced diversity for the communities into which they are placed. It is beyond the control of the asylum seeker and the local recipient community. There is no real consideration or respect in the system for social cohesion within the community but there is a lack of stability for asylum seekers with a possible exposure to abuse. Rejection of their claim at the end of this 'seamless process' will not only be the expectation but will also increasingly lead to forced removal, with the government committed to ensuring that the number of removals exceeds the number of new claims. That is a commitment that can only be made out of a firm resolve to ensure that most asylum applications are rejected. The system is certainly set up to be able to deliver on that commitment. The political climate in which the assessment of claims to asylum or humanitarian protection takes place is such that merit plays very little part in the decision-making process.

Refugee re-settlement programme

71. The only solution put forward by the UK authorities to the increasing needs of displaced people requiring international protection is the Gateway re-settlement programme of the United Nations High Commissioner for Refugees (UNHCR).
72. The programme builds co-operation between local and central government in the UK and the international agencies working with refugees. The assessment of suitable candidates takes place abroad and the identity and other personal characteristics of those chosen are known before the individual or family arrive in the UK, assisting the re-settlement process. In a Home Office press statement announcing the arrival of a second group of refugees through the programme in November 2004, the Home Office Minister stated: "Our involvement with the UNHCR Gateway programme offers a legal route for some of the world's most vulnerable refugees who are in genuine need of protection, without forcing them into the hands of people traffickers".³² He went on to say: "The UK's participation in this scheme is an important part of our balanced asylum and immigration strategy – tackling abuse of our asylum system by people who do not need protection, opening up managed migration routes which benefit our economy and better integration for those allowed to settle here".
73. The UK Government has made a commitment to take a total of 500 refugees in the first instance through the re-settlement programme. Since the programme was proposed in 2002 as an answer to the irregular arrival of refugees due to their inability to travel lawfully to the UK, a total of 150 have arrived. Even if the full quota of 500 had been taken, it could only be described as a drop in the ocean compared to the need for protection and support for the world's refugees. Furthermore, the fact that the quota has not been met, partly due to the unwillingness of certain

³² Home Office Press Release ref. 339/2004, 3.11.04

local authorities in the UK to accommodate refugees, is an indication of the appalling travesty that is being perpetuated in the name of providing a safe haven.

74. The UNHCR itself has clearly stated that re-settlement programmes are not an answer to the demand for asylum. Of interest in the context of the present study, namely the problems of irregular migration to the UK, UNHCR has said: “Whilst resettlement constitutes a multi-faceted response mechanism, it is certainly not the panacea for all problems besetting asylum systems today, particularly those related to widespread illegal migration”.³³ The same report continues: “Resettlement and asylum are two distinct and separate possibilities. It is therefore critical to the integrity of the international protection system that resettlement processing and the promotion of asylum are pursued in tandem, and not used to work against each other Using resettlement to further restrict the admission of individual asylum seekers would undermine the right to seek asylum which is anchored in the Universal Declaration of Human Rights and is at the very core of the protection regime for refugees”.³⁴

Poppy Project and support for victims of trafficking

75. The Poppy Support and Accommodation Service (the Poppy Project) was established in March 2003 funded by the Home Office Victims Unit to provide housing and support for a maximum of 25 adult female victims of trafficking for sexual exploitation. The project is currently funded to work with women from London only, where it is estimated that 80% of 8000 prostitutes are foreign nationals, mainly from Eastern Europe and S.E. Asia.³⁵ In order to access the project (and subject to the availability of accommodation), a woman must fulfil a number of criteria including that she has been brought to the UK, is or has been forced to work as a prostitute within the past 30 days, that she has come forward to the authorities and is willing to co-operate with them. If accepted, she is given a period of time (4 weeks) in which to consider her options and to decide whether to co-operate. There will then be an assessment as to whether any information she is able and willing to give would be of material value in a prosecution or contribute to the intelligence information on a trafficking network. Although the original intention was that women would pass through the project within a period of approximately 3 months, in reality many residents are staying longer and therefore the possibility of a successful referral of other trafficked women is limited. The project had received 250 referrals by early December 2004.
76. From an immigration perspective, the fact that a woman has been trafficked and co-operates with the enforcement authorities does not provide her with a basis of stay in the UK. There is fact a tension between the police who are attempting to investigate the offence of trafficking and the Immigration Service which wishes to effect removal. At some point, therefore, a woman in the project is likely to face removal or make a return to her own country, unless of course she qualifies for residence in some other category in the immigration rules. This can in itself put her in a very vulnerable position. As Anna Johansson, team leader with the Poppy Project, has stated: “because traffickers often come from the prostitute’s country of origin, it is easier for them to threaten to kill their families if they don’t do what they are told, and this also increases the risks if they try to return home”.³⁶
77. The Home Office itself has set up a Crime Reduction *Toolkit* which specifically deals with the victims of trafficking. It is aimed at those with responsibility for addressing sexual offences including prostitution, child protection and labour exploitation. Children who are identified as

³³ UNHCR Standing Committee Paper, 14.6.01, New Directions for resettlement policy and practice, para. 23, p. 5

³⁴ UNHCR, para. 24, p. 5

³⁵ Rosie Caren, *The Guardian* 11.2.05, Migrant Women Forced into Cheap Prostitution

³⁶ Quoted in *The Guardian*, 11.2.05

victims of trafficking should be protected by social services as part of their responsibility under the Children Act 1989.

78. The possibility of support from the Poppy Project does not depend simply on meeting the criteria and the availability of bed space, it also relies upon identification of a woman as a victim of trafficking. It is rare that an individual will make themselves known or be identified as soon as they arrive at a port of entry but, if they are, the appropriate referral or support depends upon the identifying officer's knowledge of procedures for dealing with them. As Elizabeth Little, Director of the Refugee Arrivals Project, has stated: "At the port of entry anyone claiming to have been trafficked will be treated according to the individual immigration officer's level of knowledge of the issue. At Heathrow we would expect them to refer to the police, who would seek to put them in a safe house, if possible. However, places are rarely available. We would hope that, if she claimed asylum, they would be placed with our organisation, and we would endeavour to support them while they are pursuing their asylum claim. The above hardly ever happens however, either because victims do not identify themselves at the port ... or because (and we cannot prove this) they are ignored, put into detention and then removed. We know of a woman who arrived at Liverpool and sought protection at the port. She was put in detention and only by chance was able to contact a lawyer who got bail for her and she was placed with us".³⁷

Managed migration schemes

79. In 'Confident Communities' it was stated that the "best way to put organised crime out of business is to reduce demand for their illicit goods and services". The Home Office response was therefore to "improve opportunities for legal migration" and therefore reduce the demand for the assistance of those engaged in unlawful activities.³⁸
80. The routes for entry to the UK for those who wish to work are currently divided into 2 categories: the first focuses upon the employer and the second upon the individual.
81. Employer-based schemes include the work permit system, sector-based schemes (SBS - in hospitality and manufacturing) and the seasonal agricultural workers scheme (SAWS). The individual-focused schemes are the Highly Skilled Migrant Programme (HSMP) and the Commonwealth Working Holidaymaker Scheme. If a worker comes for employment for which a work permit or immigration employment document has been issued, they are tied to that particular job and employer unless they obtain consent to change. For those in the HSMP or who enter as working holidaymakers, they are free to change employment without restriction.
82. In the recent White Paper, 'Controlling the Borders', the commitment has been made to replace the existing managed migration scheme by a 4-tier system from the highly skilled (for example, doctors) to the low-skilled and students. With the exception of the first tier, each migrant will need a sponsor, usually their employer, who will effectively police the worker's residence and therefore act as a quasi-immigration official.
83. Two of the current employer-based schemes (SBS and SAWS) depend heavily, both for recruitment from abroad and placement in the UK, upon agents or gangmasters. In order to maximize profit, some agents have become engaged in requiring payment to issue the visa and arrange passage to the UK, provide tied accommodation for the employee linking housing with the job so both are lost if the worker fails to co-operate, and deduct payments from wages for accommodation and travel to and from the workplace. This frequently leaves the worker in debt

³⁷ Written reply to questions, 15.2.05

³⁸ Home Office (2004) p. 90

and earning well below the minimum wage. The schemes, in other words, have become avenues of exploitation and can be described, for some at least, as ‘trafficking for exploitation’. Yet they exist within the very programmes that are intended to counter the traffickers and those involved in the illegal transportation of people to the UK. However, the vast majority who are using these schemes do come to the UK legally. But there is clear evidence of abuse indicating a pattern of labour exploitation that is not dependent upon the worker’s status as ‘legal’ or ‘illegal’. If the focus is upon immigration control and not the abusive employment relations then there is no real solution to the exploitation of workers.³⁹

84. It is not only agents who take advantage of a flexible and disposable workforce but also some employers.

The experience of immigration control

85. The reality is that the tighter the controls preventing people travelling legally to the UK, the greater the necessity of relying upon those who are willing to provide alternative methods of entry. In other words, the immigration system creates the very illegality the authorities want it so desperately to avoid.
86. In his study of the experience of Ukrainians in the UK, Stepan Shakhno gives an illuminating account of the human cost behind ‘managed migration’. As an example, a SAWS worker by the name of Vasyl, explained his first experience of Britain:

“I had a good trip to Britain, no problems on any of the borders, my visas were fine. But I had to pay £1000 for this opportunity. I finally arrived at my allocated farm and got my place in a wagon with Ukrainians and other Eastern Europeans. The first working day, me and all the other students who had just arrived went out into the fields to gather strawberries. We had been told that we were going to be paid £2 for each box of strawberries. At last we felt we were going to have some real money for our hard work. So we all went out working as hard as the human body is capable of. One girl even fell unconscious, with blood running from her nose, her blood pressure had risen rapidly from exhaustion. Each Ukrainian student collected double the amount of strawberries they were expected to....The farm managers ... lowered the price of a box of strawberries to 50p....When many of the workers returned to Ukraine, they had to spend half of what they’d earned on doctors to treat the illnesses they got in Britain”⁴⁰

87. Although this paper has not placed any emphasis upon the rules governing entry for family reunion, the fact is that the very severe restrictions which exist under the immigration rules can leave a family member left behind exposed and therefore vulnerable both in their own country and in the journey that they are subsequently required to undertake.
88. Zohra was the eldest of 3 daughters who lived with her parents and 2 younger sisters in Tehran until her father fled the country due to his conversion from Islam to Christianity. After he was recognised as a refugee in the UK, Zohra, her mother and sisters made applications for family reunion visas to join her father. Zohra was refused on the grounds that she was then over 18 and was therefore an independent adult. Her mother and sisters left for the UK whilst Zohra made a second visa application. Whilst that was being considered she was taken before a court and charged with improper conduct contrary to the Islamic code (for having a conversation with a male work colleague when not completely covered) at which time her passport was taken from her. The matter was not concluded with the passing of sentence as she became the object of personal interest to the judge who appeared to prey on her vulnerability, which was exacerbated

³⁹ For a full examination of migration and employment see Anderson and Rogaly, *Forced Labour and Migration to the UK*, TUC February 2005

⁴⁰ Taken from Shakhno, *Gone West: Ukrainians at Work in Britain*, T.U.C. March 2004

when he learnt of her father's conversion. Her precarious situation was brought to the attention of the British Embassy but the second visa application was also refused. Zohra saw no option but to put her life and safety into the hands of those who could arrange her travel to the UK where she could again enjoy the support and protection of her family. She paid the equivalent of £6000 for her journey. On the long journey overland, two incidents were particularly significant. The first was in Khoy just before she crossed the border to Turkey. She spent a couple of nights there with men whose language she could not properly understand. They were drinking and laughing, making jokes at her expense, asking her to dance and being verbally abusive. Throughout that whole period she was terrified. The second was when she was placed in a 2 bedroom flat with about 20 other women and children, including Chinese and Iraqi Kurds. During the 40 days she was there, she was never allowed to go out although other women were required to do unpaid work in the homes of some of the men who were guarding them. If they refused, they were beaten. She considers herself lucky compared to the experience of others she has heard of.

89. In 'Secure Borders, Safe Haven' it was stated that the "Government accepts that it is often very difficult for those who do have a well-founded fear of persecution to arrive in the UK legally to seek our help. The absence of such provision provides succour to the traffickers and exposes the most_vulnerable people to unacceptable risks".⁴¹ Some of those risks, however, are not necessarily in the journey that people are forced to make but in the treatment that they may face in the UK in the implementation of immigration control.
90. In July 2004, in a cross-departmental operation known as Operation Iowa, 15 people were arrested in Oxford and charged with 'conspiracy to facilitate illegal entry' and 'conspiracy to defraud'. Eleven of the 15 (out of whom 8 are women) were either asylum seekers or people granted refugee status or exceptional leave to remain in the UK and the remaining 4 were UK residents. If convicted, they may receive a prison sentence of up to 14 years. The authorities have alleged that the 11 foreign nationals have entered the UK on valid passports in their own identity with visas but subsequently submitted false asylum claims in a different identity and nationality (and hence claimed financial support and accommodation to which they were not entitled). Furthermore, that their arrival in the UK and their claims for asylum were arranged or assisted by the UK residents. The arrests took place on the last day of the school term in Oxford, leaving nearly 30 children (most of them under 12) without parents. Due to the risk of self-harm on arrest, not least by the women, some items were taken away when they were held at the police station, leaving them dressed in a way which they found demeaning. Whilst awaiting trial, all but one of the 15 have been released on bail on condition that, for example, the men report twice daily to the police station and respect a curfew between 11 p.m. and 6 a.m.
91. The Home Office has also proposed another solution to the problem of refugees exposing themselves to the dangers and exploitation of smuggling which is for support to be given within the regions. The White Paper, 'Controlling our Borders', states: "We are also working with UNHCR and other international partners to improve **protection for refugees in their regions of origin**. It is our moral duty to combat poverty and disease, improve human rights, help ease political conflict in other countries and protect people displaced from their homes by war or persecution".⁴² But that protection does not come easily for those who travel to the UK.
92. Abdulbaset was 23 years of age when he left Libya following attempts by the security forces to arrest him for his connection to a political dissident and his own activities. He paid an agent £1000 to travel across the border to Egypt on a false Libyan passport. The agent also arranged for false exit and entry visas to put in his own passport to give the appearance to the Egyptian authorities if he was stopped that he had entered legally. His hope at that stage was to sort out

⁴¹ Home Office (2002), para. 4.16, p.52

⁴² Home Office (2005), para. 28, p. 18 (emphasis in the original)

the problem in Libya and return. When it became clear that he could not safely return to Libya, he moved to other Arab countries including Syria, in the hope that he could more easily pick up his life there, not least because of the Arabic language and therefore the possibility of continuing his university education which had been interrupted in Libya. In the end, it became necessary to move away from the region because of closer co-operation and relationships between those countries and the Libyan regime. “I left Egypt because I heard of the arrest of Libyans in Marsamatroh, in the west of Egypt. It is believed that those Libyans were handed back by the Libyan authorities to the Libyan Government. It became common knowledge amongst the Libyans living in Syria that two Libyans had been handed over by the Syrian authorities to the Egyptians and from Egypt had been returned to Libya”.

93. When Abdulbaset met a Yemeni national, Abdullah, he finally found a way to travel to a safe country. Abdullah was persuaded to let Abdulbaset use his brother’s passport which contained an endorsement showing the right to reside permanently in the UK. They placed a photograph of Abdulbaset over the original and travelled together so that Abdullah, who had no intention of remaining in the UK, could retrieve the passport after they had landed in the UK and before they passed through immigration control. Abdulbaset had his own original passport with him to present as evidence of his own identity when he made his claim for asylum on arrival. He could not use it to travel to the UK because he was a national of a country which required a visa and could not apply for a visa as a refugee. But before he reached the immigration desk to make his claim for asylum and present his original documents both he and Abdullah were stopped by members of the Immigration Service surveillance team leading to the detention of both of them on suspicion of involvement with smuggling. Abdullah returned voluntarily to his own country but without his brother’s passport. Abdulbaset remained in prison for 4 months before his cousin was able to secure his release on bail by offering £4000 to the court. It was 5 years before he was recognised as a refugee.
94. Although the methods used by a smuggler can endanger the life of the person who uses their services, the lack of support from a smuggler can create an even greater risk.
95. “Omid Jamil Ali, aged 21, first left his village of Sharbarza, northern Iraq, in August 2001, hoping to find work in Britain. Up till then, his family had been farmers. But the double impact of the United Nations’ sanctions and Saddam Hussein’s economic siege of Iraqi Kurdistan had left them desperately poor. Their only option was to sell their land to pay for the eldest son to be sent to work in Europe.
96. “Two weeks after leaving Iraq, Omid had reached Italy from where he made his way to Calais. Hoping to reach Britain, he leapt on to a moving train from a bridge at the French end of the Channel Tunnel. But in the fall he suffered a severe injury. The train reportedly did not stop till it arrived in England. Only then was Omid retrieved and taken to hospital where he was pronounced dead.
97. “For three years after his death, his body remained in a Kent mortuary, as the family, having used all their money to pay for his journey to the UK, could not afford to pay for his body to be returned to Iraq for burial”. It was only eventually possible through money raised on appeal.⁴³
98. The implementation of immigration control can also create particular issues for vulnerable people, including children, women and those who are suffering from trauma.
99. Mary and her husband were both members of an opposition party in Uganda. Her husband was taken away with other political opponents after an election in which there was widespread fraud.

⁴³ Arun Kundnani, IRR News, 2.3.05
www.irr-org.uk/2005/march/ak000008.html

She has never had any contact with him since. She herself was accused of being a ‘criminal’, a ‘terrorist’ and the wife of a man dealing in ‘rebel activities’. She was taken to a house where many things happened including repeated rapes leading to her becoming pregnant. When she became violently ill she was taken to a hospital where she met a nurse who was also part of the opposition. The nurse made arrangements for an agent to provide a false passport, accompany her to the UK, through immigration control, and take her to a Ugandan Asylum Association in East London. She did not see him again after that day. She arrived in the UK on a Friday on a bank holiday weekend and therefore could not go to the Home Office to claim asylum until the Tuesday. She became ill whilst at the Home Office and the officer, believing she was suffering from malaria, arranged for security to “drag” her out of the building claiming she was “infectious”. On return to East London she was taken straight to hospital where she miscarried. When she was eventually fit enough to return to the Home Office to make her claim she was told that she had not applied for asylum “on time” and was denied NASS support. After her asylum application was refused she appealed and went to court. She describes the cross-examination by the Home Office representative in court as “an interrogation, not an interview. It put me back in the trauma I had experienced in detention. As I was leaving court I had a panic attack and was hospitalised. When I came into this country I was seeking help but the Home Office officials do their best to fail you. It is a very bad experience”.

100. Wanis left Libya in fear of arrest due to his involvement with an Islamic group opposed to the Gaddafi regime. His journey to the UK took him via Malta and Italy (both considered unsafe for Libyans because of close co-operation with Libya). In Italy he made arrangements with an agent to travel with 3 other Libyans to the UK.

101. “The agent told us that the driver did not know that we were in the back of the lorry. As we expected to be in the lorry for several days, we put on two sets of clothing. We also ate a lot of food before we got into the lorry. We also took some provisions with us such as bread and chocolate. In the back of the lorry were boxes. In between the boxes there was space for us to sit. There was very little light as the cover to the lorry was dark. After about two days in the lorry we ran out of food. There was nothing for us to do in the lorry except sleep. It was almost like hibernating. We also spent time praying. However, because we had no water we symbolically cleaned ourselves for prayer. We had to use the lorry to urinate in. We were able to get a small amount of rain water from the roof of the lorry. Apart from that we had no food and no real drink for two or three days before we arrived in England. The stiffness that I felt in the lorry soon changed to severe pain in my back.

102. As soon as Wanis and the others stepped out of the lorry they were arrested and taken to a police station. “We were put into a room and then taken out one by one. We were also searched and my shoe laces, belt and some other belongings were taken away. I was taken to a small room that had a toilet and a bench in it. Two men and one woman, all uniformed, were present in the room. I was told to strip naked. I said I could not do this. In response I was told that I was in Britain and this was how they do things and that I should take off my clothes. I was told that my friends had all stripped. I found out later that all of them had refused to do so. I persisted in my refusal... We were then handcuffed and taken to another place and interviewed. No explanation was given as to why we were handcuffed and why we were being transferred. When we asked for food and for something to drink no one took any notice of us.

“I had expected some form of hospitality when I arrived in England but the way we were treated was completely different. I was scared all the time that we were going to be sent back to Libya”.

103. Eugene arrived in the UK with his 4-year-old son, travelling on a forged Belgian document obtained for him by Cameroonian students in France. He had left Cameroon after he had taken part in a 300-strong demonstration where 3 of his political colleagues were shot dead by the police. He had been told that his wife, whom he had not seen since he was arrested and she was

raped earlier that year, had fled to the UK. On arrival in Dover he submitted the false documents to immigration which did not show how he and his son were related. He was taken to an interview room and his son was taken away from him. He told immigration about his wife and that he believed she was living in Birmingham. He didn't see his son again until he had been convicted and served a sentence for attempting to facilitate the illegal entry of his son. During his time in prison his wife had attempted to get contact with their son but, despite having a birth certificate, had been unsuccessful before Eugene was released from prison. On release, he made enquiries and learnt that his son was in care in Kent and he could not have access to him. DNA tests subsequently proved the relationship between his wife and son and he was returned to them, more than 13 months after they had been separated. When he was reunited with them, he was both scared and very emotional. Eugene and his wife have never been given any information about who cared for their son when he was away from them.

104. One woman, knowing of the rape of other Chinese women on their journey to the UK, took the precaution of getting sterilised before she left China (11b)

105. The new section 2 offence referred to above is intended to assist in the removal of failed asylum seekers. But if the individual charged, convicted and imprisoned has never held a passport in their own identity it is difficult to see how the criminalisation of those fleeing persecution will assist in that process. Furthermore, the fact that charges are being brought before any attempt has been made to assess the merits of the asylum claim is an indication of the assumption that those coming independently to the UK do not qualify as refugees.

106. Ahmed arrived in the UK just 2 weeks after the new offence under section 2 came into force. Two months before, he had left Eritrea where he had been imprisoned and tortured on 2 occasions, the most recent for 6 months before he escaped across the border to Sudan. His uncle in Sudan arranged for him to travel to a 'safe country' due to the operation of Eritrean security forces in Sudan. Ahmed travelled with an agent from Sudan via Kenya to the UK. On arrival at the airport in the UK, Ahmed was handed a passport, the first time he had ever held such a document, and told by the agent to go to the immigration control to present the passport. He met the agent on the other side, where the passport was taken from him and he was told to wait whilst the agent said that he would "make all the arrangements you need". He never saw the agent again. Whilst still waiting for the agent's return, he was approached by 2 officials who took him to a place where he was questioned and, after a night 'sleeping' in a waiting room, was taken to a police station and charged with an offence. From there he was taken to prison. He has pleaded not guilty to the offence and is still awaiting trial.

"I tried to flee to avoid being tortured and never had a plan to escape from one prison to go to another prison in a different country. I came looking for justice and I end up being psychologically tortured. I consider it a violation of my human rights. There is no better thing for a human being than enjoying justice but I have never enjoyed it, either back home or here"

107. Michael left his wife and 2 children, the youngest only 4 months old, when he fled Zimbabwe in August 2004 for fear of further attack from members of the ruling party. Michael himself is a member of the opposition party, MDC. His own Zimbabwean passport had expired and he therefore travelled across the border overland to South Africa with the assistance of his political colleagues. He was met in South Africa by another MDC member. The MDC office in South Africa had itself been attacked and members there were living in fear. They advised Michael that the only way they could help was in fact to assist him in leaving the country. It took 2 months to arrange to raise the money for a false South African passport and a ticket. The MDC members in South Africa could not trust those who acted as agents as they had had previous experience of people purporting to be agents when they were in fact informers. Michael had been advised that he would be arrested and charged if he arrived in England with a false passport and he therefore destroyed it when he arrived at Heathrow Airport. He nevertheless submitted original

documents in his true identity, namely his MDC membership card, birth certificate and a letter from the MDC to confirm his membership. These were all given to the Immigration Officer on arrival. Michael was charged with failure to produce a valid travel document under section 2 of the 2004 Act. He pleaded guilty and was given a 6-month prison sentence. It was 3 months after he arrived in the UK that he was finally able to make contact with his wife to let her know what had happened. In the 4 months that he spent in prison on remand and following conviction, he had no money and no visits, not even from immigration to ask him about why he had left Zimbabwe.

108. Even those who are potential victims of trafficking can become more vulnerable if they are forced to place the protection of their lives into the hands of those who offer the only route to safety.
109. Adrian and Vjollca left Albania with their 3 daughters, then aged 12, 15 and 17, after their father had killed a member of a gang that had kidnapped the 2 oldest girls with the intention of forcing them into prostitution. He was also involved in opposition politics. They paid \$3500 per person to a go-between acting on behalf of an agent using money saved from their own business and from relatives. At midnight, after 3 or 4 days in Vlora, they got into a small boat and had to lie down underneath covers to keep them from view in case there were any police patrols. The reason they travelled that night was because of the bad weather and therefore less chance of police surveillance but the combination of the inadequate boat, the weather and the uncertainty made it a terrifying ordeal. After arrival in Italy they were kept out of sight and had to be ready to leave at any time. They had heard about the death of a group of Chinese people who were being smuggled into Britain which had happened less than 6 months before they had had left Albania. During one of their journeys in a lorry, the driver stopped the vehicle after he discovered their presence and ordered them to leave. They were in a remote area and had to walk to a forest where they slept overnight until other arrangements could be made. There were no provisions and it was so cold that their youngest daughter found it hard to keep quiet. Her mother held her to keep her warm and quiet. "If we had stayed in Albania then for certain we were going to die. With the journey there was a risk but at least there was a chance. In truth there was no other option".

CONCLUSIONS

110. Although trafficking is outside the scope of this study, information about the law and practice regarding protection and support for the victims of trafficking has been included for a number of reasons: firstly, it demonstrates what can be achieved if the authorities are committed to providing support and protection; secondly, however, that the only support provided by the Home Office for victims of trafficking is one project limited to adult women still actively involved in prostitution in London; thirdly, that even that project is heavily over-subscribed; fourthly, that the identification of women who are possibly victims of trafficking by the authorities themselves is limited and to some extent dependent upon the initiative, knowledge and commitment of individual officers; finally, that the long-term protection of such women is dependent upon their qualification for residence separate to their status as a victim of trafficking.
111. If that is the extent of the protection available for a class of people clearly identified as vulnerable and liable to exploitation, the question that it raises is what prospect of protection there is for victims of other forms of trafficking, for example of labour exploitation, let alone those who are vulnerable as a result of their precarious immigration status arising from the necessity of their illegal entry or residence in the UK.

112. There are three significant weaknesses in the current approach in the UK to smuggling: the first is a definitional problem – the lack of a clear distinction between ‘legal’ and ‘illegal’, ‘asylum seeker’ and ‘migrant’, ‘smuggled’ and ‘trafficked’; the second is the lack of evidence to identify the nature and extent of the problems and therefore to show that the solutions proposed and enacted are addressing them or alternatively what is required; and the third is the lack of a political will to address either, with the inevitable consequence that ‘smuggling’ will not only continue to have an impact upon the system of immigration control but it will also lead to increasing demands for the UK to withdraw from those international commitments and obligations which lie at the heart of a protection system. It is in fact possible to conclude from the current policies, laws and practices that the ultimate aim of tackling ‘smuggling’ is to finally curtail the opportunity for people to claim asylum in the UK.
113. As the system stands, for those who are not coming because of the availability of work but because they have no choice but to flee their own country (and region), the schemes in existence offer no alternative to the reliance upon those involved in illegal migration. The refugee resettlement programme is of no value to people seeking asylum in the UK. For those coming to work, the demand for their labour is not matched by the existing or proposed systems for facilitating their lawful entry and the safeguards available after entry to prevent exploitation are ignored or under-used.
114. As stated above, the authorities themselves have difficulty in distinguishing between the concepts of trafficking and smuggling, as a result of which the policies or practices designed to address the issues may not be the most appropriate. For example, in the White Paper ‘Secure Borders, Safe Haven’, the Home Office, in accepting the difficulty of a refugee being able to travel to the UK legally, stated that the “absence of such provision provides succour to the traffickers (*sic*) and exposes the most vulnerable people to unacceptable risks”. Whilst refugees can of course be victims of trafficking, it is more likely that they would use the services of a smuggler as a means of leaving a country where they fear persecution and in order to travel to a ‘safe haven’. The White Paper went on to propose one solution to the displacement of people by factors such as “poverty, war and oppression” by working with governments of those countries to, for example, identify outgoing people at risk of being trafficked and offer them help. A person fleeing persecution is unlikely to appreciate being identified on departure as a result of the assistance of the UK government if it means being assisted in or returned to their country of origin!
115. Within the policy statements themselves there is a very little by way of hard evidence to back up what might easily be labelled “scaremongering”. For example, with reference to illegal entry facilitated by ‘organised crime’ there is not only no definition of ‘organised crime’, simply the perception of hardened criminals with no respect for the law, but there are also no accurate figures to show the extent of the problem. In the White Paper, ‘Secure Borders, Safe Haven’, the Home Office accepts that there are “no reliable estimates of the scale of organised crime” but it is estimated that organised criminals are behind 75% of cases (of people trafficking, smuggling and illegal working).⁴⁴ The law and practice is not therefore built upon policies based upon reliable information or data but upon a political agenda.
116. It is difficult to assess the impact of the new laws as the information available is limited. With reference to tackling organised crime and people trafficking, the Home Office has stated that 38 major networks were disrupted and 38 convictions achieved between April 2003 and April 2004 but there is no distinction between trafficking and smuggling in the data. There is however some evidence in the case studies to show that the ‘victims’ of smuggling are more often on the receiving end of operations or penalties that were allegedly aimed at those responsible for their journey to the UK.

⁴⁴ Home Office (2002), para. 53, p. 76

Refugees

117. In the UK asylum system there is a cycle of abuse which stems from a determination to prevent, deter, refuse and remove refugees.
118. Prevention leaves the refugee and those subject to human rights abuses in countries and regions where they are in danger.
119. Deterrence increases their vulnerability to the risks inherent in the illegal crossing of borders.
120. Refusal leads to erroneous decisions which are not adequately checked or overturned by an increasingly restrictive appeals process. It also leads to the development of 'toleration practices' whereby those refused and at the end of the process are 'allowed' to remain due to instability in their country but without any rights or status.
121. Both the pressure to remove and the process of removal itself leads to increasingly inhuman and degrading practices to ensure compliance, for example electronic tagging, detention, forced labour and destitution.
122. Furthermore, the higher the numbers of refugees who are forced to come illegally and refused or subjected to practices which portray them as criminals, the greater the media hysteria and therefore public clamour for tighter immigration controls. These in themselves lead to new measures to prevent and deter which necessitate more sophisticated or risky methods of travel for the refugee. So the cycle continues, one that is fuelled by racism that is not only based on misconceptions but positively encouraged by politicians more interested in electoral support than human rights. The number of refusals cannot be a fair basis for concluding that the asylum system is being abused because at best it is allowed and at worst it is designed to lead to refusal.
123. It means that even the misplaced belief that refugee re-settlement programmes can solve the crisis in the asylum system is undermined. The British public has not received the education to distinguish between a refugee from a camp in Africa and the refugee living next door. So local authorities refuse to take those identified as suitable for re-settlement because they believe, probably with good cause, that their community will not tolerate them.
124. Asylum law and practice has been developed on the assumption but not the evidence that the majority of those claiming asylum are not in fact in need of international or humanitarian protection but are instead economic migrants. Hence the alternative solution proposed of a 'managed migration' scheme. But the evidence is that those who have made use of those schemes are not refugees. For example, in 2002, Ukrainians accounted for 16 % of those with visas for the sector-based schemes (the largest group) and 20 % of those on the seasonal agricultural scheme (the second largest group after Polish citizens) although only 365 out of 84,000 who arrived that year claimed asylum.⁴⁵
125. What is required is a focus on the real and not the supposed factors which motivate people to leave their countries and claim asylum in the UK. In addition, a commitment to uphold the rights enshrined in the Refugee and Human Rights Conventions by an interpretation that is aimed at inclusion rather than exclusion. The benefit of a positive approach to the UK's international obligations is greater stability, not simply for the refugee but for the UK itself and its current citizens and residents. Racism and xenophobia destroy communities, they do not lead to integration.

⁴⁵ Shakhno, p. 5

Migrant Workers

126. “The extent of the flows of irregular workers is a strong indication that the demand for regular migrant workers is not matched by the supply with migrants serving as the buffers between political demands and economic reality”⁴⁶
127. The focus on ‘illegal working’ is upon the worker and not the workplace. Hence the importance attached to the legality of the worker’s status and not the illegality of the conditions of work. As a result, exploitation and coercive practices in the work place are allowed to continue to the detriment of migrant workers who have legal residence in the UK and, ultimately, to the UK workforce.
128. The studies that have been done on the experience of the migrant workforce in the UK have shown that there is a much greater possibility of abuse if power lies in the hands of the employer and not the worker. Furthermore, that the demand for a flexible and disposable workforce at the lower skilled end of the labour market, leads to abusive and illegal employment practices, even amongst those legally resident in the UK.
129. What is required is an assessment of the skills and experience that is required in the UK, a system outside of immigration control that assesses the ability of an applicant to meet those requirements and the right to enter and work in the UK given to the employee not the employer. That would mean that the employee would be able to maintain control over their own labour with all the flexibility that goes with it. If a person comes to the UK for work and does not find it, he or she is not going to remain because the objective is to work and earn a living, not to gain residence in the UK. In the current system, the prospect of gaining permanent residence (for example, work permit holders who can apply for settlement after 4 years) is not attractive because of an overriding desire to remain in the UK but because it no longer ties the worker to a particular employer. In other words, it gives them back the dignity that comes from having control. The new 5-year plan is going in the wrong direction when examined from a human rights perspective.
130. Tensions are being created, not least in rural communities who have not previously experienced migration, because of the reality that employers are using migrant workers in preference to local residents to increase their profits by paying wages lower than that expected by the resident community. Yet at the same time, migrant workers, particularly those controlled by agents in the UK, are subjected to abusive practices. The unwillingness or refusal of the authorities in the UK to use enforcement powers available in relation to employment in place of immigration control leads to the continuation of the abuse. If employers, like smugglers, cannot profit from exploitation then there will be no incentive to continue. This clearly benefits both the resident labour force and the migrant workers who are needed in the UK economy at all levels.
131. There is therefore a severe imbalance between commitments and practices which protect the state and the absence of any clear agenda to provide protection for the individual who enters or remains in the UK, legally or illegally, for employment.
132. What is needed more than anything else is a clear and unequivocal commitment to human rights which must be of paramount importance above and beyond any question of immigration status. Without that, any tampering with the system is almost irrelevant. True there will be some success in providing protection and support to a small number of women in the Poppy Project or any similar programmes. There will also be a very small number of refugees coming benefiting through the re-settlement programme. But for the vast majority of people leaving situations of war, conflict or humanitarian crisis or in response to not only their own needs but

⁴⁶ ILO: Towards a Fair Deal for Migrant Workers in the Global Economy, May 2004 para. 40, p. 12

those of the UK for both skilled and unskilled labour, the system will be wanting in the form of protection and in fact it will aid or facilitate the abuse. That is the situation that is already in existence in the UK for both refugees and migrant workers whereby those that are deemed to be irregular are outside the protection of the human rights framework.

BIBLIOGRAPHY

Home Office White Papers

Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum
Cm. 4018, July 1998

Secure Borders, Safe Haven: Integration with Diversity in Modern Britain
Cm. 5387, February 2002

Confident Communities in a Secure Britain: Home Office Strategic Plan 2004-2008
Cm. 6287, July 2004

Controlling our Borders: Making Migration work for Britain
Five Year Strategy for Asylum and Immigration
Cm. 6472, February 2005

Legislation

Asylum and Immigration Appeals Act 1993

Asylum and Immigration Act 1996

Immigration and Asylum Act 1999

Nationality, Immigration and Asylum Act 2002

Asylum and Immigration (Treatment of Claimants etc.) Act 2004

Other publications

Anderson, Bridget and Rogaly, Ben (2005): Forced Labour and Migration to the UK (TUC)
www.tuc.org/uk/international/tuc-9317.f0.cfm

Goodwin-Gill, Guy: Article 31 of the 1951 Convention relating to the Status of Refugees: non-penalization, detection and protection in Refugee Protection in International Law: UNHCR's global consultation on international protection (eds. Feller, Erike; Turk, Volker; Nicholson, Frances) (Cambridge 2001)

Macdonald, Ian A. and Webber, Frances (2001): Macdonald's Immigration Law and Practice (Butterwoths)

Phelan, Margaret and Gillespie, James (2003): Immigration Law Handbook (Oxford)

Shakhno, Stepan (2004): Gone West: Ukrainians at work in the UK (TUC)