

**IS THE PROHIBITION OF MODERN SLAVERY PROTECTING MINORS?  
AN ANALYSIS OF THE UNITED KINGDOM AND GERMANY BEFORE THE  
BACKDROP OF INTERNATIONAL HUMAN RIGHTS LAW**

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## **Executive Summery**

Modern slavery is a universal phenomenon and nevertheless is invisible to most people. In 2016, the Global Slavery Index estimated 40,3 million people living in modern slavery globally (71% female and 29% male). Modern slavery is a hidden crime that arise in the present-day society and violates several human rights: The right to human dignity and personal integrity, the prohibition of slavery or servitude, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, etc. Modern slavery is an ‘umbrella term’ that covers forced labor, sexual exploitation, domestic servitude, debt bondage, human trafficking, descent-based slavery, organ harvesting, or forced and early marriage. This thesis provides an overview of the existing legal response to modern slavery in the United Kingdom, Germany and international human rights law. The main objective of this research is to evaluate the effective protection of minors under the existing legal framework combating modern slavery. It evaluates the issue under the European Court of Human Rights and the United Nations.

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## Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
BAMS	The Federal Ministry for Labor and Social Affairs
BMFSFJ	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
CEOP	Child Exploitation Online Protection Centre
CTPF	Child Trafficking Protection Fund
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EU	European Union
FKS	Financial Monitoring Unit to Combat Illicit Employment ( <i>Finanzkontrolle Schwarzarbeit</i> )
GLA	Gangmasters Licensing Authority
GLAA	Gangmasters and Labour Abuse Authority
GRETA	Group of Experts on Action against Trafficking in Human Beings
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTAs	Independent Child Trafficking Advocates
ILO	International Labour Organisation
KOK	German NGO network against trafficking in human beings
NGO	Non-Governmental Organization
NRM	National Referral Mechanism
UK	United Kingdom
UKHTC	United Kingdom Human Trafficking Centre
UN	United Nations

# 1 Introduction

Modern slavery is a universal phenomenon and nevertheless invisible to the majority of people. In 2016, the Global Slavery Index estimated 40,3 million people living in modern slavery globally (71% female and 29% male).<sup>1</sup> “Modern slavery is a destructive, personal crime and an abuse of human rights”<sup>2</sup> which includes forced labor, sexual exploitation, domestic servitude, debt bondage, human trafficking, descent-based slavery, organ harvesting, or forced and early marriage.<sup>3</sup> Victims might experience a restriction of movement, deception, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, excessive overtime, etc.

In human history, slavery happened continuously all over the world. The ancient Greeks have seen slavery as morally acceptable, as Aristotle said: “It is thus clear that, just as some are by nature free, so others are by nature slaves, and for these latter the condition of slavery is both beneficial and just.”<sup>4</sup> Additionally, forced labor goes far back in history as the Roman Colosseum or the Egyptian pyramids were built with slaves.<sup>5</sup> The *French Declaration of the Rights of Man and of the Citizen* 1789, inspired by the French revolution, states for the first time that “men are born and remain free and equal in rights”<sup>6</sup>. The abolition of slavery came in the 19<sup>th</sup> century where the first multilateral treaty – the *Slavery Convention (1927)*<sup>7</sup> – defined slavery in international law.

<sup>1</sup> Walk Free Foundation, ‘The Global Slavery Index 2018’ (2018) <[https://downloads.globalslaveryindex.org/ephemeral/GSI-2018\\_FNL\\_190828\\_CO\\_DIGITAL\\_P-1570098850.pdf](https://downloads.globalslaveryindex.org/ephemeral/GSI-2018_FNL_190828_CO_DIGITAL_P-1570098850.pdf)> accessed 12 December 2018.

<sup>2</sup> *ibid*, 2.

<sup>3</sup> Anti-Slavery International, ‘What Is Modern Slavery?’ (*Antislavery.org*) <<https://www.antislavery.org/slavery-today/modern-slavery/>> accessed 4 January 2019.

<sup>4</sup> Aristotle, *The Politics of Aristotle Translated with an Introduction, Notes and Appendix by Ernest Barker* (Ernest Barker tr, Oxford University Press 1946), 14.

<sup>5</sup> Silvia Scarpa, *Trafficking in Human Beings* (Oxford University Press 2008).

<sup>6</sup> Article 1 Declaration of the Right of Man and the Citizen (1789).

<sup>7</sup> Convention to Suppress the Slave Trade and Slavery 1927 (60 LNTS).

Despite the legal prohibition of slavery, the crime kept existing and adjusted its forms to the present time. In other words, “[s]lavery is not a historically isolated phenomenon, it is a contemporary manifestation of human relations, driven by economic avarice and legitimised by racism.”<sup>8</sup>

Modern slavery is a “business routed in the international movement of people and, as in the case with any other criminal activity, is being driven by large profits.”<sup>9</sup> To eliminate modern slavery effectively, every country has the onus to tackle the crime. In 2017, the United Kingdom registered 5,143 potential victims of modern slavery.<sup>10</sup> Labor exploitation, followed by sexual exploitation, was the most common type of exploitation among minor victims. The United Kingdom, Albania and Vietnam were the most common countries of origin of all potential victims.<sup>11</sup> In 2017, Germany registered 495 victims of modern slavery. However, this data only refers to sexual exploitation, labor exploitation and forced begging. In total, 172 minors were exploited.<sup>12</sup>

This thesis comprises three main chapters with corresponding subchapters. The first chapter considers the definition of modern slavery and provides an overview of the most common forms of modern slavery. Particularly, human trafficking, sexual exploitation and forced or compulsory labor will be scrutinized. The second and third chapter analyze the contemporary legal and

<sup>8</sup> UK’s Inter-Departmental Ministerial Group, ‘2015 Report of Inter-Departmental Ministerial Group on Modern Slavery’ (2015) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/469968/IDMG\\_Report\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/469968/IDMG_Report_Final.pdf)> accessed 12 November 2018, 17.

<sup>9</sup> Diego Hernandez and Alexandra Rudolph, ‘Modern Day Slavery: What Drives Human Trafficking in Europe?’ (2015) 38 *European Journal of Political Economy* 118.

<sup>10</sup> This data refers to domestic servitude, labour exploitation, organ harvesting, sexual exploitation and unknown exploitation.

<sup>11</sup> HM Government and others, ‘2018 UK Annual Report on Modern Slavery’ (2018) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/749346/2018\\_UK\\_Annual\\_Report\\_on\\_Modern\\_Slavery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749346/2018_UK_Annual_Report_on_Modern_Slavery.pdf)> accessed 3 April 2019, 10.

<sup>12</sup> Bundeskriminalamt, ‘Menschenhandel: Bundeslagebild 2018’ (2019) <<https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundeslagebild2018.html?nn=27956>> accessed 10 February 2019.



institutional response on a regional level of the United Kingdom and Germany to modern slavery. The last chapter investigates the response on the international level to modern slavery. The focus is set on the European Court of Human Rights (ECtHR) and the United Nations (UN).

## 1.1 Methodology

This thesis attempts to investigate the research problem of how different legislations, with the aim to combat modern slavery, protect minors. The following research questions will be addressed:

- Which human rights are abused in modern slavery?
- What approach is taken by the selected jurisdictions to combat modern slavery?
- Is a specific legislation to combat modern slavery more effective than no specific legislation?
- How are minors protected under the legislations combating modern slavery of the selected jurisdictions?
- What kind of support is given to minors from the selected jurisdictions?

This research is based on an exploratory research which therefore answers the defined research questions. Secondary research methods are used to conduct information including online, literature and case study research. As defined by Sandhusen, explorative research “define[s] the problem more precisely”<sup>13</sup> which is sufficient in the context of this thesis.

The methodology of comparative and critical analysis of case law, relevant legislations, principles, doctrines, policies and constitutional documents will be applied in this research. Furthermore, reports, case studies and scientific Articles have been observed. The focus will be

<sup>13</sup> Richard Sandhusen, *Marketing* (4th ed, Barron’s Educational Series 2008), 191.

set on the effectiveness, regarding the research questions, of each legislation in the selected jurisdictions. To achieve this aim, a qualitative research will be conducted which comprises a detailed analysis of legislations impacting the fight against modern slavery. The focus is set on the selected jurisdictions of the United Kingdom, Germany and international human rights law. Due to structure and overview of the international human rights law chapter, this thesis will focus on the European Court of Human Rights and the United Nations.

The jurisdictions were chosen because of their different approach to combat modern slavery and the economic and social similarities. More particular, the United Kingdom was chosen because it has a specific legislation addressing modern slavery. In contrast, Germany was chosen because it does not have a specific legislation addressing modern slavery. It rather has several legislations which covers single parts of the issue. However, both countries are members of the European Union, have similar economic power and function mainly as destination countries.<sup>14</sup>

## 1.2 Terminology

Modern slavery is described differently in countries all over the world. “[...] The term slavery itself, but also other concepts such as human trafficking, forced labour, debt bondage, forced or servile marriage, and the sale or exploitation of children”<sup>15</sup> are used in such definitions. In this thesis, I will adopt the terminology as it is defined by the Global Slavery Index. “[...] Modern slavery refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, abuse of power or deception, with treatment akin to a farm animal.”<sup>16</sup>

<sup>14</sup> Walk Free Foundation, ‘The Global Slavery Index 2016’ (2016) <<https://downloads.globalslaveryindex.org/ephemeral/GSI-2016-Full-Report-1570177889.pdf>> accessed 13 November 2018.

<sup>15</sup> Walk Free Foundation (n 1), 7.

<sup>16</sup> Walk Free Foundation (n 1), 12.

In this research, modern slavery is used as an ‘umbrella term’ that covers different forms of exploitation such as human trafficking, forced labor, domestic servitude, forced or servile marriage, debt bondage, organ harvesting, and (commercial) sexual exploitation which will be scrutinized in the subchapter 1.4. This thesis will adopt key definitions of human trafficking<sup>17</sup>, sexual exploitation<sup>18</sup>, and forced or compulsory labor<sup>19</sup> which most governments have agreed on.

For the purpose of this study, the definition of human trafficking, given by the *Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)*<sup>20</sup> will be adopted. Furthermore, the definition of a child/minor given by the United Nations *Convention on the Rights of a Child*<sup>21</sup> will be adopted. A child or minor is “every human being below the age of eighteen years”.

### 1.3 Limitations of the Research

A common limitation in modern slavery research is the issue of gathering reliable data. Modern slavery is a “complex and largely hidden crime whose victims are often too traumatized to report their exploitation, or do not self-identify as victim”<sup>22</sup>. According to a study of the Dutch National Rapporteur on Trafficking in Human Beings and United Nations Office on Drugs and

<sup>17</sup> See subchapter 1.4.1

<sup>18</sup> See subchapter 1.4.2

<sup>19</sup> See subchapter 1.4.3

<sup>20</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into 29 September 2003) [2237 UNTS] 319. Ratified by the United Kingdom on 9 February 2006 and Germany on 14 June 2006.

<sup>21</sup> Convention on the Rights of the Child, GA Res 44/25, annex, 44 UN GAOR Supp (No 49), at 167, UN Doc A/44/49 (1989).

<sup>22</sup> HM Government and others (n 11), 4.

Crime, “the estimated numbers are four to five times higher than the recorded numbers of detected victims”<sup>23</sup>.

Another major limitation is the availability of data. For the jurisdiction of the United Kingdom, this research uses data from the police, National Referral Mechanism (NRM), and specified public bodies which have the duty to notify under the *Modern Slavery Act 2015* (*Modern Slavery Act*). The main sources of data in Germany come from the *Bundeskriminalamt*. Worldwide and country specific data is used from the Global Slavery Index. It must be kept in mind that reliable numbers are dependent on several factors. There must be a mechanism in place which registers numbers, provides statistics and reports findings. If such a mechanism is missing, the data might be lower compared to a country where such mechanism is in place. Additionally, there must be the possibility for victims to report the crime. Furthermore, the legal framework must provide a safe space to report and secure protection and support for victims after the reporting.

#### 1.4 *Forms of Modern Slavery*

Modern slavery can occur in many different forms, including forced labor, sexual exploitation, domestic servitude, debt bondage, human trafficking, descent-based slavery, organ harvesting, or forced and early marriage.<sup>24</sup> Victims of modern slavery might experience restriction of movement, deception, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, excessive overtime, etc. Perpetrators use similar methods in different forms of

<sup>23</sup> UNDOC and National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, ‘Monitoring Target 16.2 of the United Nations Sustainable Development Goals: A Multiple Systems Estimation of the Numbers of Presumed Human Trafficking Victims in the Netherlands in 2010-2015 by Year, Age, Gender, Form of Exploitation and Nationality’ (UNODC Research 2017) Research brief, 1.

<sup>24</sup> Anti-Slavery International (n 3).

exploitation to obtain power over their victims. Hence, only blurred lines between different forms of modern slavery exist. The following part will discuss the three main forms of exploitation in modern slavery.

#### 1.4.1 Human Trafficking

Victims of modern slavery mostly experience human trafficking. The first common definition of ‘trafficking’ came with the *Palermo Protocol* in the year 2000.<sup>25</sup> Article 3(a) defines trafficking in persons as

“[...] recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>26</sup>

In the case of child trafficking, no means need to be involved to consider it as trafficking. In other words, minors cannot give consent to exploitation, even if the child does agree to the ‘act of

<sup>25</sup> The ‘Palermo Protocol’, is one of the three protocols from the Convention against Transnational Organized Crime which was adopted by the UN in 2000 and ratified by Germany in June 2006 and the UK in February 2006. Both countries signed but did not ratify the Protocol against the ‘Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition’ yet.

<sup>26</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into 29 September 2003) (n 20).

exploitation'. However, the *Palermo Protocol* does not define any form of exploitation. Moreover, “the exploitation of the prostitution of others or other forms of sexual exploitation”<sup>27</sup> is not defined and neither do other international treaties cover the definition of these terms. As written in the *travaux préparatoires*, the *Palermo Protocol* “[...] addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation are not defined in the Protocol, which is therefore without prejudice to how State Parties address prostitution in their respective domestic laws.”<sup>28</sup> Furthermore, the *Palermo Protocol* does not include a definition of organ removal. The *travaux préparatoires* only states that “removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.”<sup>29</sup>

To “improv[e] the protection [...] and develop the standards established” by the *Palermo Protocol*, the Council of Europe adopted the *Convention on Action against Trafficking in Human Beings*.<sup>30</sup> The *Convention on Action against Trafficking in Human Beings* established a monitoring system which is formed of two pillars: The Committee of the Parties and the Group of Experts on Action against Trafficking in Human Beings (GRETA).

The term ‘debt bondage’ can be interpreted in the context of human trafficking as the belief of the victim to pay back a ‘debt’ to their perpetrator, which is included in ‘means’. “Creation of debt is

<sup>27</sup> *ibid*, Article 3(a).

<sup>28</sup> United Nations General Assembly, ‘Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the Work of Its First to Eleventh Sessions, Addendum, Interpretative Notes for the Official Records (Travaux Préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto’ (2000) A/55/383/Add.1 <<https://undocs.org/en/A/55/383/Add.1>> accessed 4 October 2019, Section 64.

<sup>29</sup> *ibid*, Section 65.

<sup>30</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings* (2005), entry into force February 2008. Ratification of Germany in December 2012 and the UK in December 2008.

one of the main mechanisms used by traffickers to maintain control over victims.”<sup>31</sup> A common result of debt bondage is “[...] people being forced to work in unsafe environments, enduring long hours of work on a daily basis without appropriate breaks, provisions or access to essential facilities and/or having their travel documents retained.”<sup>32</sup> Consequences of debt bondage may occur in obedience of the victim. In my point of view, this behavior is closely connected to cultural values, education and believe. In this case, victims are more vulnerable to be manipulated by the trafficker – even without the use of physical violence or other.<sup>33</sup>

Trafficking itself does not necessarily include the transportation across international borders. It can also happen within a country or the European Union. Although most human trafficking victims are still moved across borders, “the [International Labour Organization] found that victims of sex trafficking [are] more likely [to] face transnational human trafficking while victims of forced labor typically experienced exploitation in their country of residence.”<sup>34</sup> Hence, such findings often depend on the area and the type of modern slavery. In the United Kingdom for instance, domestic trafficking is a serious issue, but most victims of modern slavery are trafficked across borders.<sup>35</sup>

<sup>31</sup> Alexis A Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Praeger 2009), 57.

<sup>32</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment*, Occasional Paper Series no. 5 (June 2013), 54.

<sup>33</sup> Ibid, 54-55.

<sup>34</sup> HM Government and others, ‘2015 Report of Inter-Departmental Ministerial Group on Modern Slavery’ (UK’s Inter-Departmental Ministerial Group 2015) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/469968/IDMG\\_Report\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/469968/IDMG_Report_Final.pdf)> accessed 12 November 2018. 3.

<sup>35</sup> HM Government and others, ‘2015 Report of Inter-Departmental Ministerial Group on Modern Slavery’ (UK’s Inter-Departmental Ministerial Group 2015) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/469968/IDMG\\_Report\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/469968/IDMG_Report_Final.pdf)> accessed 12 November 2018, 21.

The relationship between traffickers and their victims can vary in many ways. It is common that victims and traffickers “share the same national and cultural background”<sup>36</sup>. Hence, “[v]ictims may be recruited [and/or trafficked] by strangers through formal advertisements, internet ads, word of mouth, or family members or friends.”<sup>37</sup> Children “are often placed in the trust of traffickers – often family members or friends – who promise the parents to provide education or work opportunities.”<sup>38</sup> Recruiters or traffickers may use different entrapments of tricking humans into exploitation where the psychological aspect is of major importance. Mostly women and young girls are tricked into trafficking and/or (sexual) exploitation with the ‘loverboy tactic’. The so called ‘loverboys’ (men), “approach attractive and vulnerable young girls and seduce[...] them to migrate to a rich country where they can build a life together”<sup>39</sup> or work for them. Sometimes there is no physical violence needed because the victim ‘wants’ to work for their ‘boyfriend’.<sup>40</sup> This causes tremendous psychological damage and often includes feelings of shame and degradation. Other recruitment tactics are kidnapping, false promises of marriage, employment, education, promises of a better life, or expensive gifts. Recruiters or traffickers who know their victims usually take advantage of their vulnerability and use the complicated conditions to manipulate the individual. Europol defines ‘push factors’ (social and economic circumstances in countries of origin) and ‘pull factors’ (selection of destination countries)<sup>41</sup>. Because of the acquaintance with a victim, several push factors are closely connected to the local environment. “Potential victims of

<sup>36</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2014* (United Nations 2014) <<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=993664>> accessed 14 October 2019.

<sup>37</sup> Aronowitz (n 31), 55.

<sup>38</sup> *ibid.*

<sup>39</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia University Press 2009), 9.

<sup>40</sup> This kind of manipulation is transferable to other relationships. The common ground for this strategy is the abuse of and imbalance between power and vulnerability.

<sup>41</sup> EUROPOL, ‘Situation Report: Trafficking in Human Beings in the EU’ (2016) 765175 <[https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational\\_report\\_trafficking\\_in\\_human\\_beings-europol.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational_report_trafficking_in_human_beings-europol.pdf)> accessed 10 October 2019, 10.



[trafficking of human beings] experience adverse personal circumstances, lack of education, high levels of unemployment and low living standards, gender discrimination or inequalities in the labour market; they may experience human rights violations and abusive situations or be fleeing from conflict zones.”<sup>42</sup> Destination countries are selected regarding living standards, employment opportunities and quality of life. Furthermore, the demand for services (cheap labor, sexual service, child marriage etc.) plays a crucial role in defining the destination country. Especially “women bear the brunt of poverty and seek ways to migrate to the more prosperous countries”<sup>43</sup>. Therefore, ‘typical female’ labor occurred in sectors as care work, domestic and sexual service.<sup>44</sup> Besides the lucrative profits, “trafficking involves a complex chain of actors who are knowingly or unknowingly involved”<sup>45</sup>.

A common “control method to exercise maximum domination over victims”<sup>46</sup> is the juju ritual. It is a traditional religious practice which is widespread in Western Africa. The juju ceremony is usually conducted in the home country before the transportation to the destination country. The ceremony “is a multidimensional and supernatural event with far-reaching consequences”<sup>47</sup>, where victims have to undress, and the priest cuts the victim’s body with a razor blade. A soot is rubbed in the open wound which is supposed to contain the spirit of an evil god.

<sup>42</sup> *ibid.*

<sup>43</sup> Joyce Outshoorn, ‘The Political Debates on Prostitution and Trafficking of Women’ (2005) 12 *Social Politics: International Studies in Gender, State & Society* <<https://academic.oup.com/sp/article-lookup/doi/10.1093/sp/jxi004>> accessed 14 October 2019, 143.

<sup>44</sup> LM Agustin, ‘A Migrant World of Services’ (2003) 10 *Social Politics: International Studies in Gender, State & Society* <<https://academic.oup.com/sp/article-lookup/doi/10.1093/sp/jxg020>> accessed 14 October 2019.

<sup>45</sup> European Commission, ‘Communication from the Commission to the European Parliament and the Council – Reporting on the Follow-up to the EU Strategy towards the Eradication of Trafficking in Human Beings and Identifying Further Concrete Actions’, (2017) COM(2017) 728 final <[https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/20171204\\_communication\\_reporting\\_on\\_follow-up\\_to\\_the\\_eu\\_strategy\\_towards\\_the\\_eradication\\_of\\_trafficking\\_in\\_human\\_beings.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/20171204_communication_reporting_on_follow-up_to_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf)>.

<sup>46</sup> Marcel van der Watt and Beatri Kruger, ‘Exploring “Juju” and Human Trafficking: Towards a Demystified Perspective and Response’ (2017) 48 *South African Review of Sociology* 74.

<sup>47</sup> *ibid.*

Furthermore, human tissue from the victims is collected and put in ‘small packages’ which are handed to the trafficker. Thereafter, the victim has to take an oath “that [the victim] will pay back the ‘incurred’ debt owed to the trafficker [...] and that she will never disclose their identity”<sup>48</sup>. “Therefore, debt bondage is a solemn consequence of the juju contract and the victim will eventually repay the debt by prostituting herself in the destination country.”<sup>49</sup>

Among the globally identified victims of human trafficking, 49% are women and 23% are girls.<sup>50</sup> The highest number of detected women can be found in Central Asia. Central America and the Caribbean list the highest number of detected girls’ victims of trafficking in person, closely followed by West Africa and South Asia. Trafficking in person emerges with different patterns in several forms all over the world. The main reasons for trafficking among both genders are sexual exploitation and forced labor. 83% of women and 72% of girls are trafficked for sexual exploitation. 13% of women and 21% of girls are trafficked for forced labor, respectively.<sup>51</sup> Forced marriage (more commonly detected in South-East Asia), children for illegal adoption (mainly reported in Central and South America), forced criminality (mainly in Western and Southern Europe), organ removal (more commonly detected in North Africa, Central and South-Eastern Europe, and Eastern Europe), begging, production of pornographic material or other forms of exploitation is reported at a much lower rate and is pending on the region. America, Europe, East Asia and the Pacific record the highest number of female victims of trafficking in person for sexual

<sup>48</sup> *ibid*, 75.

<sup>49</sup> CS Baarda, ‘Human Trafficking for Sexual Exploitation from Nigeria into Western Europe: The Role of Voodoo Rituals in the Functioning of a Criminal Network’ (2016) 13 *European Journal of Criminology* 257.

<sup>50</sup> Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018* (United Nations publication 2018) <[https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)> accessed 13 September 2019, 28.

<sup>51</sup> *ibid*, 28. The data refers to 54 countries and 5440 women and 2350 girls in the year 2016.

exploitation. In sub-Saharan Africa and the Middle East, it is most common to be trafficked for forced labor.<sup>52</sup>

Armed conflicts and a weak rule of law affect the vulnerability of victims. People fleeing from conflict areas are more likely to become victims of exploitation in forced marriage, industries and service sectors, and sexual slavery. Particular refugees are at high risk of being trafficked – not only on the route but also in camps and shelters. Likewise, people living in conflict areas may be exploited as porters by armed groups. Within conflict zones, trafficking can be linked to territorial dominance and a demonstration of power to threat and spread fear to the local population. Especially women and girls are often used as sex slaves, seen as trophies or forced into marriage.<sup>53</sup> Dominance, in general, is always present in trafficking and violence against women and girls. Existing gender relations and roles associated with the “male dominance and female subordination, which is not biologically, but largely socially determined”<sup>54</sup> endorse the issue.

Trafficking in human beings include a “complex interplay of supply and demand (...) and has an obvious gender dimension”<sup>55</sup>. It has its grounds in “complex integrating socio-economic-political structures, process and relationships, underscored by class, gender and ethnic concerns”<sup>56</sup>. Even though trafficking and slavery affect men and women, gender-specific exploitation exists. Mainly women and girls are vulnerable because of the low social status, cultural rituals, religion and personal characteristics. For instance, females are more vulnerable to exploitation as domestic servants in urban areas because there are “more obedient”<sup>57</sup>. In cultures with dowry payments,

<sup>52</sup> *ibid*, 10-11.

<sup>53</sup> *ibid*, 11-12.

<sup>54</sup> Commonwealth Secretariat (ed), *Report of the Expert Group on Strategies for Combating Trafficking of Women and Children: Best Practice* (Commonwealth Secretariat 2003), 13.

<sup>55</sup> European Commission (n 45), 1.

<sup>56</sup> *ibid*. 14.

<sup>57</sup> Rachel Masika (ed), *Gender, Trafficking, and Slavery* (3rd edn, Oxfam 2002), 39.

girls are seen as a burden to the family and are therefore more likely to be sent away or sold. Based on the low social status of females in some countries and cultures, women suffer additional hardship in bonded labor which includes vulnerability to rape by landlords.

#### 1.4.2 Sexual Exploitation

Sexual exploitation is the most discussed and documented form of modern slavery. From a human rights approach, the right to bodily integrity, the prohibition of torture, the right to freedom and dignity are violated by sexual exploitation. The recruitment of people into sexual exploitation can be similar to human trafficking.<sup>58</sup> However, the recruitment process can vary and is denoted for its complexity. Especially in the recruitment process of minors, parents and older siblings, forced abduction, or deceptive agreements are mostly involved. These young people are typically taken far away from their place of origin and “isolation from family and friends is the norm”<sup>59</sup>. “Heterosexual prostitution remains the largest and most profitable form of [commercial sexual exploitation] where girls are primarily affected.”<sup>60</sup> However, boys are also at risk of sexual exploitation. Due to the lack of ‘visibility’ and data, cases of young male victims often stay unrevealed. One reason for this might be that sexual exchange often takes place in hidden locations such as “public toilets, parks, bus/train stations, ‘cruising’ areas, shopping areas and arcades.”<sup>61</sup>

<sup>58</sup> See chapter 1.4.1

<sup>59</sup> RJ Estes and NA Weiner, *The Commercial Sexual Exploitation of Children in the US, Canada and Mexico* (University of Pennsylvania 2001).

<sup>60</sup> Yvonne Rafferty, ‘The Impact of Trafficking on Children: Psychological and Social Policy Perspectives’ (2008) 2 *Child Development Perspectives* 13.

<sup>61</sup> Ralph Lillywhite and Paula Skidmore, ‘Boys Are Not Sexually Exploited? A Challenge to Practitioners’ (2006) 15 *Child Abuse Review* 353.

The sexual exploitation of minors is a worldwide phenomenon. Mainly “family members, relatives, neighbours or those known and trusted by the child, typically perpetrate abuse”<sup>62</sup>. Sexual exploitation includes violence, rape, sexual abuse and sexual harassment.<sup>63</sup> It can be differentiated between sexual exploitation and commercial sexual exploitation of minors. Sexual exploitation of minors occurs when “children [are] used for sexual goals with cash reward or in other forms between children, service buyer, middlemen and other parties who get profit from the children sexual trading”<sup>64</sup> wherever commercially exploitation of minors is the treatment of children “as a sexual [...] and commercial object. [It] includes the prostitution of children, child pornography, child sex tourism, and other forms of transactional sex where a child engages in sexual activities to have key needs fulfilled, such as food, shelter, or access to education”<sup>65</sup>.

In 2017, sexual exploitation was the second most common exploitation type in the United Kingdom with 1746 reported victims of whom 564 were children.<sup>66</sup> In Germany, sexual exploitation cases were the most reported of all modern slavery cases in 2018. 430 victims were reported in total of whom where 96% female (413 victims). The police reported most cases from victims of Germany (18,4%), Bulgaria (15,3%), Romania (14,75%) and Nigeria (14,2%). Significantly, every second victim was under 21 years old. More particular, 142 lawsuits involving minor victims and 164 minor victims were reported in 2018. 79% (130) of the victims were

<sup>62</sup> Kevin Lalor and Rosaleen McElvaney, ‘Child Sexual Abuse, Links to Later Sexual Exploitation/High-Risk Sexual Behavior, and Prevention/Treatment Programs’ (2010) 11 Trauma, Violence, & Abuse 159.

<sup>63</sup> Diana EH Russell, *Sexual Exploitation: Rape, Child Sexual Abuse, and Workplace Harassment* (Sage Publications 1984) 290.

<sup>64</sup> Syamsul Fatoni and Devi Rahayu, ‘Handling Net For Commercial Sexual Exploitation Victim Children In Surabaya’ (Atlantis Press 2018) <<https://doi.org/10.2991/icss-18.2018.274>> accessed 16 October 2019.

<sup>65</sup> International Labour Organization, *Commercial Sexual Exploitation and Trafficking of Children “in a Nutshell”*: A Resource for Pacific Island Countries (International Programme on the Elimination of Child Labour (IPEC) 2015).

<sup>66</sup> HM Government and others (n 11), 17.

between 14 and 17 years old and 20% (34 victims) were under 14 years old. The nationality of the minor victims was mainly German, Nigerian and Hungarian.<sup>67</sup>

### 1.4.3 Forced or Compulsory Labor

The *Forced Labour Convention* is the most widely ratified international statement with a definition of forced labor. Article 2(1) defines forced or compulsory labor as “[...] all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>68</sup> In 2012, the International Labour Organization (ILO) defined eleven indicators of forced labor which are the abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions and excessive overtime.<sup>69</sup> Vulnerability is a major element in facilitating forced labor.<sup>70</sup> Article 2(2) of the Directive 2011/36/EU of the European Parliament and of the Council from the 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU)<sup>71</sup> defines the position of vulnerability as “any situation in which the person involved has no real and acceptable alternative to submit to the abuse involved”. The abuse of a

<sup>67</sup> Bundeskriminalamt (n 12).

<sup>68</sup> International Labour Organization Convention No. 29, C029 – Forced Labour Convention 1930, entered into force in May 1932.

<sup>69</sup> International Labour Office, ‘ILO Indicators of Forced Labour: Special Action Programme to Combat Forced Labour’ <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)> accessed 29 July 2019.

<sup>70</sup> Peter Dwyer and others, ‘Socio-Legal Status and Experiences of Forced Labour among Asylum Seekers and Refugees in the UK’ (2016) 32 Journal of International and Comparative Social Policy 182.

<sup>71</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (5 April 2011), in Official Journal L 101, 15/04/2011.

position of vulnerability often appears in exploitative conditions.<sup>72</sup> The ILO argues that the abuse of vulnerability increases in cases of multiple dependency on the employer for instance on the job, housing, food, etc.<sup>73</sup> “Victims of forced labour are often recruited with [false promises regarding the type of work, housing and living conditions, acquisition of regular migration status, job location or the identity of the employer]. But once they begin working, the promised conditions of work do not materialize, and workers find themselves trapped in abusive conditions without the ability to escape.”<sup>74</sup> Especially children might be recruited through false promises regarding education or a better future.

The ILO defines child labor “as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”<sup>75</sup> It refers to work that is “mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to attempt to combine school attendance with excessively long and heavy work.”<sup>76</sup> In other words, it “is work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”<sup>77</sup> The worst form of child labor is defined by Article 3 of the *ILO Convention No. 182*<sup>78</sup> as

“slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or

<sup>72</sup> Letizia Palumbo and Alessandra Sciarba, ‘Vulnerability to Forced Labour and Trafficking: The Case of Romanian Women in the Agricultural Sector in Sicily’ [2015] Anti-Trafficking Review 89.

<sup>73</sup> International Labour Office (n 69).

<sup>74</sup> *ibid.*

<sup>75</sup> Inter-parliamentary Union and International Labour Office (eds), *Eliminating the Worst Forms of Child Labour: A Practical Guide to ILO Convention No. 182* (ILO, Inter-parliamentary Union 2002), 16.

<sup>76</sup> *ibid.*, 15.

<sup>77</sup> *ibid.*, 16.

<sup>78</sup> International Labour Organization Convention No. 182, C182 - Worst Forms of Child Labour Convention, 1999.

compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

As mentioned before, forms of modern slavery do not occur as an isolated phenomenon. “The reality of forced labour is not a static one, but a continuum of experiences and situations.”<sup>79</sup> Human trafficking and forced labor are closely connected.<sup>80</sup> The ILO had found forced labor in different sectors in the United Kingdom affecting men, women, and children.<sup>81</sup> In the year 2014, the United Kingdom reported 206 cases of child labor exploitation. The majority of victims were boys from Albania, Slovakia, and Vietnam.<sup>82</sup>

Key sectors of forced labor in the United Kingdom are the sex industry, construction, agriculture and horticulture, contract cleaning and residential care.<sup>83</sup> The Inter-Departmental Ministerial Group categorizes domestic servitude separately. In the year 2014, 48 cases of girls and 23 cases of boy were recorded of domestic servitude in the United Kingdom. Most female victims came from Nigeria.<sup>84</sup> However, the data needs to be critically scrutinized. Especially in

<sup>79</sup> Klara Skrivankova, ‘Between Decent Work and Forced Labour: Examining the Continuum of Exploitation’ <<https://www.gla.gov.uk/media/1585/jrf-between-decent-work-and-forced-labour.pdf>> accessed 29 September 2019.

<sup>80</sup> Christien van den Anker, ‘Rights and Responsibilities in Trafficking for Forced Labour: Migration Regimes, Labour Law and Welfare States’ [2009] Web Journal of Current Legal Issues <<http://www.bailii.org/uk/other/journals/WebJCLI/2009/issue1/vandenanker1.html>> accessed 15 September 2019.

<sup>81</sup> Sectors are for instance “factories, agricultural and construction section, car washes, nail bars, restaurants and bars, the tarmac and paving industry, and the maritime sector, [...] metal and recycling industry, chicken catching, selling DVD’s, cleaning, and nannies and taxi drivers.” See Walk Free Foundation (n 14).

<sup>82</sup> In total 159 male 47 female and victims. Further information: HM Government and others (n 35).

<sup>83</sup> Bridget Anderson and Ben Rogaly, ‘Forced Labour and Migration to the UK’ (2005) <[https://www.compas.ox.ac.uk/wp-content/uploads/PR-2007-Forced\\_Labour\\_TUC.pdf](https://www.compas.ox.ac.uk/wp-content/uploads/PR-2007-Forced_Labour_TUC.pdf)> accessed 23 May 2019.

<sup>84</sup> Further information: HM Government and others (n 84), 12.



finding data of trafficking for forced labor, it is difficult to distinguish “between poor working conditions and situations involving forced labour”<sup>85</sup>.

In Germany, forced labor occurred on a huge scale in World War II where German companies and the German *Reich* under the National Socialists exploited many people. In August 2000, the *Law on the Creation of a Foundation “Remembrance, Responsibility and Future”*<sup>86</sup> was passed, which provided individual humanitarian benefits for former slaves and forced laborer’s and other victims of National Socialism. Nowadays, forced labor mainly occurs among migrants and refugees. Women are mostly exploited in domestic work or home care. Other sectors of labor exploitation are construction work, hospitality, meat processing, retail, agriculture and transport and logistics.<sup>87</sup> In 2016, the German authorities identified 48 victims of forced labor. 70,8% of the victims where male. Most victims were reported in the construction sector.<sup>88</sup>

<sup>85</sup> Angela Hill, “‘This Modern Day Slavery’: Sex Trafficking and Moral Panic in the United Kingdom’ (University of California 2011), 21.

<sup>86</sup> Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft" (2000).

<sup>87</sup> KOK - Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., ‘Arbeitsausbeutung’ <<https://www.kok-gegen-menschenhandel.de/menschenhandel/formen-der-ausbeutung/arbeitsausbeutung/>> accessed 10 March 2019.

<sup>88</sup> Global Slavery Index, ‘Country Studies Germany’ (2018) <<https://www.globalslaveryindex.org/2018/findings/country-studies/germany/#footnote:3>> accessed 10 March 2019.

## 2 Specific Provisions for Modern Slavery: The United Kingdom

This chapter will discuss modern slavery in the context of relevant statutes in the jurisdiction of the United Kingdom. It will provide an overview of the legal instruments existing in the United Kingdom combating modern slavery. Furthermore, the relevant statutes will be analyzed by its purpose and approach in the light of different forms of modern slavery with a specific focus on the impact of each instrument on minors. It will look at the process of victim identification and report in the United Kingdom. Lastly, this chapter will analyze the protection and support for victims provided by the United Kingdom.

The United Kingdom sets an example with formulating legislation and policies concerning human trafficking, child protection, and slavery. It counts amongst the most responsive governments to combat modern slavery.<sup>89</sup> Nevertheless, modern slavery crimes happen continuously, and the scale of identified victims increases year by year.

The United Kingdom functions mostly as a destination country for victims from Central and Eastern Europe, Africa, and the Middle East.<sup>90</sup> The existing response to modern slavery of England and Wales is set out in the *Modern Slavery Strategy* launched in 2014. Scotland and Northern Ireland use their own, equivalent framework.<sup>91</sup> It is based on a comprehensive cross-governmental approach and defines detailed actions calling on government departments, agencies, and partners in the United Kingdom as well as internationally. The *Modern Slavery Strategy* is based on the

<sup>89</sup> Walk Free Foundation (n 1).

<sup>90</sup> Walk Free Foundation (n 14), 152-153.

<sup>91</sup> The Scottish Government published the human trafficking and exploitation strategy in 2017; available at: <https://www.gov.scot/policies/human-trafficking/trafficking-and-exploitation-strategy/>.

The most recent Northern Ireland Modern Slavery Strategy was published 2019. In line with section 12 of the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, the aim is to raise awareness of offences and focuses on pursue, protection, prevention; available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/modern-slavery-strategy-2019-2020.pdf>

‘four P’s’ framework which comprises (1) Pursue, (2) Prevent, (3) Protect, and (4) Prepare and aims to significantly reduce the prevalence of modern slavery. (1) Pursue and (2) Prevent focus on the reduction of threat and (3) Protect and (4) Prepare on the reduction of vulnerability. The first component aims to “prosecute and disrupt individuals and groups responsible for modern slavery”<sup>92</sup>. The focus is set on coordinated law enforcement structures and international cooperation to achieve change in the response to modern slavery. Police forces and Border Policing have a key role in identifying, combating national and international modern slavery. The second component aims to “prevent people from engaging in modern slavery”<sup>93</sup>. It is implemented through a clear message of zero tolerance of any form of exploitation, information campaigns and close cooperation with local groups. Offenders of modern slavery crimes will be included in the lifetime offender management program and a special focus is set on the prevention of “child abuse and organized child sexual exploitation, including child trafficking”<sup>94</sup>. “Strengthening safeguards against modern slavery by protecting vulnerable people from exploitation and increasing awareness and resilience against this crime”<sup>95</sup> is set out in the third component. It focuses on public awareness, and children and homeless people which are particularly vulnerable. More sensibility within the police, health and children’s services to identify children at risk will be established. The last component aims to “reduce the harm caused by modern slavery through improved victim identification and enhanced support”. Therefore, it provides special support for child victims and supports the reintegration of victims.

<sup>92</sup> Great Britain and Home Office, *Modern Slavery Strategy* (2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf)>, 10.

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*, para 1.19.

<sup>95</sup> *ibid.*, 10.

## 2.1 Legal Framework

The United Kingdom's legal response to human trafficking can be found in the ratification of various legal instruments.<sup>96</sup> In 2015, the United Kingdom introduced its first specific law concerning human trafficking. The *Modern Slavery Act* marked a cornerstone in the history of combating “slavery, servitude, forced or compulsory labour and human trafficking”<sup>97</sup>. Before that time, the United Kingdom had already “criminalized the offence in its existing criminal, immigration and labour legislation”<sup>98</sup>. The following part sets out the prior response of the United Kingdom to modern slavery offences, before the introduction of the *Modern Slavery Act*.

The *Children Act of 1989*, which was amended in 2004, protects the well-being of children and includes guiding principles. The *Children Act* prohibits trafficking and includes relevant provisions to “the investigation, prosecution and punishment of traffickers”<sup>99</sup>. Sex trafficking was firstly criminalized by the *Sexual Offences Act 1956*<sup>100</sup>. Nowadays, the *Sexual Offences Act 2003*<sup>101</sup> is one of the most important criminal laws against human trafficking for sexual exploitation<sup>102</sup>. It protects children from sexual exploitation and specifically addresses sexual offence against children and sex trafficking in, within and out of the United Kingdom.<sup>103</sup> Section 47 to 50 prohibits child prostitution and defines an offence as “[p]aying for sexual services of a child”<sup>104</sup>, “[c]ausing

<sup>96</sup> Children Act 1989 and 2007; Nationality, Immigration and Asylum Acts 2002; Sexual Offences Act 2003; Asylum and Immigration Act 2004; Gangmasters Licensing Act 2004; Immigration Asylum, and Nationality Act 2006; The Proceeds of Crime Act 2002; The Coroners and Justice Act 2009; The Convention Relating to the Status of Refugees (1951); Human Rights Act 1998.

<sup>97</sup> Chapter 30 Modern Slavery Act 2015.

<sup>98</sup> May Ikeora, *Bilateral Cooperation and Human Trafficking: Eradicating Modern Slavery between the United Kingdom and Nigeria* (Palgrave Macmillan 2018), 170.

<sup>99</sup> House of Commons and Home Affairs Committee, ‘The Trade in Human Beings: Human Trafficking in the UK’ (2009) Sixth Report of Session 2008-09 <<http://www.statewatch.org/news/2009/may/uk-hasc-trafficking-report-vol1.pdf>> accessed 2 April 2019, 5.

<sup>100</sup> Sections 22, 24, 30–31 Sexual Offences Act 1956.

<sup>101</sup> Sexual Offences Act 2003, United Kingdom.

<sup>102</sup> Entered into force in May 2004.

<sup>103</sup> Chapter 42, Sections 9, 57–60 Sexual Offences Act 2003.

<sup>104</sup> Section 47 Sexual Offences Act 2003.

or inciting child prostitution or pornography”<sup>105</sup>, “[c]ontrolling a child prostitute or a child involved in pornography”<sup>106</sup> and “[a]rranging or facilitating child prostitution or pornography”<sup>107</sup>. Sex trafficking is covered under section 57 to 59. Section 5 to 8 covers offences against children under 13. The legislation on modern slavery was further strengthened with the implementation of the Scottish provision of the *Criminal Justice (Scotland) Act 2003*. Furthermore, it undergirds the *Nationality, Immigration and Asylum Act 2002* which solely addresses sexual offences and criminalizes human trafficking for the intention of prostitution.<sup>108</sup> In 2004, the United Kingdom initially criminalized all forms of slavery and forced labor, as well as organ transplant, in connection with trafficking in the *Asylum and Immigration (Treatment of Claimants, etc.) Act*. It criminalizes the entrance to the United Kingdom of an adult with a child without any proof of identity.<sup>109</sup> It further criminalizes the “intent[...] to exploit”<sup>110</sup> or “believe[...] that another person is likely to exploit the passenger”<sup>111</sup> in the context of arrival<sup>112</sup>, travel<sup>113</sup> or departure<sup>114</sup>. This Act especially addresses victims of non-EU countries. The *Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005* constitutes the Scottish equivalent to the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*. The *Gangmasters (Licensing) Act 2004* (hereinafter *Gangmasters (Licensing) Act*) applies to the whole United Kingdom and addresses trafficking for forced labor in agricultural work, shellfish gathering, and associated processing and packaging sectors.<sup>115</sup> Every gangmaster is therefore legally bound to have a license. Operating

<sup>105</sup> Section 48 Sexual Offences Act 2003.

<sup>106</sup> Section 49 Sexual Offences Act 2003.

<sup>107</sup> Section 50 Sexual Offences Act 2003.

<sup>108</sup> Part 7, Substance 145 Nationality, Immigration and Asylum Act 2002.

<sup>109</sup> Chapter 19, 2(2), Section 4 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>110</sup> Section 4(1,a) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>111</sup> Section 4(1,b) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>112</sup> Section 4(1) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>113</sup> Section 4(2) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>114</sup> Section 4(3) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>115</sup> Paragraph 3(1) Gangmaster (Licensing) Act 2004.

without a license is a criminal offence which holds a maximum penalty of 10 years imprisonment, a fine, or both.<sup>116</sup> The *Gangmasters (Licensing) Act* established the Gangmasters Licensing Authority (GLA) in 2005. This regulatory body started working in 2006 and has had received over 3000 reports since then.<sup>117</sup> For further investigation, the reports are sent to the United Kingdom Human Trafficking Centre (UKHTC). Due to the approval of the new *Immigration Act* in 2016, the GLA became the Gangmasters and Labour Abuse Authority (GLAA). The *Gangmasters (Licensing) Act* only covers some sectors of the issue of labor exploitation and does not address the hospitality or social care sector. Worryingly, undocumented victims of forced labor without a legal right to work and children are not covered. Especially vulnerable groups need the legal protection of such Acts. Regarding minors, the Child Exploitation Online Protection Centre (CEOP) works closely with the UKHTC, to ensure the specialized focus on child protection.

Section 15 and 25 of the *Immigration Asylum, and Nationality Act 2006* (*Immigration Asylum, and Nationality Act*) contain provisions on the prevention of illegal work.<sup>118</sup> Imprisonment up to two years and an unlimited fine may be imposed by knowingly employing an illegal worker.<sup>119</sup> The *Immigration Asylum, and Nationality Act* applies to adults, defined as persons over 16 years.<sup>120</sup> Section 71 of the *Coroners and Justice Act 2009*<sup>121</sup> addresses “[s]lavery, servitude and forced or compulsory labour”<sup>122</sup> and states that “holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention”<sup>123</sup>.

<sup>116</sup> Paragraph 12 Gangmaster (Licensing) Act 2004.

<sup>117</sup> House of Commons and Home Affairs Committee (n 101), 21.

<sup>118</sup> Entry into force in February 2008 and replaced section 8 of the Asylum and Immigration Act 1996.

<sup>119</sup> See Immigration Asylum, and Nationality Act 2006, Section 21.

<sup>120</sup> Section 25 Immigration Asylum, and Nationality Act 2006

<sup>121</sup> Territorial extend only in England and Wales.

<sup>122</sup> Chapter 3 (71) Coroners and Justice Act 2009.

<sup>123</sup> *ibid*, part 2, chapter 3, 71(2).

To structure and systemize all the provisions concerning human trafficking, the United Kingdom launched an Action Plan on Tackling Human Trafficking in 2007. The plan was supposed to identify gaps, increase transparency and provide a platform to approach the issue of human trafficking.<sup>124</sup>

## 2.2 *Modern Slavery Act 2015*

As mentioned in the last subchapter, the *Modern Slavery Act* marks a cornerstone in the fight against modern slavery and “[...] implements the United Kingdom’s anti-trafficking obligations under the *UN Trafficking Protocol*<sup>125</sup>, the *Council of Europe Anti-Trafficking Convention*<sup>126</sup>, and the *EU Anti-Trafficking Directive*<sup>127</sup> [...]”<sup>128</sup>.

“In 2015, the *Modern Slavery Act*, the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)* (hereinafter *Human Trafficking and Exploitation Act*), and the *Human Trafficking and Exploitation (Scotland) Act* entered into force in the UK.”<sup>129</sup> All these acts include provisions to combat modern slavery. On 25 October 2015, the *Modern Slavery Act* entered into force. It is composed of 7 parts and 62 sections. Beforehand, it is important

<sup>124</sup> House of Commons and Home Affairs Committee (n 101), 6.

<sup>125</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into 29 September 2003) (n 20).

<sup>126</sup> Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) CETS 197. Ratified by the United Kingdom on 17 December 2008.

<sup>127</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (n 71).

<sup>128</sup> Jason Haynes, ‘The Modern Slavery Act (2015): A Legislative Commentary’ (2015) 37 Statute Law Review 33.

<sup>129</sup> Christine Beddoe and Vicky Brotherton, ‘Class Acts? Examining Modern Slavery Legislation across the UK’ (The Anti Trafficking Monitoring Group 2016) <[http://www.kalayaan.org.uk/wp-content/uploads/2014/09/atmg\\_class\\_acts\\_report\\_web\\_final.pdf](http://www.kalayaan.org.uk/wp-content/uploads/2014/09/atmg_class_acts_report_web_final.pdf)> accessed 29 September 2019.

to be aware of the territorial extent, which is defined under Section 60. Most provisions extend to England and Wales only, but some also to Northern Ireland and Scotland.<sup>130</sup>

The first part “outlines the modalities relating to slavery and human trafficking offenses and the associated issues of penalties and sentencing”<sup>131</sup>. The decision of the case *CN v United Kingdom*<sup>132</sup>, combined with the criticism pertaining to the vague definition of modern slavery<sup>133</sup> compelled the Westminster Parliament to establish new offenses. Therefore, the *Modern Slavery Act 2015* consolidates relevant provisions concerning human trafficking, child labor and slavery of the *Coroners and Justice Act 2009*<sup>134</sup>, *Sexual Offences Act 2003*<sup>135</sup>, and the *Asylum and Immigration (Treatment of Claimants etc.) Act 2004*<sup>136</sup>. As a result, part 1 of the *Modern Slavery Act 2015* defines offences of human trafficking<sup>137</sup>, slavery, servitude, and forced or compulsory

<sup>130</sup> Section 60 Modern Slavery Act 2015: “Extent

(1) Parts 1, 2 and 5 (except for section 53) [F1 and section 54A, and Schedule 4A, in Part 7] extend to England and Wales only, subject to subsection (4).

(2) Part 3 extends as follows— (a)section 35 extends to England and Wales only; (b)section 36 extends to Scotland only; (c)section 37 extends to Northern Ireland only; (d)sections 38 and 39, and Schedule 2, extend to England and Wales, Scotland and Northern Ireland.

(3) Part 4, section 53 in Part 5 and Parts 6 and 7 [F2 (except for section 54A and Schedule 4A)] extend to England and Wales, Scotland and Northern Ireland, subject to subsections (4) and (5).

(4) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.

(5) But the amendments and repeals made by the following provisions of Schedule 5 extend to England and Wales only— (a) paragraph 2; (b) paragraph 5(2); (c) paragraph 6; (d) paragraph 8; (e) paragraph 21.

(6) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.”

<sup>131</sup> Haynes (n 130), 37.

<sup>132</sup> *CN v The United Kingdom* [2012] European Court of Human Rights App. No. 4239/08. For more information see chapter 4.1.

<sup>133</sup> JR Spencer, ‘INTERNATIONAL LAW, PEOPLE TRAFFICKING AND THE POWER TO STAY CRIMINAL PROCEEDINGS FOR ABUSE OF PROCESS’ (2014) 73 The Cambridge Law Journal 14.

<sup>134</sup> See Section 71: Offences of slavery, servitude and forced or compulsory labour.

<sup>135</sup> See Section 57: Trafficking into the UK for sexual exploitation; Section 58: Trafficking within the UK for sexual exploitation; Section 58A: Trafficking outside the UK for sexual exploitation; Section 59: Trafficking out of the UK for sexual exploitation; Section 59A: Trafficking people for sexual exploitation.

<sup>136</sup> See Section 4: Trafficking people for exploitation.

<sup>137</sup> Section 2(1) “A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.”

(2) “It is irrelevant whether V consents to the travel (whether V is an adult or a child)”

(3) “A person may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.”

(4) “person arranges or facilitates V’s travel with a view to V being exploited only if—



labor<sup>138</sup>. Paragraph 3 contains the meaning of exploitation which include slavery, servitude and forced or compulsory labour<sup>139</sup>, sexual exploitation<sup>140</sup>, removal of organs<sup>141</sup>, securing services by force, threats or deception<sup>142</sup>, and securing services from children and vulnerable persons<sup>143</sup>.

One major improvement is the increase of the maximum penalty for such offences. A maximum statutory penalty of life imprisonment can be imposed under an offence of section 1 or 2. On summary convictions under an offence of section 1 or 2, the imprisonment may be no longer than 12 months or a fine or both.<sup>144</sup> Offences of section 4 may be punished with imprisonment for a term not exceeding 10 years. If the offence is committed by kidnapping or false imprisonment, the penalty increases up to life imprisonment.<sup>145</sup> Under offences of section 4 on summary convictions, the imprisonment may not be longer than 12 months or a fine or both.<sup>146</sup>

The second part contains slavery and trafficking prevention and risk orders which “are an important inclusion in the Modern Slavery Act, as they effectively equip courts with the power to respond flexibly to the quickly evolving dynamics of slavery and human trafficking”<sup>147</sup>.

(a)the person intends to exploit V (in any part of the world) during or after the travel, or  
(b)the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.”

<sup>138</sup> Section 1(1) “A person commits an offence if—

(a)the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or

(b)the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.”

<sup>139</sup> Section 3(2) Modern Slavery Act 2015.

<sup>140</sup> Section 3(3) Modern Slavery Act 2015.

<sup>141</sup> Section 3(4) Modern Slavery Act 2015.

<sup>142</sup> Section 3(5) Modern Slavery Act 2015.

<sup>143</sup> Section 3(6) Modern Slavery Act 2015.

<sup>144</sup> Part 1, Section 5(1) Modern Slavery Act 2015.

<sup>145</sup> Part 1, Section 5(3) Modern Slavery Act 2015.

<sup>146</sup> Part 1, Section 5(2) Modern Slavery Act 2015.

<sup>147</sup> Haynes (n 130), 43.

Maritime enforcement is covered in the third part of the *Modern Slavery Act*. Section 35 to 37 defines enforcement powers in relation to ships in England and Wales, Scotland and Northern Ireland.

The fourth part establishes an Independent Anti-Slavery Commissioner (hereinafter the Commissioner) who works directly with statutory agencies.<sup>148</sup> In May 2019, Sara Thornton started her three-year term as current Commissioner. The main functions of the Commissioner are the encouragement of good practices in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, and the identification of victims of those offences.<sup>149</sup> However, the Commissioner cannot exercise any function in relation to an individual case<sup>150</sup> and must report to the Secretary of State<sup>151</sup>. Section 41(3)(a)–(f) sets out the functions of the Commissioner in more detail. For instance, the Commissioner may prepare reports, make recommendations, provide information, education or training, and consults public authorities.

The fifth part contains the protection of victims and will be analyzed in subchapter 2.4.

Part 6 sets out the transparency in supply chains. Section 54 “requires large commercial organisations supplying goods or services, and carrying on a business in the UK, to prepare a slavery and human trafficking statement for each financial year.”<sup>152</sup> The statement must include “[...] steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any parts of its own business.”<sup>153</sup>

<sup>148</sup> Section 43 of the Modern Slavery Act 2015 states that public authorities have a duty to cooperate with the Commissioner. Schedule 3 lists all public authorities which include law enforcement and border security, local government, health bodies and regulators.

<sup>149</sup> Section 41(1), Modern Slavery Act 2015.

<sup>150</sup> Section 44(1), Modern Slavery Act 2015.

<sup>151</sup> Section 42, Modern Slavery Act 2015.

<sup>152</sup> Great Britain and Home Office, *Independent Review of the Modern Slavery Act 2015: Final Report* (2019), 39.

<sup>153</sup> Section 54 (4) Modern Slavery Act 2015.

Section 54(4)(b) implies the possibility of publishing a statement that such steps have not been taken. More particular, Section 54(5) defines the specific content which may be included in the statement, for instance, the organization's structure or relevant policies.<sup>154</sup> The statement must be available via hard copy or, if existing, online on the website.<sup>155</sup> However, the *Modern Slavery Act* does not impose any immediate financial penalties for organizations that fail to comply with section 54. The enforcement mechanism, the Secretary of State, is set out in subsection 11 which can bring civil proceedings to the High Court for an injunction requiring organizations to comply.

The seventh part “requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority and otherwise relates to general matters such as consequential provision and commencement.”<sup>156</sup>

### 2.3 Identification and Report of (Minor) Victims

To meet the obligation under the *Convention on Action against Trafficking in Human Beings*, the United Kingdom Government set up the National Referral Mechanism (NRM) in 2009. The NRM “is a framework for identifying victims of [modern slavery in England and Wales,] ensuring

<sup>154</sup> Section 54 (5) Modern Slavery Act 2015: “An organisation’s slavery and human trafficking statement may include information about—

- (a) the organisation’s structure, its business and its supply chains;
- (b) its policies in relation to slavery and human trafficking;
- (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- (f) the training about slavery and human trafficking available to its staff.”

<sup>155</sup> Section 54(7) Modern Slavery Act.

<sup>156</sup> *Modern Slavery Act 2015: Chapter 30: Explanatory Notes*. (The Stationery Office 2015) <<http://www.legislation.gov.uk/ukpga/2015/30/notes/contents>> accessed 26 August 2019, 1.

they receive the appropriate protection and support”<sup>157</sup> and referring individual cases. Furthermore, it provides data of victims for the United Kingdom Human Trafficking Centre (UKHTC). Only potential victims identified in the United Kingdom can be referred to the NRM.

Section 52 of the Modern Slavery Act sets out the ‘duty to notify’ “the Secretary of State about suspected victim of slavery or human trafficking”<sup>158</sup> in England and Wales only. This applies to specific public authorities which are defined under section 52(5)<sup>159</sup>. As defined in the Home Office policy, Border Force and Immigration Enforcement, and Home Office staff within United Kingdom Visas and Immigration are also required to comply.

The *Modern Slavery Act (Duty to Notify) Regulations 2015*<sup>160</sup> include detailed information of what must be provided by compelling an MS1 (Notification of Potential Victim of Modern Slavery)<sup>161</sup> or an NRM form<sup>162</sup>. In the case of adult victims, the MS1 form should be used if the victim wants to stay anonymous or does not want special support. The NRM form requires adult victims to give consent to provide personal details and receive special support. Minor victims do not need to give consent to enter the NRM and therefore should be referred to the NRM in all cases. The NRM form for children states:

<sup>157</sup> ‘NRM Overview and Form’ (*modernslaveryhelpline.org*) <<https://www.modernslaveryhelpline.org/learn-more/frontline-professionals/nrm-overview-and-form>> accessed 1 November 2019.

<sup>158</sup> Section 52 Modern Slavery Act.

<sup>159</sup> Section 52 applies to (a) a chief officer of police for a police area; (b) the chief constable of the British Transport Police Force; (c) the National Crime Agency; (d) a county council; (e) a county borough council; (f) a district council; (g) a London borough council; (h) the Greater London Authority; (i) the Common Council of the City of London; (j) the Council of the Isles of Scilly; (k) the Gangmasters Licensing Authority.

<sup>160</sup> Modern Slavery Act 2015 (Duty to Notify) Regulations 2015 <[http://www.legislation.gov.uk/uksi/2015/1743/pdfs/ukxi\\_20151743\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/1743/pdfs/ukxi_20151743_en.pdf)>

<sup>161</sup> MS1 form is available at [www.gov.uk/government/publications/duty-to-notify-the-home-office-of-potential-victims-of-modern-slavery](http://www.gov.uk/government/publications/duty-to-notify-the-home-office-of-potential-victims-of-modern-slavery)

<sup>162</sup> NRM form is available at <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>

“Modern slavery, including child trafficking, is child abuse. When an agency comes into contact with a child who may have been exploited or trafficked, Local Authority Children’s Services and the police should be notified immediately. A referral into the NRM does not replace or supersede established child protection processes, which should continue in tandem.

All children, irrespective of their immigration status, are entitled to safeguarding and protection under the law. Referrals to the NRM should be for all potential victims of trafficking and modern slavery, who can be of any nationality, and may include British national children, such as those trafficked for child sexual exploitation or those trafficked as drug carriers internally in the UK.

Where there is reason to believe a victim could be a child, the individual must be given the benefit of the doubt and treated as a child until an assessment is carried out.”<sup>163</sup>

The Home Office is responsible for identifying and supporting (potential) victims of trafficking in any part of the United Kingdom, and slavery, servitude, or forced or compulsory labor in England and Wales. Frontline officers, who work in the area of Border Force, criminal casework, entry clearance staff, enforcement teams, immigration crime teams, local immigration teams, Asylum Intake Unit, asylum casework teams, premium service center staff or detention centers must be particularly sensitive to signs of modern slavery.<sup>164</sup> However, any frontline officer

<sup>163</sup> National referral mechanism form: child for England and Wales, and Scotland and Northern Ireland available at <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>

<sup>164</sup> Home Office, ‘Victims of Modern Slavery - Frontline Staff Guidance’ <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf)> accessed 24 May 2019, 55.

or staff may identify victims. Frontline officers who work in one of the enumerated areas above, need to complete relevant online training on modern slavery.

Usually, victims tell a provided story by their traffickers or modern facilitators if questioned by authorities. “If the victim’s trafficker or modern slavery facilitator is present when the victim is questioned initially, frontline staff must look out for nonverbal communication and body language between the victim and trafficker or modern slavery facilitator.”<sup>165</sup> Due to several reasons, it is possible that some people do not recognize themselves as victims of modern slavery and/or are reluctant to be identified as such. As an example, they may fear punishment at the hands of their traffickers or of the authorities, deportation, juju<sup>166</sup> or witchcraft rituals, or discrimination from their community and families.<sup>167</sup> Furthermore, frontline officers need to pay special attention to physical indicators for example “tattoos or other marks indicating ownership by exploiters, injuries apparently as a result of assault or controlling measures, or work-related injuries often through inadequate personal protective equipment or poor health and safety measures”<sup>168</sup>. Also sexual health indicators must be sensibly recognized such as “pregnancy as a result of their modern slavery situation or they may have recently been forced to terminate a pregnancy, sexually transmitted diseases, injuries of a sexual nature or, gynecological symptoms such as urinary or vaginal infections, pelvic inflammation or pain or irregular bleeding”<sup>169</sup>. The ILO published a report<sup>170</sup> on operational indicators of human trafficking for sexual and labor exploitation of children and adults. The report distinguishes indicators of deceptive recruitment, coercive

<sup>165</sup> *ibid*, 17.

<sup>166</sup> See chapter 1.4.1.

<sup>167</sup> Home Office (n 166), 20.

<sup>168</sup> *ibid*, 18.

<sup>169</sup> *ibid*.

<sup>170</sup> International Labour Organization, ‘Operational Indicators of Trafficking in Human Beings: Results from a Delphi Survey Implemented by the ILO and the European Commission’ <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105023.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf)> accessed 28 August 2019.

recruitment, recruitment by abuse of vulnerability, exploitation, coercion at destination and abuse of vulnerability at the destination.

#### 2.4 Protection of (Minor) Victims

Regarding the research question, the following analysis of the United Kingdom's law and policies on protecting victims of modern slavery focuses on minors. Section 45 of the *Modern Slavery Act* addresses the complex issue of criminalizing victims of modern slavery and represents the domestic incorporation of the *Council of Europe Convention on Action against Trafficking in Human Beings* (hereinafter *the Convention on Action against Trafficking in Human Beings*)<sup>171</sup>. After the United Kingdom signed<sup>172</sup> the *Convention on Action against Trafficking in Human Beings* in March 2007, the independent Crown Prosecution Service adopted it. Article 26<sup>173</sup> outlines the non-punishment provision and Article 28(3) states that “[a] child victim shall be afforded special protection measures taking into account the best interests of the child.” Furthermore, Article 8 of Directive 2011/36/EU prohibits the conviction and bringing charges against victims.

Minors are particularly vulnerable and even more inhibited to report to the police. Section 45 of the *Modern Slavery Act* outlines a statutory defense for persons (minors) being or having

<sup>171</sup> See chapter 4.

<sup>172</sup> Ratification on the 12/2008; entry into force on 04/2009.

<sup>173</sup> “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

been a victim of modern slavery or trafficking and “ha[ve] been compelled to commit an offence as a direct consequence of being a modern slavery victim”<sup>174</sup>. It states:

“(1) A person is not guilty of an offence if—

- (a) the person is aged 18 or over when the person does the act which constitutes the offence,
- (b) the person does that act because the person is compelled to do it,
- (c) the compulsion is attributable to slavery or to relevant exploitation, and
- (d) a reasonable person in the same situation as the person and having the person’s relevant characteristics would have no realistic alternative to doing that act”<sup>175</sup>

The statutory defense recognizes the vulnerable position of children as they receive different compulsions than adults. “Cannabis cultivation, offences related to prostitution, and immigration offences”<sup>176</sup> are included in the statutory defense. In 2013, the Court of Appeal ruled on a criminal appeal against three children who were trafficked and convicted for the offence of producing cannabis.<sup>177</sup> All three children were arrested at the age of 16, not treated as child victims and faced second victimization. The court held “that it would be an abuse of process to prosecute a child victim of trafficking for actions which were consequent on or integral to the exploitation he or she had suffered.”<sup>178</sup>

<sup>174</sup> ‘Modern Slavery Bill - Factsheet: Defence for Victims (Clause 45)’ <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/372789/Defence\\_Victims.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/372789/Defence_Victims.pdf)> accessed 28 August 2019.

<sup>175</sup> Part 5, Section 45 Modern Slavery Act 2015.

<sup>176</sup> ‘Modern Slavery Bill - Factsheet: Defence for Victims (Clause 45)’ (n 174).

<sup>177</sup> *L, HVN, THN and T v R* [2013] EWCA Crim 991.

<sup>178</sup> GRETA - Group of Experts on Action against Trafficking in Human Beings, ‘Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom’ (Council of Europe 2016) 21 <<https://rm.coe.int/16806abdc>> accessed 26 August 2019, 71.



Importantly, 140 offences are exempt from the defense which are listed in Schedule 4<sup>179</sup> of the *Modern Slavery Act*. However, many of the exemptions are common in child trafficking cases. If an offence is listed in Schedule 4, a public interest test might be conducted before bringing the charges. Due to the vulnerability of potential minor victims of modern slavery, it is important that the possibility of the statutory defense has been raised and that judges and magistrates consider it in all pre-trial hearings.

An important judgment regarding the burden of proof of the Court of Appeal was issued in March 2018. In *MK v R*<sup>180</sup>, the Court of Appeal held that section 45 of the *Modern Slavery Act* “[...] does not implicitly require the defendant to bear the legal or persuasive burden of proof of any element of the defense. The burden on a defendant is evidential. It is for the defendant to raise evidence of each of those elements and for the prosecution to disprove one or more of them to the criminal standard in the usual way.”<sup>181</sup> In other words, victims do not have to prove the ingredients of section 45, they only have to raise evidence to show them. Therefore, the burden of proof is on the prosecution. Due to this judgment, the vagueness of section 45 of the *Modern Slavery Act* defense has been clarified.

Support for child victims is regulated separately in England and Wales, Northern Ireland and Scotland. In England and Wales, primarily children service department provides support for child victims. Furthermore, section 48 of the *Modern Slavery Act* introduces Independent Child Trafficking Advocates (ICTAs). They “provide specialist independent support for trafficked children, in addition to existing statutory service provision, and to advocate on behalf of the child

<sup>179</sup> Schedule 4 Modern Slavery Act 2015.

<sup>180</sup> *MK v R* [2018] EWCA Crim 667.

<sup>181</sup> *ibid*, para 45.

to ensure that their best interests are reflected in decisions made by public authorities.”<sup>182</sup> The *Modern Slavery Act* is unclear in the question of whether the appointment of a guardian is dependent on an NRM decision. To improve the support of child victims, the United Kingdom Government uses the Child Trafficking Protection Fund (CTPF). The fund works with organizations such as ECPAT UK<sup>183</sup>, Children Society or Unseen.

In Scotland, the support for minors is defined under the *National Guidance for Child Protection in Scotland 2014*<sup>184</sup> and the *Getting It Right for Every Child* <sup>185</sup> framework. The existing child protection and children service legislation is set out in the *Children (Scotland) Act 1995*<sup>186</sup>; *Children’s Hearings (Scotland) Act 2011*<sup>187</sup>; and the *Children and Young People (Scotland) Act 2014*<sup>188</sup>. Local authorities work under these legislations and provide support for child victims of trafficking. According to the *Human Trafficking and Exploitation (Scotland) Act 2015*<sup>189</sup>, trafficked children without a guardian will be appointed to an Independent Child Trafficking Guardian. A guardian can be appointed before an NRM decision.

In Northern Ireland, an Independent Guardian will assist, represent and support minor victims or separated children. Article 21 of the *Human Trafficking and Exploitation Act (Northern*

<sup>182</sup> Jasmin Keeble, Adam Fair and Stephen Roe, *Assessment of Independent Child Trafficking Advocates: Interim Findings*. (Home Office 2018) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/730098/assessment-of-independent-child-trafficking-advocates-horr101.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730098/assessment-of-independent-child-trafficking-advocates-horr101.pdf)> accessed 17 August 2019, 3.

<sup>183</sup> ECPAT UK (Every Child Protected Against Trafficking United Kingdom).

<sup>184</sup> Scottish Government, *National Guidance for Child Protection in Scotland 2014*. (Scottish Government 2014) <<http://www.nls.uk/scotgov/2014/9781784124281.pdf>> accessed 8 July 2019.

<sup>185</sup> Scottish Government, ‘Getting It Right for Every Child: A Guide to Getting It Right for Every Child’ <<https://www2.gov.scot/resource/doc/1141/0065063.pdf>> accessed 29 August 2019.

<sup>186</sup> Children (Scotland) Act 1995 <<https://www.legislation.gov.uk/ukpga/1995/36/contents>> accessed 29 August 2019.

<sup>187</sup> Children’s Hearings (Scotland) Act 2011 <<https://www.legislation.gov.uk/asp/2011/1/contents>> accessed 29 August 2019.

<sup>188</sup> Children and Young People (Scotland) Act 2014 <<http://www.legislation.gov.uk/asp/2014/8/contents/enacted>> accessed 29 August 2019.

<sup>189</sup> Section 11 Human Trafficking and Exploitation (Scotland) Act 2015 <<http://www.legislation.gov.uk/asp/2015/12/contents/enacted>> accessed 29 August 2019.

*Ireland*)<sup>190</sup> states that it is in the responsibility of the Regional Health and Social Care Board to assure such Independent Guardians. Similar to Scotland, a guardian can also be appointed before an NRM decision. However, “each jurisdiction has a different interpretation on eligibility for guardianship, for example, who is entitled to have a guardian, how the guardian is appointed, when and for how long a guardian will be able to represent the child.”<sup>191</sup>

The United Kingdom has ratified several EU legislations to strengthen the protection of victims. Firstly, Directive 2011/36/EU where Article 11 to 17 sets out the type and standards for victim support. Secondly, EU Directive 2004/80/EC<sup>192</sup> which addresses compensation to crime victims. Thirdly, EU Directive 2012/29/EU<sup>193</sup> “establish[es] minimum standards on the rights, support and protection of victims of crime provid[ing] the right to obtain a decision on compensation by the offender.”<sup>194</sup> And lastly EU Directive 2011/99/EU<sup>195</sup>, which sets out a “mechanism for the mutual recognition of protection measures [for victims of crime].”<sup>196</sup>

In the United Kingdom, potential victims of trafficking will be provided with support. In England and Wales, potential victims of slavery, servitude and forced or compulsory labor are eligible for support as well. To request support for minors, the local authority children’s service

<sup>190</sup> Human Trafficking and Exploitation Act (Northern Ireland) <<http://www.legislation.gov.uk/nia/2015/2/enacted>> accessed 29 August 2019.

<sup>191</sup> Beddoe and Brotherton (n 129).

<sup>192</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims in Official Journal L 261/15, 6/08/2004.

<sup>193</sup> Richtlinie 2012/29/EU des europäischen Parlaments und des Rates vom 25. Oktober 2012 über Mindeststandards für die Rechte, die Unterstützung und den Schutz von Opfern von Straftaten sowie zur Ersetzung des Rahmenbeschlusses 2001/220/JI im Amtsblatt der Europäischen Union L 315/57, 14/11/2012.

<sup>194</sup> European Commission, Justice and Consumers Department, ‘Victims’ Rights’ <[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en)> accessed 14 September 2019.

<sup>195</sup> Available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:338:0002:0018:EN:PDF> accessed 29 August 2019 .

<sup>196</sup> Elisabet Cerrato and others, *European Protection Order Directive 2011/99/EU: European Implementation Assessment*. (Secretariat of the European Parliament (DGEPRS) 2017) <<http://dx.publications.europa.eu/10.2861/57192>> accessed 9 September 2019, 23.

must be always contacted. The Home Office is in charge, that the arranged accommodation is secure and appropriate.

### 3 No Specific Legal Recognition of Modern Slavery: Germany

Chapter Four will evaluate modern slavery legislation and policies in Germany. It will provide an overview of the existing specific legal provision(s) combating modern slavery and analyze it with a focus on the recognition and protection of minors. This chapter will further examine different actors on the national level, with its area of responsibility and the impact they have on combating modern slavery – with a special focus on minors. Finally, this chapter will evaluate the (legal) support for (minor) victims existing in Germany.

#### 3.1 Legal Framework

Germany is made up of sixteen federated states (*Länder*). As set out in the *German Basic Law*<sup>197</sup>, the *Länder* are responsible for the execution of federal laws. Since GRETA published a report<sup>198</sup> on Germany in 2015, the Federal Government improved the legal basis on combating modern slavery continuously. With the implementation of the Directive 2011/36/EU, the *Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code*<sup>199</sup>, transposed Directive 2011/36/EU into national law. The attempt, as well as the act of exploitation of “another person’s predicament or helplessness arising from being in a foreign country”<sup>200</sup> to recruit, transport, transfer, harbor or receive humans with the purpose of exploitation, is now criminalized under the *German Criminal Code*<sup>201</sup>. The

<sup>197</sup> Grundgesetz für die Bundesrepublik Deutschland 1994.

<sup>198</sup> GRETA - Group of Experts on Action against Trafficking in Human Beings, ‘Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany’ (Council of Europe 2015) <<https://rm.coe.int/1680631c3b>> accessed 9 April 2019, Section 232.

<sup>199</sup> *Gesetz zur Verbesserung der Bekämpfung des Menschenhandels und zur Änderung des Bundeszentralregistergesetzes sowie des Achten Buches Sozialgesetzbuch*, entered into force on 15 October 2016.

<sup>200</sup> Federal Ministry of Justice and Consumer Protection 2017, *Strafgesetzbuch (StGB) § 232(1) Menschenhandel*. Available at: [https://www.gesetze-im-internet.de/stgb/\\_232.html](https://www.gesetze-im-internet.de/stgb/_232.html). [03.09.2019].

<sup>201</sup> *Deutsche Strafgesetzbuch* (1998) <[https://www.gesetze-im-internet.de/englisch\\_stgb/](https://www.gesetze-im-internet.de/englisch_stgb/)>.

definition of exploitation includes prostitution of others or similar forms of exploitation; begging; forced labor, slavery, debt bondage or similar offences for sexual and work exploitation; and organ removal. Penalties for such offences range from six months up to five years. The penalty increases from six months up to ten years if the victim is under 18 years old; violence or threat arises in the process of recruitment, transportation, transferring, harboring or receiving the individual; the victim is kidnapped; ill-treatment or abuse is involved; or the perpetrator is operating in a network.<sup>202</sup> If a person is under 21 years old, the exploitation of predicament or helplessness is not necessary.

Forced sexual exploitation and labor exploitation are criminalized separately in section 232a<sup>203</sup> and section 232b<sup>204</sup> of the *German Criminal Code*. The offence, as well as the attempt, is punished with a penalty from six months to ten years. Section 236 criminalizes child trafficking and sets a maximum penalty of ten years. Forced marriage is criminalized under section 237 which imposes a maximum penalty up to five years.

In July 2016, the German *Bundestag* (German Federal Parliament) approved legislation that provides the legal basis on the regulation of sex work for the first time. The *Prostitution Protection Act*<sup>205</sup> entered into force in July 2017. It protects sex workers against exploitation and human trafficking, and “require[s] to obtain statutory permission to operate a prostitution business and [...] to register with the authorities as a prostitute/sex worker.”<sup>206</sup> The law only applies to persons

<sup>202</sup> *ibid*, § 232(2) & (3) Menschenhandel.

<sup>203</sup> *ibid*, § 232a Zwangsprostitution.

<sup>204</sup> *ibid*, § 232b Zwangsarbeit.

<sup>205</sup> Gesetz zum Schutz von in der Prostitution tätigen Personen (Prostituiertenschutzgesetz) 2016.

<sup>206</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, ‘Report Submitted by the German Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2015)2 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings’ (Council of Europe 2017) 21 <<https://rm.coe.int/cp-2017-21-rr-deu-en-pdf/168073fdf2>> accessed 3 September 2019, 9.

over 18 years old.<sup>207</sup> However, particular provisions apply to persons under 21 years. For instance, the vulnerability is recognized in paragraph 10 which contains health advice. Therefore, people who are under 21 years old have attend health consultations every six months instead of every 12 months.<sup>208</sup> The *Prostitution Protection Act* further implies an obligation on the sex worker, as well as on the customer, to use a condom<sup>209</sup>, and it prohibits the advertisement for sex without condoms<sup>210</sup> and sex with pregnant women<sup>211</sup>. The implementation is the responsibility of the *Länder*. However, the *Prostitution Protection Act* “require[s] officials across all states to screen for trafficking indicators during registration [...]”<sup>212</sup>.

Section 25 (4a) of the *Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory*<sup>213</sup> contains a provision which grants permission of residence to victims of offences defined in § 232 to § 233a of the *German Criminal Code*, even though the individual is obliged to leave the country. Section 10 of the *Act to Combat Undeclared Work and Unlawful Employment*<sup>214</sup> addresses the offence of employing someone under unfavorable working conditions. Section 10a imposes a penalty up to three years or a fine for a person who employs a foreign national who lacks residence permit and is a victim of human trafficking. The “larger-scale employment of foreign nationals who lack a work permit or residence permit and employment of underage foreign nationals”<sup>215</sup> is addressed in section 11. As set out in section 4(b) of the *Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory*, a victim

<sup>207</sup> Gesetz zum Schutz von in der Prostitution tätigen Personen (Prostituiertenschutzgesetz), § 1 Anwendungsbereich.

<sup>208</sup> *ibid*, § 10.

<sup>209</sup> *ibid*, § 32.

<sup>210</sup> *ibid*, § 32(1) Kondompflicht; Werbeverbot.

<sup>211</sup> *ibid*, § 32(3) Kondompflicht; Werbeverbot.

<sup>212</sup> Department of State United States of America (n 34), 207.

<sup>213</sup> Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz) 2004.

<sup>214</sup> Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung - Schwarzarbeitsbekämpfungsgesetz 2004.

<sup>215</sup> *ibid*, Section 11.

of section 10 (1)<sup>216</sup> or section 11 (1)(3)<sup>217</sup> of the *Act to Combat Undeclared Work and Unlawful Employment* is granted permission of residence even though the individual is obliged to leave the country. In addition to those provisions, the *Act on Redefining Residence Rights and Termination of Residency*<sup>218</sup>, improves the residence rights for victims of modern slavery. Firstly, a residence permit should be granted if “the public prosecutor’s office or the criminal court considers his presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his information”<sup>219</sup>. Secondly, a residence permit should be granted if the victim “has broken off contact to the persons accused of having committed the criminal offence”<sup>220</sup>. Thirdly, a residence permit should be granted “if [the victim] has declared his willingness to testify as a witness in the criminal proceedings relating to the offence”<sup>221</sup>. Lastly, after the conclusion of the criminal proceedings, the temporary residence permit should be extended if humanitarian or personal reasons or public interests require the foreigner’s further presence in the federal territory”<sup>222</sup>.

In 2017, Germany passed the *Act to Reform Asset Recovery in Criminal Law*<sup>223</sup> which transposed the EU Directive on the Freezing and Confiscation of Instrumentalities and Proceeds

<sup>216</sup> Section 10 (1): “Any person who intentionally commits one of the acts specified in section 404 (2) no 3 of Book III of the Social Code and employs a foreign national under conditions that are clearly less favourable than those of German workers who carry out the same or a similar activity is punished with imprisonment for up to three years or with a criminal fine.”

<sup>217</sup> Section 11 (1)(3): “Any person who employs a person under the age of 18 in violation of section 4 (3) sentence 2 of the Residence Act.”

<sup>218</sup> Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung 2015.

<sup>219</sup> § 25 (4)(a)(1) Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz).

<sup>220</sup> *ibid.*, § 25 (4)(a)(2).

<sup>221</sup> *ibid.*, § 25 (4)(a)(3).

<sup>222</sup> *ibid.*, § 25 (4)(a).

<sup>223</sup> Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung 2017.



of Crime (2014/42/EU)<sup>224</sup> into German law. It reforms existing provisions and simplifies the complex structure of asset recovery in German law. Before the *Act to Reform Asset Recovery in Criminal Law* was passed into law, confiscated assets were very uncommon in juvenile court cases.<sup>225</sup> From now on, compensation claims of the victim will be already decided in the criminal trial.

“The prosecution offices function under the authority of the Ministers of Justice of the *Länder*.”<sup>226</sup> The Central Customs Authority (*Zoll*) is in charge of conducting labor inspections. More particular, the Financial Monitoring Unit to Combat Illicit Employment (*Finanzkontrolle Schwarzarbeit (FKS)*) undertakes workplace inspections on the federal level. However, there is no dedicated agency that carries out such inspection, in particular, identifying victims of forced labor exploitation in Germany. The *FKS* is rather focused on the social security system of the employers than identifying offences of modern slavery. If an offence of modern slavery is discovered, the *FKS* refers it to the responsible police service. In other words, investigations and prosecutions are in the responsibility of the *Länder* where each *Land* has its own victim referral system to either Non-Governmental Organizations (NGO’s) or governmental support.

The following will examine the German response to modern slavery in supply chains. In December 2016, the Federal Cabinet adopted the first German National Action Plan on the

<sup>224</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, in Official Journal L 127/39, 24/04/2014.

<sup>225</sup> Wiebke Reitemeier, ‘Die Reform Der Strafrechtlichen Vermögensabschöpfung’ [2017] ZJJ 354.

<sup>226</sup> GRETA - Group of Experts on Action against Trafficking in Human Beings, ‘Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany’, Section 30, (Council of Europe 2015) <<https://rm.coe.int/1680631c3b>> accessed 4 September 2019.

Implementation of the UN Guiding Principles on Business and Human Rights 2016–2020<sup>227</sup>. In the same year, the procurement law was reformed which transposed the *EU Procurement Directive 2014/24/EU* into German domestic law. Contracting authorities are now required to exclude a business “from participation in a procurement procedure [if the business] has been the subject of a conviction by final judgment for”<sup>228</sup> child labor and other forms of trafficking in human beings among others. Paragraph 123 of the *Act against Restraints of Competition (Competition Act – GWB)*<sup>229</sup> states that public authorities must exclude a business “from participation at any point in the procurement procedure [if the business] has been convicted by final judgment or a final administrative fine has been issued against the [business] under § 30 of the *German Administrative Offences Act* for a criminal offence under”<sup>230</sup> human trafficking for the purpose of sexual exploitation<sup>231</sup>, human trafficking for the purpose of work exploitation<sup>232</sup> and assisting in human trafficking<sup>233</sup>. Germany has ratified several core conventions of the ILO such as No. 29 *Forced Labour Convention*<sup>234</sup>, No. 105 *Abolition of Forced Labour Convention*<sup>235</sup> and No. 182 *Worst Forms of Child Labour Convention*<sup>236</sup>. The Directive 2014/24/EU recommends asking businesses to comply with such ILO conventions.

<sup>227</sup> The Federal Government, ‘National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights 2016 - 2020’ (2017) <<https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>> accessed 15 September 2019.

<sup>228</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, in Official Journal L 94/65, 28/03/2014, Subsection 1, Article 57 (1).

<sup>229</sup> Vergaberechtsmodernisierungsgesetz 2015.

<sup>230</sup> *ibid.*, § 123(1).

<sup>231</sup> Section 232 German Criminal Code.

<sup>232</sup> Section 233 German Criminal Code.

<sup>233</sup> Section 233a German Criminal Code.

<sup>234</sup> Ratified on 13 June 1956, see

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102643](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102643).

<sup>235</sup> Ratified on 22 June 1956.

<sup>236</sup> Ratified on 18 April 2002.

In April 2017, the *CSR Directive Implementation Act*<sup>237</sup> transposed *EU Directive 2014/95/EU*<sup>238</sup> into national law. It requires capital market-orientated companies with more than 500 employees<sup>239</sup>, cooperatives and credit institutions to publish a non-financial report. Paragraph 289(c) defines five matters which must be included in the report: anti-corruption or bribery matters, employee-related matters, environmental matters, social matters and respect for human rights. However, “[o]nly 28% [of the companies] followed the structure of the five matters defined by the”<sup>240</sup> *CSR Directive Implementation Act* and only 33% of the companies provided concrete figures for the matter of human rights.<sup>241</sup>

Relevant legal provisions regarding the commercial sexual exploitation of minors are listed in the *German Criminal Code*. Commercial sexual exploitation of minors is defined as “[...] sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object.”<sup>242</sup> It is a fundamental violation of children's rights. As mentioned earlier in this chapter, section 232 ff., section 180a, and section 181a criminalize sexual exploitation of minors. Since 2016, section 176(5) child abuse, 176a(3) aggravated child abuse, 180(1)(1) and 180(2) causing minors to engage in sexual activity, and 182(2) abuse of juveniles criminalizes further crimes of sexual exploitation of minors.

<sup>237</sup> Gesetz zur Stärkung der nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernlageberichten (CSR-Richtlinie-Umsetzungsgesetz) 2017.

<sup>238</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, in Official Journal L 330/1, 15/11/2014.

<sup>239</sup> Paragraph 289b (1) Gesetz zur Stärkung der nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernlageberichten (CSR-Richtlinie-Umsetzungsgesetz).

<sup>240</sup> Global Compact Netzwerk Deutschland and econsense – Forum for Sustainable Development of German Business, ‘NEW MOMENTUM FOR REPORTING ON SUSTAINABILITY? Study on Implementation of the German CSR Directive Implementation Act’ <[https://www.globalcompact.de/wAssets/docs/Reporting/NFE\\_Studie\\_Online\\_englisch\\_181015.pdf](https://www.globalcompact.de/wAssets/docs/Reporting/NFE_Studie_Online_englisch_181015.pdf)> accessed 22 September 2019, 14.

<sup>241</sup> *ibid*, 15.

<sup>242</sup> Article 5 of the Stockholm Declaration and Agenda for Action, 1st World Congress against Sexual Exploitation of Children“, Stockholm 1996 <[https://www.dji.de/fileadmin/user\\_upload/izkk/StockholmAgenda1996.pdf](https://www.dji.de/fileadmin/user_upload/izkk/StockholmAgenda1996.pdf)>.

### 3.2 *Actors on National Level*

Regarding the institutional framework of human trafficking, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) coordinates agencies on a federal level. The Federal Ministry for Labor and Social Affairs (BAMS) is in the responsibility of action against trafficking for the purpose of labor exploitation. Under the leadership of the BAMS, the Federal Working Group on Combating Human Trafficking was established by the German government in 2015. The working group established three main sub-groups in the fight against human trafficking for the purpose of labor exploitation: “[p]revention and public awareness, advice and support for victims, and prosecution and improvement of data collection”<sup>243</sup>. Since 1999, the BMFSFJ funds the German NGO network against trafficking in human beings (KOK) which comprises 39 NGO’s fighting human trafficking. KOK is the only network that focuses on human trafficking and modern slavery. It “act[s] as a national and international interface between counselling services, public and private policy actors and key international organisations”<sup>244</sup>

### 3.3 *Protection of (Minor) Victims*

The rights of young people are set out in the *Social Code*, Book VIII – Child and Youth Services<sup>245</sup>. The federal law addresses youth issues and refers to particularly vulnerable groups such as mentally handicapped children<sup>246</sup>, young people come of age<sup>247</sup>, and unaccompanied foreign children and young people<sup>248</sup>. According to section 69 to 71 of the *Social Code (Book*

<sup>243</sup> GRETA - Group of Experts on Action against Trafficking in Human Beings (n 198), para 75.

<sup>244</sup> *ibid*, para 33.

<sup>245</sup> Sozialgesetzbuch (SGB) - Achtes Buch (VIII) - Kinder- und Jugendhilfe 1990 (BGBl I S 1163).

<sup>246</sup> *ibid*, Section 27-40.

<sup>247</sup> *ibid*, Sections 27-41, 86a.

<sup>248</sup> *ibid*, Section 42, 88a.

VIII), every federal state in Germany has to have an implementation act about the Child and Youth Service Act.<sup>249</sup> With the ratification of the *Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe* in 2005<sup>250</sup>, the Youth Welfare Office is required by law to protect every foreign unaccompanied minor who entered Germany.<sup>251</sup> With regard to the prohibition of child marriage, a minor who enters Germany is also recognized as an unaccompanied minor if he or she is married.<sup>252</sup> The *Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher*<sup>253</sup> sets out a national redistribution system which should achieve a primary procedure to take children into custody. According to section 42a (1) of the *Social Code (Book VIII)*, the Youth Welfare Office is required to take unaccompanied minors into custody upon their arrival in Germany. Furthermore, the Youth Welfare Office has to act in the best interest of the minor and provide adequate support, accommodation, and health care.<sup>254</sup> After the unaccompanied minor is taken into primary custody, the so-called clearing procedure (*'Clearing-Verfahren'*) follows. One of the first steps is age clarification. If the estimated age is above 18 years, the person will be referred to the relevant Initial Reception Centre for adult refugees<sup>255</sup>. If the estimated age is under 18 years, the minor can either live with his/her relatives in Germany or Europe (if existing, which will be checked by the authorities) or will be referred to the Youth Welfare Office responsible for the minor. Additionally, a guardian will be appointed to the minor. This can be either a volunteer individual or an employee of the relevant Youth Welfare Office. Since 2017, it is in the responsibility of the Youth Welfare Office to check if an asylum application has to be lodged for the minor even before the appointment of a guardian.<sup>256</sup>

<sup>249</sup> See [https://eacea.ec.europa.eu/national-policies/en/content/youthwiki/references-germany#Implementation\\_laws\\_Laender\\_KJHG](https://eacea.ec.europa.eu/national-policies/en/content/youthwiki/references-germany#Implementation_laws_Laender_KJHG)

<sup>250</sup> Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe (Kinder- und Jugendhilfeweiterentwicklungsgesetz – KICK) 2005 (BGBl I S 2729).

<sup>251</sup> See Section 42 Social Code (Book VIII).

<sup>252</sup> See § 42a Abs. 1 Satz 2 Social Code (Book VIII).

<sup>253</sup> Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher 2015.

<sup>254</sup> § 42a Abs. 1 Satz 2, § 42 Abs. 2 Satz 3 Social Code (Book VIII).

<sup>255</sup> Every refugee has to register and therefore notify the German state that he or she wants to apply for asylum. This can happen in relevant governmental authorities.

<sup>256</sup> § 3 Gesetz zur besseren Durchsetzung der Ausreisepflicht 2017.

The basis for victim compensation in Germany is set out in the *Act on compensation to victims of violent crime*<sup>257</sup>. Therefore, every victim of a violent crime committed under German territory who suffers health damage is entitled to file for compensation<sup>258</sup>. With the reformation in 2009, it is now possible to file for compensation of violent acts committed abroad<sup>259</sup>. “A violent crime is an intentional, unlawful physical assault against a person. Sexual offences and sexual assaults against minors are also regarded as violent crimes”<sup>260</sup>. To claim compensation, the victim has to fill in the application<sup>261</sup> and send it to the social compensation authority responsible for the case. Support is available from all victims’ support organizations in Germany.

<sup>257</sup> Gesetz über die Entschädigung für Opfer von Gewalttaten (Opferentschädigungsgesetz) 1985.

<sup>258</sup> *ibid*, para. 1(1).

<sup>259</sup> *ibid*, Section 3a.

<sup>260</sup> Federal Ministry of Labour and Social Affairs, ‘Compensation and Assistance for Victims of Violent Crime’ (*bmas.de*, 4 August 2016) <<https://www.bmas.de/EN/Our-Topics/Social-Security/compensation-and-assistance-for-victims-of-violent-crime.html>> accessed 29 September 2019.

<sup>261</sup> Antrag auf Leistungen für Gewaltopfer available at [https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Rundschreiben-SF/antrag-baf-oeg.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Rundschreiben-SF/antrag-baf-oeg.pdf?__blob=publicationFile&v=2).

## 4 International Human Rights Law on Modern Slavery

The *Slavery Convention (1927)* is the first multilateral treaty which defines slavery in international law. Article 1 states that “[s]lavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”. The *Slavery Convention* further implies an obligation on each party to “[t]o prevent and suppress the slave trade [and] [t]o bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.”<sup>262</sup>

“The primacy of human rights and the potential for human trafficking to impact upon the dignity of human beings”<sup>263</sup> is set out in the principles and guidelines published by the Office of the High Commissioner for Human Rights.<sup>264</sup> Furthermore, it includes the duty on States “under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked person.”<sup>265</sup> This chapter analyses the international response to combat modern slavery. It gives an overview of relevant legal provisions and particularly examines the European Court of Human Rights and the United Nations.

There are several international instruments combating different forms of modern slavery, including trafficking of human beings, forced labor, or exploitation which the United Kingdom and Germany have signed and ratified. The main international instrument is the *Palermo Protocol*<sup>266</sup>. It particularly pays attention to women and children and protects victims of

<sup>262</sup> Article 2 Convention to Suppress the Slave Trade and Slavery.

<sup>263</sup> Amy Weatherburn, ‘Using an Integrated Human Rights-Based Approach to Address Modern Slavery: The UK Experience’ (2016) 184 Sweet & Maxwell and its Contributors 2.

<sup>264</sup> Office of the High Commissioner for Human Rights, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ <<https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>> accessed 10 March 2019.

<sup>265</sup> *ibid.*, 1.

<sup>266</sup> Ratified by the United Kingdom in February 2006 and by Germany in June 2006.

exploitation which “shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>267</sup> This definition was copied in the *Council of Europe Convention on Action against Trafficking in Human Beings* which includes prevention, protection and promotion, and ‘gender equality’.<sup>268</sup> One of the main added values is its recognition of (unaccompanied) children and their special protection. Thirdly, the *European Convention on Human Rights (ECHR)* which prohibits torture under Article 3 and slavery and forced labor under Article 4. Fourthly, Article 5 of the *Charter of Fundamental Rights of the European Union* prohibits slavery and forced labor. Fifthly, the Directive 2011/36/EU<sup>269</sup> focuses on law enforcement, prevention, recovery and reintegration of victims. “Specific assistance, support and protective measures”<sup>270</sup> shall be available to children. The Directive 2011/36/EU defines unaccompanied children as particularly vulnerable and sets an obligation for the States from the moment of identification until a durable solution is found. This durable solution includes return, reintegration into the host society or the country of origin/return, imparting international protection status or other status.<sup>271</sup> Additionally, recital 8 underlines that:

“[c]hildren are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interest must be of primary consideration, in accordance with the Charter of

<sup>267</sup> Article 3(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into 29 September 2003) (n 20).

<sup>268</sup> Ratified by the United Kingdom in December 2008 and by Germany in December 2012.

<sup>269</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (n 71).

<sup>270</sup> *ibid*, para. 22.

<sup>271</sup> *ibid*, para. 23.



Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.”

In the context of prosecution and punishment, recital 14 of the Directive 2011/36/EU states that:

“[v]ictims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities [...] that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. The safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.”

Recital 22<sup>272</sup> and 23<sup>273</sup> capture vulnerable and unaccompanied child victims of trafficking. Sixthly, the *Convention on the Rights of the Child*, where slavery is not particularly mentioned but child trafficking is specified in Article 35. It applies a broader

<sup>272</sup> “Member States should ensure that specific assistance, support and protective measures are available to child victims. [...] Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. [...] Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.”

<sup>273</sup> “Particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor’s best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration [...].”

concept of it by requesting the States to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”<sup>274</sup>.

#### 4.1 *The European Court of Human Rights*

The European Court of Human Rights (ECtHR) defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”<sup>275</sup> by using the 1926 *Slavery Convention*. In the landmark case *Siliadin v France*<sup>276</sup>, the ECtHR ruled for the first time that there was a breach of Article 4 of the *European Convention on Human Rights (ECHR)*. Article 4 states the prohibition of slavery, servitude, forced and compulsory labor. The ECtHR ruled that the modern legal concept of slavery falls within Article 4. It further noted that the treatment of the plaintiff did fall in the scope of servitude, rather than of slavery because the “legal ownership”<sup>277</sup> and the “reduction to the status of an object”<sup>278</sup> was missing. Also, in *M. and Others v. Italy and Bulgaria*<sup>279</sup>, the ECtHR did not find enough evidence to raise the issue under slavery. It stated that “a monetary contribution cannot be considered to amount to a price attached to the transfer of ownership”<sup>280</sup>. Servitude is linked with the concept of slavery and “means an obligation to provide one's services that is imposed by the use of coercion”<sup>281</sup>. The ECtHR further states that the “mental distinguishing feature between servitude and forced or compulsory labour

<sup>274</sup> Article 35 Convention on the Rights of the Child (1989).

<sup>275</sup> *Siliadin v France* [2005] European Court of Human Rights App. No. 73316/01, para 122.

<sup>276</sup> *ibid.*

<sup>277</sup> *ibid.*

<sup>278</sup> *ibid.*

<sup>279</sup> *M and Others v Italy and Bulgaria* [2012] European Court of Human Rights App. No. 40020/03.

<sup>280</sup> *ibid.*, para 161.

<sup>281</sup> *Siliadin v France* (n 276), para 124.

[...] lies in the victim's feeling that their condition is permanent and that the situation is unlikely to change"<sup>282</sup>.

Article 4 does not define forced or compulsory labor. In *Van der Mussele v. Belgium*, the ECtHR used the *ILO Convention No. 29* as an interpretation starting point.<sup>283</sup> Not every kind of work under the threat of a penalty falls within the scope of Article 4. The type and amount of work are factors that distinguish 'forced labor' from a reasonably amount of work and lead the ECtHR to the principle of the 'disproportioned burden'.<sup>284</sup> In the occurrence of an allegation of a violation of a right of the *ECHR*, the ECtHR follows its methodology of discussing the general material scope of the alleged right. The ECtHR first assesses whether the circumstances of the case fall within the already described material scope. Regarding the 'prohibition of slavery and forced labor', the ECtHR established that harm inflicted by private parties is covered by the material scope of Article 4 of the *ECHR*.<sup>285</sup> It stated further, that a positive obligation flows from Article 4. In the next step, the ECtHR reviewed the facts of the harm inflicted by private parties on the applicant and whether this falls into the scope of slavery, servitude or forced labour.

In the case of *Rantsev v. Cyprus and Russia*<sup>286</sup>, the ECtHR decided that there was not enough evidence to raise a claim under Article 3 of the *ECHR*. Instead, it argued that the "use of violence and ill-treatment of victims are common features of trafficking"<sup>287</sup>. Therefore, the ECtHR linked any "inhuman or degrading treatment suffered by the [victim] to the alleged trafficking and

<sup>282</sup> *CN and V v FRANCE* [2012] European Court of Human Rights App. No. 67724/09, para. 91.

<sup>283</sup> *Van der Mussele v Belgium* [1983] European Court of Human Rights App. No. 8919/80, para. 91: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

<sup>284</sup> *ibid*, para. 39.

<sup>285</sup> *Siliadin v France* (n 276), para 89.

<sup>286</sup> *Rantsev v Cyprus and Russia* [2010] European Court of Human Rights App. No. 25965/04.

<sup>287</sup> *ibid*, para 252.

exploitation”<sup>288</sup> and concluded that it is not necessary to consider the Article 3 claim separately. Based on the “obligation to interpret the Convention in light of present-day conditions”<sup>289</sup> the ECtHR did not identify the treatment of the victim as ‘slavery’, ‘servitude’ or ‘forced and compulsory labour’. That is how Article 4 came into the picture. Even though Article 4 does not include the wording of human trafficking, the ECtHR considered that it falls within the scope of the prohibition of slavery, servitude and forced labour based on the meaning of Article 3(a) of the *Palermo Protocol* and Article 4(a) of the *Council of Europe Convention on Action against Trafficking in Human Beings*.<sup>290</sup> The judgment does not include a definition of human trafficking as such nor does it identify its essential elements. The ECtHR gets criticised for assimilating trafficking into slavery.<sup>291</sup> Furthermore, the action element of trafficking as defined as “recruitment, transportation, transfer, harbouring or receipt of persons”<sup>292</sup> which is connected to the circumstances of the applicant’s migration status instead of the abuse or exercise of power. Furthermore, the ECtHR did not clarify the connection between the facts and human trafficking. However, the ECtHR found that there was a violation of Article 4.

Article 4 has a positive obligation “to penalise and prosecute effectively any act aimed at maintain a person in a situation of slavery, servitude or forced compulsory labour”<sup>293</sup>. Furthermore, a member state must “put in place a legislative and administrative framework to prohibit and punish trafficking, as well as to take measures to protect victims”<sup>294</sup>. In special circumstances,

<sup>288</sup> *ibid.*

<sup>289</sup> *ibid.*, para 282.

<sup>290</sup> *ibid.*, and *M. and Others v. Italy and Bulgaria* (n 280), para 151.

<sup>291</sup> J Allain, ‘Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery’ (2010) 10 Human Rights Law Review.

<sup>292</sup> Article 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into 29 September 2003) (n 20).

<sup>293</sup> *Siliadin v France* (n 275).

<sup>294</sup> *Rantsev v. Cyprus and Russia* (n 264), para 285.

Article 4 requires the need for operational measures which means to protect (potential) victims of trafficking.<sup>295</sup>

In the case *C.N. v. United Kingdom*<sup>296</sup>, the ECtHR found for the fourth time a violation of Article 4. The ECtHR ruled that the United Kingdom had violated Article 4 of the *ECHR* because “[...] the investigation into the applicant’s complaints of domestic servitude was ineffective due to the absence of specific legislation [...]”<sup>297</sup>. The plaintiff, a Ugandan woman, escaped from sexual and physical violence in Uganda to the United Kingdom. A relative helped her to enter the United Kingdom with false travel documents. After the arrival, the relative subducted her travel documents and placed her into work as a carer and as a security guard. The salary was transferred directly to the relative and the plaintiff received very little of it. Three and a half years later, the plaintiff collapsed during a visit to a bank and was taken to the hospital. She applied for asylum but the “Secretary of State for the Home Department considered that the applicant could access protection in Uganda to prevent further sexually motivated attacks. Moreover, he found that if she had been genuinely afraid [the relative], she would have tried to escape from him earlier”<sup>298</sup> and rejected it. In order of the plaintiff’s solicitor, the police to investigate her case and found no evidence of human trafficking. In December 2002, the plaintiff “assessed by the POPPY Project, a Government funded project providing housing and support for victims of trafficking. The POPPY Project concluded that she had been subjected to five of the six indicators of forced labor (as identified by the ILO). In particular, her movement had been restricted to the workplace, her wages were withheld to pay a debt she did not know about, her salary was withheld for four years,

<sup>295</sup> *C.N. v. The United Kingdom* (n 132), para 286.

<sup>296</sup> *ibid.*

<sup>297</sup> *ibid.*, para 81.

<sup>298</sup> *ibid.*, para 14.

her passport was retained, and she was subjected to threats of denunciation to the authorities.”<sup>299</sup> After further investigations, the police stated again that there was no offence of trafficking and any kind of exploitation. With section 71 of the *Coroners and Justice Act 2009*, slavery, servitude and forced or compulsory labor were criminal offences and punishable by a fine and/or up to fourteen years’ imprisonment. The ECtHR states that “domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance.”<sup>300</sup> Further, the ECtHR notes that “due to the absence of a specific offence of domestic servitude, the domestic authorities were unable to give due weight to these factors.”<sup>301</sup> This case demonstrates the issue of intersectionality. The plaintiff was female and migrant which is, unfortunately, common in modern slavery. By comparison, the plaintiffs were also female and migrant in *Siliadin v France* and *C.N. and V. v. France*.

#### 4.2 United Nations

With the adoption of the *International Covenant on Civil and Political Rights (ICCPR)*<sup>302</sup> in 1966, international law firstly included an individual legal entitlement as the right not to be held in slavery, not to perform forced or compulsory labor and of the prohibition of slavery and slave-trade in any form.<sup>303</sup>

<sup>299</sup> *ibid*, para. 20.

<sup>300</sup> *ibid*, para. 80.

<sup>301</sup> *ibid*, para. 80.

<sup>302</sup> International Covenant on Civil and Political Rights (ICCPR), GA Res 2200A (XXI), 21 UN GAOR Supp (No. 16), UN Doc A/6316 (1966), 999 UNTS 171.

<sup>303</sup> *ibid*, Article 8.

The UN Special Rapporteur on Contemporary Forms of Slavery (UN Special Rapporteur) is appointed by the Human Rights Council and the only actor in the United Nations that reports and examines modern slavery. The UN Human Rights Committee is a treaty body of 18 independent experts that supervises and monitors compliance with the *ICCPR* by its State parties. The four major responsibilities of the UN Human Rights Committee, which replaced the UN Working Group on Contemporary Forms of Slavery, are the examination of reports from the States parties, the elaboration of general comments, receiving and consideration of individual complaints, and the consideration of “certain complaints made by a State party that another State party is not abiding by the obligations assumed under the [*ICCPR*]”<sup>304</sup>.

The *Universal Declaration of Human Rights*<sup>305</sup> is a milestone document in the history of international human rights law and is a “source of inspiration and direction for the standard-setting and monitoring activities of the United Nations in the field of human rights.”<sup>306</sup> Article 4 states that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” The absence of reference to any form of forced or compulsory labor in Article 4 of the *Universal Declaration of Human Rights* distinguishes it from the *ICCPR*. The adoption of the *Palermo Protocol* enriched international law with a definition of human trafficking. The United Nations *Convention on the Rights of the Child* comprises the economic, social, health and cultural rights of minors. Article 39 states that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment

<sup>304</sup> United Nations High Commissioner for Human Rights, ‘Civil and Political Rights: The Human Rights Committee (Fact Sheet No. 15)’ <<https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>> accessed 16 October 2019.

<sup>305</sup> Universal Declaration of Human Rights by the U.N. General Assembly, GA Res 217A (III), UN Doc A/810, (1948).

<sup>306</sup> Gudmundur Alfredsson and Asbjørn Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff Publishers 1999).

or punishment; or armed conflicts.”<sup>307</sup> Compared to other human rights mechanisms, State parties are bound to the *Convention on the Rights of the Child* by international law. The United Nations Committee on the Rights of the Child monitors the compliance of the member states.

There are only a few cases where courts held States international responsible in the context of modern slavery. In the judgment of *Hadijatou Mani Koraou v. Republic of Nigeria*<sup>308</sup>, the Economic Community of West African States Community Court of Justice (ECOWAS Community Court of Justice) ruled that the Republic of Niger was in breach of the prohibition of slavery as written in the African Charter on Human and Peoples’ Rights. The ECOWAS Community Court of Justice concluded that the Republic of Niger “did not sufficiently protect the applicant’s rights against the practice of slavery”<sup>309</sup>. The Inter-American Court of Human Rights ruled in *Brasil Verde v. Brasil*<sup>310</sup> for the first time on the issue of modern slavery. In 2016, Brasil was found in violation of the right not to be subjected to slavery and trafficking based on working conditions of laborers at a cattle ranch. For more cases see chapter 4.1.

Goal 8.7 of the United Nations Sustainable Development Goals state to “[t]ake immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”<sup>311</sup> by 2030.

<sup>307</sup> Article 39 Convention on the Rights of a Child.

<sup>308</sup> *Koraou v Niger* [2008] ECOWAS Community Court of Justice ECW/CCJ/JUD/06/08, available at <<http://www.unhcr.org/refworld/docid/491168d42.html>>. An unofficial translation into English is available at <[https://www.unodc.org/res/cld/case-law-doc/traffickingpersonscrimetype/ner/2008/h\\_m\\_v\\_republic\\_of\\_niger\\_html/Hadijatou\\_Mani\\_v.\\_Republic\\_of\\_Niger\\_Community\\_Court\\_of\\_Justice\\_Unofficial\\_English\\_translation.pdf](https://www.unodc.org/res/cld/case-law-doc/traffickingpersonscrimetype/ner/2008/h_m_v_republic_of_niger_html/Hadijatou_Mani_v._Republic_of_Niger_Community_Court_of_Justice_Unofficial_English_translation.pdf)>.

<sup>309</sup> *ibid*, 15.

<sup>310</sup> *Brasil Verde v Brasil* (Inter-American Court of Human Rights).

<sup>311</sup> United Nations, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ <<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>> accessed 10 February 2019.



## 5 Discussion

Modern Slavery is a “multi-faceted socio-economic problem with complicated legal and political dimensions.”<sup>312</sup> As set out in chapter 4, the thematic of modern slavery is embedded in international human rights law. The human rights-based approach to eliminate modern slavery includes the legal response (internationally, national, and regional) as well as the progress in human rights research and scholar publications which directly influences the fight against modern slavery. Nevertheless, there are several challenges for the effectiveness of (international) human rights law combating modern slavery. There is no clearly defined scope of the positive obligation. As the ECtHR states that the protection of the positive obligation “[...] is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources.”<sup>313</sup> Furthermore, the ECtHR indicates that this obligation – particular concerning children and other vulnerable persons – “should be effective and include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity”<sup>314</sup>. Another challenge is the connection between poverty and modern slavery. As the Committee on Economic, Social and Cultural Rights defines poverty in the present days as “more broadly as the lack of basic capabilities to live in dignity.”<sup>315</sup> Extreme forms of poverty include “broader features, such as hunger, poor education, discrimination, vulnerability and social exclusion.”<sup>316</sup> Due to the

<sup>312</sup> Todd Landman, ‘Combating Modern Slavery with Human Rights’ (*OpenGlobalRights*, 14 August 2018) <<https://www.openglobalrights.org/combating-modern-slavery-with-human-rights/>> accessed 14 August 2019.

<sup>313</sup> *O’KEEFFE v IRELAND* [2014] European Court of Human Rights App. No. 35810/09, para. 144.

<sup>314</sup> *SÖDERMAN v SWEDEN* [2013] European Court of Human Rights App. No. 5786/08, para. 81.

<sup>315</sup> Committee on Economic, Social and Cultural Rights, ‘The International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights’ (United Nations 2001) E/C.12/2001/10, para 7.

<sup>316</sup> *ibid.*

complexity of extreme forms of poverty, factors cannot be clearly connected with the state or third parties. This complicates the obligation to protect. Another major challenge is the effective protection of human rights law of migrants. Since refugees and migrants are particular vulnerable to modern slavery, human rights law especially should protect them.

The United Kingdom “fully meets the minimum standards for the elimination of trafficking”<sup>317</sup> and is therefore ranked in Tier 1 (as all the years before)<sup>318</sup>. The Government of the United Kingdom “continued to demonstrate serious and sustained efforts during the reporting period [...] [such as] increasing funding for anti-trafficking efforts; identifying significantly more potential victims; training more first-responders in identifying potential victims; increasing trafficking investigations and prosecutions; and commissioning a parliamentary review and evaluation of the effectiveness of the *Modern Slavery Act* [...] with input from NGOs.”<sup>319</sup> However, the government only meets the minimum standards regarding protection services for minor victims. In 2019, Germany firstly was downgraded to Tier 2 (all the years before in Tier 1) in the Trafficking in Persons Report. The Government “does not fully meet the minimum standards for the elimination of trafficking” because law enforcement efforts decreased. The *German Social Code* does not “require proof of force or coercion to prosecute suspected sex traffickers when victims were younger than age 21”<sup>320</sup>. The complexity of Section 233 of the *German Social Code* resulted in the fact, that suspected traffickers were charged with crimes easier to prove than coercion in labor and sex trafficking.<sup>321</sup>

<sup>317</sup> Department of State United States of America (n 34), 481.

<sup>318</sup> For more information see *ibid*, 35.

<sup>319</sup> *ibid*, 481.

<sup>320</sup> *ibid*, 206.

<sup>321</sup> *ibid*.

It is common that traffickers move children across borders, as well within the United Kingdom. For that reason, it is important that England and Wales, Northern Ireland and Scotland have a similar standard in all areas of their jurisdiction. As research shows, there are significant differences in all three jurisdictions and that Ireland and Scotland legislation went further in several areas than the *Modern Slavery Act*.<sup>322</sup> The introduction of a “single monitoring mechanism that is responsible for oversight of policy on guardianship for trafficked children in all jurisdictions”<sup>323</sup> would improve the effectiveness of combating modern slavery in the United Kingdom. The relationship between immigration status and vulnerability to forced labor is an important topic in relation to the research question. Cathryn Costello’s argues that “immigration law, the immigration process and labour market structures may interact to create vulnerability to forced labour”<sup>324</sup>.

Experience with modern slavery generates long term physical and emotional damage. Due to vulnerability and fear, minors experience these negative consequences even worse. Especially sexual exploitation is “most physically and emotionally damaging for the victim because of the persistent physical, sexual and psychological abuse that accompanies it on a daily basis”<sup>325</sup>. Child sexual victimization is closely connected to teen pregnancy<sup>326</sup>, adult prostitution<sup>327</sup>, substance abuse, violence, and adult criminal behavior.<sup>328</sup> Methods such as physical, sexual, and

<sup>322</sup> Kevin Bales, Dr Hedwards Bodean and Bernard Silverman, ‘Modern Slavery Research: The UK Picture’ (University of Nottingham Rights Lab 2017) <<https://iascresearch.nottingham.ac.uk/ResearchingModernSlaveryintheUK.pdf>> accessed 29 September 2019.

<sup>323</sup> Beddoe and Brotherton (n 129), 54.

<sup>324</sup> Cathryn Costello, ‘Migrants and Forced Labour: A Labour Law Response’ in Alan Bogg and others (eds), *The Autonomy of Labour Law* (Hart Publishing 2015).

<sup>325</sup> International Organization for Migration (ed), *The IOM Handbook of Direct Assistance for Victims of Trafficking* (International Organization for Migration 2007) <[https://publications.iom.int/system/files/pdf/iom\\_handbook\\_assistance.pdf](https://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf)> accessed 3 October 2019.

<sup>326</sup> Cathy Spatz Windom and Joseph B Kuhns, ‘Childhood Victimization and Subsequent Risk for Promiscuity, Prostitution, and Teenage Pregnancy: A Prospective Study’ (1996) 86 American Journal of Public Health 1607.

<sup>327</sup> Mimi H Silbert and Ayala M Pines, ‘Early Sexual Exploitation as an Influence in Prostitution’ (1983) 28 Social Work 285.

<sup>328</sup> Estes and Weiner (n 59).

psychological violence against the victim or their family; social and linguistic isolation; deployment in areas unknown to them; stigmatization; dependence on alcohol or drugs; insecurity and suspicion against the police; controlled access to food and water; and monitoring through the use of weapons, cameras, and dogs<sup>329</sup> destroying the physical and psychological defense of the individual. Other violent methods used by perpetrators are cigarette burns; kicks in the head and the back; slamming the victims head against floors or walls; or assaulting the victims with guns, knives or other objects.<sup>330</sup> Due to the blurred lines existing between the different forms of modern slavery, the victims may suffer “similar symptoms and behavioral characteristics, including attachment, biological integrity, emotional regulation, dissociative adaptations, behavior, cognitive functioning, and self-concept.”<sup>331</sup>

A study on the physical and psychological health consequences of women and adolescents trafficked in Europe found out, that trafficked women experience violence before and while trafficking, suffer (concurrent) physical and mental health symptoms, and sexual and reproductive health symptoms.<sup>332</sup> 60% of all trafficked women experienced some form of violence before they have been trafficked. 15% had “forced or coerced sexual experience before the age of 15, prior to being trafficked.”<sup>333</sup> Almost every woman experienced (physical or sexual) violence while she was trafficked. The experience had tremendous impact on the physical health of the women such as headaches, fatigue, stomach or abdominal pain or dizzy spells. As a result of sexual violence, rape, and coercion during trafficking, women reported pelvic pain, vaginal discharge and gynecological

<sup>329</sup> International Organization for Migration (n 326).

<sup>330</sup> Cathy Zimmerman and others, ‘Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe’ (The London School of Hygiene & Tropical Medicine 2006) <<https://www.icmec.org/wp-content/uploads/2015/10/Stolen-Smiles-Physical-and-Psych-Consequences-of-Traffic-Victims-in-Europe-Zimmerman.pdf>> accessed 10 March 2019, 10.

<sup>331</sup> Rafferty (n 60).

<sup>332</sup> Zimmerman and others (n 331).

<sup>333</sup> *ibid*, 9.

infection. The psychological reaction of trafficking were primarily depression, anxiety and hostility. Loneliness, hopelessness about the future, feeling worthlessness and nervousness were the most reported symptoms.<sup>334</sup> Sex trafficking victims under 25 mostly suffer “debilitating physical injuries, malnutrition, psychological traumas, posttraumatic stress disorder, and infection by a scourge of sexually transmitted disease, including HIV/AIDS.”<sup>335</sup> In some cases, victims do not experience physical violence because inflicting visible injuries may have negative influence on the ‘sale’ of the victim's body. They rather experience invisible injuries such as head beating or getting needles stuck under their nails.<sup>336</sup> Minor victims of modern slavery testified “that they [were] beaten with hot irons, whipped and covered with scalding water, sexually harassed and raped, suffer[ing] from verbal abuse, threats, restriction of personal freedom, kept locked up, banned from attending school, forced into long working hours – up to 15 to 18 hours a day – with no permission to see their families, kept in isolation, working at night, with no salaries, and starving and given only their employers’ leftovers to eat.”<sup>337</sup> Due to the complex psychology of modern slavery, it may happen that former victims transform to recruiters or trafficker themselves. One explanation for this behavior might be that victims “employ numerous adaptive mechanisms to survive their ordeals, including drug and alcohol abuse and the morose acceptance that the life of a slave is the best life they deserve.”<sup>338</sup>

<sup>334</sup> *ibid.*

<sup>335</sup> Kara (n 39).

<sup>336</sup> OESCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (OSCE 2013) <<https://www.refworld.org/pdfid/51d4158d4.pdf>> accessed 13 September 2019.

<sup>337</sup> OSCE Organization for Security and Co-operation in Europe (ed), *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude* (OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2010), 41.

<sup>338</sup> Kara (n 39), 9.

In any form of modern slavery, numerous human rights are violated. Due to the complexity of the crime, the following paragraph will analyze human rights violation in modern slavery in general. To define specific violations, each case has to be analyzed individually.

Modern slavery violates human dignity and autonomy. The principle of human dignity has become a “leading principle of the international human rights culture”<sup>339</sup>. Human dignity is central in several international texts such as the *United Nation Charter*<sup>340</sup>, the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>341</sup>, the *International Covenant on Civil and Political Rights (ICCPR)*. Furthermore, it is mentioned in several *ILO Conventions*<sup>342</sup>, in the preamble of the *Convention on the Rights of the Child*<sup>343</sup>, in Article 17 and 70 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*<sup>344</sup>, in Article 19 of the *International Convention for the Protection of All Persons from Enforced Disappearance*<sup>345</sup>, and in the preamble, Article 3, 8, 16, 24, and 25 of the *International Convention on the Rights and Dignity of Persons with Disabilities*<sup>346</sup>. Human dignity is also used in regional human rights instruments such as the *European Union Charter of Fundamental Rights*<sup>347</sup> and domestic constitutional texts such as the *German Basic Law* which guarantees dignity stating that “[h]uman dignity shall be inviolable. To

<sup>339</sup> Matthias Mahlmann, ‘The Basic Law at 60 – Human Dignity and the Culture of Republicanism’ (2010) 11 German Law Journal 10.

<sup>340</sup> Charter of the United Nations, 26 June 1945, 59 Stat 1031, UNTS 993, 3 Bevans 1153.

<sup>341</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), GA Res 2200A (XXI), 21 UN GAOR Supp (No 16), at 49, UN Doc A/6316 (1966), 993 UNTS 3.

<sup>342</sup> C156 Workers with Family Responsibilities Convention, 1981; C122 Employment Policy Convention, 1964; C111 Discrimination (Employment and Occupation) Convention, 1958; C107 Indigenous and Tribal Populations Convention, 1957; C104 (Shelved) Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955.

<sup>343</sup> Convention on the Rights of the Child (1989).

<sup>344</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, GA Res 45/158, annex, 45 UN GAOR Supp (No. 49A), at 262, UN Doc A/45/49 (1990).

<sup>345</sup> International Convention for the Protection of All Persons from Enforced Disappearance, E/CN 4/2005/WG 22/WP 1/Rev 4 (2005).

<sup>346</sup> International Convention on the Rights and Dignity of Persons with Disabilities, GA Res A/61/611 (2006).

<sup>347</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01), OJ (2000) C 364/1, Preamble, Art. 1, 25, and 31.

respect and protect it shall be the duty of all state authority.”<sup>348</sup> The *African Charta on Human and Peoples’ Rights*<sup>349</sup> and the *American Convention on Human Rights*<sup>350</sup> mentions dignity in specific provisions regarding slavery and forced labor. Article 20 and 21 of the *African Charter on the Rights and Welfare of the Child*<sup>351</sup> and Article 17 and 33 of the *revised Arab Charter on Human Rights*<sup>352</sup> mentions dignity in relation to the treatment of children. Article 4 and 8 of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*<sup>353</sup> mentions dignity in relation to violence against women.

The intrinsic worth that every human being possesses by merely being human is the core element of human dignity.<sup>354</sup> “[T]his intrinsic worth should be recognized and respected by others, and some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth.”<sup>355</sup> Hence, it can be argued that this intrinsic worth is violated in modern slavery experience. The Office of the High Commissioner for Human Rights highlights in the Recommended Principles and Guidelines on Human Rights and Human Trafficking that “the Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.”<sup>356</sup>

<sup>348</sup> Article 1(1) Grundgesetz für die Bundesrepublik Deutschland.

<sup>349</sup> Article 5 African Charter on Human and Peoples’ Rights, 1981, 21 ILM (1982).

<sup>350</sup> American Convention on Human Rights, OAS Treaty Series No. 36, 1144 UNTS 123, Art. 6.

<sup>351</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).

<sup>352</sup> Revised Arab Charter on Human Rights, reprinted in 12 *Int’l Human Rights Rep* (2005) 893.

<sup>353</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ‘Convention of Belem do Para’, 33 ILM (1994) 153.

<sup>354</sup> Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ (2008) 19 *European Journal of International Law* 679.

<sup>355</sup> *ibid*, 679.

<sup>356</sup> Office of the High Commissioner for Human Rights (n 264), 3.

According to the *UN Convention Against Torture 1987*, Article 3 of the *Universal Declaration of Human Rights* and Article 9 of the *ICCPR*, everyone has the right to life, liberty and security of person. Violations of this human right is torture, rape, and sexual abuse; inhuman and degrading treatment and punishment. All, some or one of these violations may be found in modern slavery cases. To be more specific, modern slavery may amount to torture, “if the trafficker inflicts severe pain or suffering on a powerless victim under his/her control for the purpose of intimidation, punishment or discrimination, and when the State is not taking necessary measures under the concept of due diligence to protect the victim against this treatment.”<sup>357</sup> Torture can be physical or psychological.

As set out in the *Slavery Convention 1927* and *Supplementary Convention 1956*<sup>358</sup>, and the *Convention Concerning Abolition of Forced Labour 1959*<sup>359</sup>, everyone has the freedom to own one’s body and labor. A violation of this right can be found in situations of modern slavery such as forced labor, debt bondage, sexual exploitation, and human trafficking. In a broader context, life integrity rights are violated in modern slavery. “Life integrity rights imply an integrated set of claims defending the biological and social integration of body and mind among all humans (denied by [...] torture); of self-ownership, mobility, and social dignity (denied by slavery, segregation, and apartheid); [and] of self and family (denied by prohibiting marriage and family development as under slavery and certain forms of totalitarianism)”<sup>360</sup>

<sup>357</sup> OESCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 338), 26.

<sup>358</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and practices Similar to Slavery 1956, 226 UNTS 3, ratified by the United Kingdom on April 1957 and Germany on January 1959.

<sup>359</sup> International Labour Convention No. 105, C105 – Abolition of Forced Labour Convention (1957), ratified by the United Kingdom on December 1957 and Germany on June 1959.

<sup>360</sup> Helen Fein, *Human Rights and Wrongs: Slavery, Terror, Genocide* (Paradigm Publishers 2007), 6.



## 6 Conclusion

This thesis has commenced with the aim of evaluating the effective protection of minors under modern slavery legislation in the United Kingdom and Germany. With this end in mind, the current research has identified the major legal frameworks in each jurisdiction and analyzed the obligation under international human rights law. Furthermore, different forms of modern slavery, victim identification and the protection of (minor) victims were evaluated.

A general answer to the research question ‘whether a specific legislation to combat modern slavery protects minor victims more effectively than no specific legislation’ would not cope with the complexity of the crime. Whereas modern slavery crimes are hidden, complex and happen continuously in both jurisdictions, the United Kingdom as well as Germany must improve their legislation. According to the Global Slavery Index, the United Kingdom takes more action to combat modern slavery than Germany.<sup>361</sup> However, each country has its strengths and weaknesses in protecting minor victims of modern slavery. The main weaknesses in the German legal framework to protect minors of modern slavery are victim identification, adequate accommodation, and available comprehensive training for authorities. Furthermore, Germany does not have an independent national rapporteur who monitors the implementation of modern slavery policy in line with Directive 2011/36/EU. As discussed in chapter 3.1, Germany does not have a specific “agency with a comprehensive labour inspectorate mandate”<sup>362</sup>. The Financial Monitoring Unit to Combat Illicit Employment (*Finanzkontrolle Schwarzarbeit (FKS)*) works under the Central Customs Authority and undertakes workplace inspections. Both authorities do not have specialized training even though they work in areas where victims of modern slavery appear

<sup>361</sup> Walk Free Foundation (n 1).

<sup>362</sup> GRETA - Group of Experts on Action against Trafficking in Human Beings (n 198), para 131.

regularly. Neither the police have a special mandate and training to identify victims of modern slavery. This issue needs to be eliminated especially because of the raising asylum applications in Germany. The KOK found a correlation between raising numbers of asylum seekers and modern slavery, especially in human trafficking.<sup>363</sup> However, there are no considerable numbers of identified victims in Germany of people who traveled along the Central Mediterranean Route. Even though, this route is at high risk of modern slavery.<sup>364</sup> One reason for the poor identification of victims in the asylum procedure might be the constant tightening of the asylum politics in Germany.<sup>365</sup> The finding of van den Anker, that “complex and restrictive migration regimes are exacerbating labour exploitation in general and trafficking for forced labour in particular”<sup>366</sup> contributes to this assumption.

Additionally, Germany does not have a “consistent national services or guidelines regarding a specialised support system”<sup>367</sup> regarding accommodation for victims of modern slavery. There is no accommodation for minor victims of modern slavery, in particular for victims of trafficking. Consequently, there are placed in regular welfare institutions which do not provide adequate support. Hence, the risk of running away, go missing or becoming homeless is very high.<sup>368</sup> It becomes even more challenging if the victim has addiction issues, which is common in modern

<sup>363</sup> German NGO Network against Trafficking in Human Beings - KOK e.V., ‘Flucht Und Menschenhandel: Betroffene Erkennen, Unterstützen, Schützen’ (German NGO Network against Trafficking in Human Beings - KOK eV 2017) <[https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Publikationen\\_KOK/KOK\\_Study\\_Accommodation\\_of\\_Trafficked\\_Persons\\_in\\_Germany.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Study_Accommodation_of_Trafficked_Persons_in_Germany.pdf)> accessed 14 October 2019.

<sup>364</sup> See ‘Mediterranean Human Trafficking and Exploitation Prevalence Survey: IOM’ (*IOM UN Migration*, December 2016) <<https://www.iom.int/news/mediterranean-human-trafficking-and-exploitation-prevalence-survey-iom>>; UNHCR, ‘Central Mediterranean Route Situation’ (UNHCR The UN Refugee Agency 2018) Supplementary Appeal January – December 2018 <<https://www.unhcr.org/5aa78775c.pdf>> accessed 14 October 2019.

<sup>365</sup> German NGO Network against Trafficking in Human Beings - KOK e.V. (n 364).

<sup>366</sup> van den Anker (n 80).

<sup>367</sup> Dr Dorothea Czarnecki, ‘Is Accommodation for Trafficked Persons in Germany Really Safe?’ (German NGO Network against Trafficking in Human Beings - KOK eV 2017) <[https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Publikationen\\_KOK/KOK\\_Study\\_Accommodation\\_of\\_Trafficked\\_Persons\\_in\\_Germany.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Study_Accommodation_of_Trafficked_Persons_in_Germany.pdf)> accessed 17 October 2019, 10.

<sup>368</sup> *ibid*, 13.

slavery cases. In most youth welfare institutions, addiction issues are generally an exclusion criterion. A referral to the psychiatric unit is mostly the only and/or last solution. In addition, there are no specific accommodations for particular vulnerable persons which include people with “trauma issues, physical or mental disabilities or [people with] risk of suicide”<sup>369</sup>. This is problematic because most victims of modern slavery suffer from trauma issues.<sup>370</sup>

The awareness and political debate of modern slavery is more present in the United Kingdom than in Germany, in general. Even though the United Kingdom has a specific legislation combating modern slavery, there are several weaknesses to discuss. The main weaknesses are the relation of the offences to minors, available training of authorities and appropriate treatment of minor victims. According to the *Palermo Protocol*, the ‘means’ element of human trafficking does not apply to minors because a child cannot give consent to the act of exploitation. However, this fact is not clearly pointed out in the *Modern Slavery Act*. Hence section 1(5) and 2(2) of the *Modern Slavery Act* need to specific state that a minor cannot give consent to any element of modern slavery. Due to the territorial extend of the *Modern Slavery Act*, there are several differences within the United Kingdom. As analyzed in chapter 2.2, Northern Ireland, Scotland and England have partly separate legislations to cope modern slavery. Compared to the *Modern Slavery Act*, the *Human Trafficking and Exploitation Act* of Northern Ireland has a “stronger deterrent effect on potential exploiters”<sup>371</sup>. Furthermore, the *Human Trafficking and Exploitation Act* goes beyond the *Modern Slavery Act* by having a lower “threshold for establishing the defence to unlawfully committing an offense as a result of having been trafficked or subjected to slavery.”<sup>372</sup> Hence, “the best interests of children

<sup>369</sup> *ibid*, 14.

<sup>370</sup> See chapter 5.

<sup>371</sup> Haynes (n 128), 55.

<sup>372</sup> *ibid*.

wishing to raise the defence are, *prima facie*, more adequately protected”<sup>373</sup> compared to the *Modern Slavery Act*.

In conclusion, the United Kingdom has more available (legal) protection for minor victims of modern slavery. However, both countries need to strengthen their legislation regarding child victim support and victim identification. Especially training need to be provided to all authorities, in particular front-line responders. The police, social workers, immigration office staff, doctors and foster carers need to be trained and sensitized to identify indicators of modern slavery.

<sup>373</sup> *ibid.*

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