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Special Issue of International Criminology: 'Misleading the World? Reassessing the International Impact of the British Modern Slavery Agenda: Vietnam

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Abstract

Vietnamese nationals feature conspicuously in the British narrative of modern slavery. In 2019, 39 Vietnamese nationals tragically died in a refrigerated lorry in Kent, in a case which shocked both countries (Barnes T (2019) Essex lorry deaths: concerns 'snakehead' smuggling gangs could be behind 39 found dead in trailer. The Independent Newspaper. <https://www.independent.co.uk/news/uk/crime/essex-lorry-deaths-latest-snakehead-chinese-gang-human-trafficking-people-smuggling-a9171066.html>. {Accessed 18/04/2024}). Yet, in early 2024, Vietnamese nationals are currently the most likely migrants to reach the United Kingdom via small boats. This article—based on ongoing legal work and research carried out in both Vietnam and the United Kingdom—will explore the history of irregular migration from Vietnam and its specific connections to illegal drug cultivation. It will evaluate the impact of key domestic initiatives such as the National Referral Mechanism and the Modern Slavery Act 2015 <https://www.legislation.gov.uk/ukpga/2015/30/section/45> {Accessed 14/09/2024} as well as most recent anti-trafficking campaigns in the United Kingdom and Vietnam. It argues that the losses of life in a refrigerated lorry in Essex and the continuing migrations are as much a product of prohibitionist drug policies as contradictory immigration and human trafficking messaging.

Keywords Vietnam · Serious and organised crime · Human trafficking · Cannabis cultivation

Over the last twenty years, the arrival of Vietnamese migrants to the United Kingdom and the UK and Vietnamese governments' attempts to stop them, are an important part of understanding the international impact of the British Modern Slavery Agenda. Important firstly, as many Vietnamese have lost their lives en route to the UK, the tragic case of those, suffocated in a refrigerated lorry in 2019 gaining much publicity and subject to investigations both in the UK and Vietnam (R v Nica & Hughes, 2021). Secondly, the fate of convicted Vietnamese children assessed by the European

courts (European Court of Human Rights in V.C.L. & A.N. v the United Kingdom, 2021)¹ has helped reinforce protections for victims of human trafficking. Finally, Vietnamese adults and children, after British nationals are routinely the most likely nationality to enter the UK's National Referral Mechanism (NRM) (Home Office, 2021). Simultaneously, Vietnamese migrants were, early in 2024, the third most common nationality to enter the United Kingdom via small boats (BBC News, 2024a; Gov UK, 2024). For this still to be the case there clearly, must have been significant government

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¹ As noted by the European Court of Human Rights in V.C.L. and A.N. v the United Kingdom, correct victim identification is a prerequisite for the application of the non-punishment principle guaranteed by Article 26 ECAT.

failures, yet there have also been some successes. This article will outline both.

To understand the United Kingdom governments' often confused and ideological response, it is helpful first to revisit Garland's (1996/2002) seminal work on 'The Limits of the Sovereign State'. Whilst his thesis has been subject to critique (Hughes & McLaughlin, 2004), one of his central theoretical thrusts is that politicians, rather than acknowledging the limits of sovereign state power in a high tech-globalised world, possess a nostalgic tendency to ignore the evidence that punitive Law and Order responses do not work as anticipated. Instead, they are prone to denial, 'acting out' by reasserting the power of the state, resulting in patently punitive sanctions and expressive actions to reassure the public that are not grounded in the reality. In Garland's (1996; p. 461) words, "punishment is an act of sovereign might, a performative action which exemplifies what absolute power is all about".

In the United Kingdom, this tendency to nostalgia harks back to the time when the country was a world power with unparalleled military and diplomatic influence across the world (Haynes, 2024). Excessive punishments tend to fall on actors clearly delineated from the legislators, what Garland calls the criminology of the 'other' but known within the literature of serious and organised crime, as the 'alien conspiracy' thesis' (Woodiwiss & Hobbs, 2009). For Garland (1996; p. 461), this criminology of the alien other "represents criminals as dangerous members of distinct racial and social groups which bear little resemblance to 'us', the law-abiding majority. It is, moreover, a 'criminology' which trades in images, archetypes and anxieties, rather than in careful analyses and research findings—more a politicized discourse of the unconscious than a detailed form of knowledge-for-power". Within this literature, the alien conspiracy theory ignores the social embeddedness of organised crime and the interface between the legal and the illegal realms and prioritises the foreign and imported element of serious and organised crime (Hobbs & Antonopolous, 2013; McLean et al., (2020p. 1248). Those groups, such as Vietnamese "modern day slavers", "human traffickers" and cannabis cultivators are portrayed by the state as the source of serious crime problems that threaten the social fabric² while the more mundane but constant domestic consumer demands from the British public for affordable cannabis for example, are rarely mentioned.

Garland's insights assist in understanding why a British Prime minister could and did talk of 'defeating' modern

slavery, (May, 2016) and being world leading in so doing, whilst simultaneously instigating what has become an ever more punitive and fanciful anti-immigration regime³ which threatens the elusive 'Vietnamese human trafficker' with a life sentence⁴ yet failed to deter the thousands of Vietnamese migrants who make it to the United Kingdom annually. It also helps explain why what was, and is, an overwhelmingly peaceful migration of poor (although sometimes relatively poor only⁵) industrious Vietnamese nationals to work in the United Kingdom is perceived in terms of modern-day slavery, drug distribution/cultivation, and serious and organised crime. Yet, and this is a criticism of Garland's theoretical overreach it is also the case that the United Kingdom's version of 'acting out' is different from its (ex)-European neo-liberal partners. The UK's style is more pronounced in some aspects, for example, in its continuing and equally futile response to cannabis use—yet more administrative in other aspects, at least in attempting to monitor its failures (Independent Chief Inspector of Borders (2023)).⁶ Simultaneously, it is also absurd to argue that Vietnamese migration to the United Kingdom can solely be understood via this lens, as a response to British state violence. Clearly every state has an immigration policy and almost all states have signed the international conventions against human trafficking, therefore the United Kingdom must be able to distinguish victims of human trafficking from those of whom who are smuggled, even if the latter are often rendered at risk of exploitation by the precarious conditions that greet them on arrival.⁷

³ With the latest failed arrangement to resettle migrants (in-fact one migrant) to Rwanda, abandoned after costing £700million pounds (Macaskill 2024).

⁴ Human trafficking can now be punished with a life tariff under the Modern Slavery Act 2015 Act).

⁵ For example, it is the case that the economic background of those who tragically died in 2019 and those who have been returned from Vietnam to the UK was mixed (Pham 2021). This mixture of economic prospects and backgrounds has consistently been found in research on those who migrate from Vietnam to the UK (AAT 2014; FCO 2014).

⁶ Whilst this special issue is critical of the British Government, the point being made here, is that at least in the United Kingdom a wide variety of empirical data on migration, human smuggling, human trafficking and the mechanisms used to record it, such as the NRM are available through FOI reports, and government reports such as those quoted throughout this article.

⁷ See UN 2000 and UNODC 2024 for the definitions of Human Trafficking and Human Smuggling and Campana and Varese (2016) for a useful discussion on how these definitions differ in their application.

² For a similar state portrayal of the threat to the United Kingdom from 'Chinese' serious and organised crime, see Silverstone (2011), Silverstone and Whittle (2016); Whittle (2022) and Whittle and Silverstone (2024).

Methodology

Whilst this is mainly a discursive piece, the authors have recently conducted a series of interviews with victims and police officers in Vietnam, including people in Ha Tinh and Nghe An who were families of the victims of the Essex tragedy in 2019 and police officers involved directly in investigating the case study (Luong, Nguyen & Le, *In press*). The authors also have practical experience, with one author having trained staff at the Vietnamese Ministry of Public Security prior to joining the academy and the other a provider of expert evidence in human trafficking trials in both England and Scotland. This ongoing research and professional experience inform those arguments made below.

Understanding the Origin and Development of Migration and Human Trafficking from Vietnam to the United Kingdom

In contrast to the rhetoric of blameless victim, evil trafficker and irredeemable state, the evidence (albeit limited) from research is more nuanced. As has been outlined elsewhere the Vietnamese diaspora is multi-faceted, and the migrations to the United Kingdom are segmented (Sims, 2007; Silverstone & Savage, 2010; See Silverstone (2011; Silverstone and Brickell (2017a, 2017b); Silverstone, 2021; Whittle & Silverstone, 2024)). The largest component of its diaspora, originated from the South of Vietnam as refugees fleeing the fall of what was then, Saigon in 1975. They were then joined by more disparate groups who moved to the United Kingdom, mainly from northern provinces, and what was East Germany. This migration was relatively small and it only when a larger migration, joined it, from 2005 onwards from northern central provinces that the United Kingdom government started to take note. From 2008 onwards, the National Police Chiefs Council, civil servants in the Foreign and Commonwealth Office and the Labour government viewed the migration with concern as it was the case that disproportionate numbers of Vietnamese migrants were being arrested in so called cannabis farms/houses/cultivations. There was a fear of ‘Triad’ like serious and organised crime groups establishing themselves in the UK (Silverstone, 2011). The Vietnamese diaspora were also key actors in the burgeoning nail businesses, and the expressed fear was that these were fronts for sexual services and working practices that amounted to modern day slavery (Chalabi, 2013). Overall, the police service had little community or targeted intelligence and therefore there was a concern of wide-spread human trafficking (Silverstone 2011; Whittle & Silverstone, 2024).

In-fact, both individuals from the Vietnamese diaspora and Vietnamese nationals were indeed playing a more active

role in the pre-existing but growing domestic cannabis cultivation market (NPCC, 2014). Whilst the organisation of these activities has never been thoroughly researched in the United Kingdom, an autobiography of a largescale Vietnamese cannabis cultivator in Australia (Giang, 2022; Luong, 2021), and research in the Czech Republic (Kraus & Nozina, 2020) illustrate a business which is mostly peaceful, with investors (bigger bosses), cultivators and many attendant roles, such as electricians, cooks, house renters. Some of those involved work entirely in the illegal economy but many Vietnamese migrants also entwine these jobs with work in the legitimate economy. The research is unequivocal that those who are new to the country and/or lack connections are the gardeners or attendant workers and hardly ever the bigger bosses as the capital outlay is substantial for this (Luong, 2021; Burland, 2019; Whittle & Silverstone, 2024).

Some of these gardeners’ undoubtedly work in extremely rudimentary conditions, with poor sanitation, hot and unsafe accommodation next to toxic cannabis growths, with limited English, and few if any options. Yet, despite this, many make this choice and feel that the economic cultural capital (learning English for example, increasing an international social network) gained working in cultivations or often nail shops or other manual labour is preferable to their domestic prospects in Vietnam. Of course, it is important to be cautious and to review every case on its individual merits but overall, what actually occurred was principally an economic migration where some human trafficking did indeed happen but only exceptionally within cannabis cultivations and nail shops⁸ and there was very little involvement in sex work or ‘prostitution’ (Silverstone & Savage, 2010). Also of note, was the continuing issue of a different approach to defining childhood, with Vietnam—unlike the UK—continuing to view adulthood starting at 16 rather than 18.⁹ Culturally,

⁸ Indeed, research is clear that nail shops are not simply fronts for brothels (Silverstone 2021). This is not to say that work here or in other employment such as providing domestic work is not without risks and hardships. Unfortunately, there are no recent studies of the Vietnamese experience, but albeit for a different migration (Silverstone & Whittle 2024), it is worth noting that Luo, Gadd & Broad (2023;p. 1) in their work with Chinese irregular migrants, highlight “the verbal abuse, workplace bullying, and job-related mental stress irregular migrants are also exposed to, as well as the subordination and isolation of Chinese women caught between catering and domestic work”.

⁹ This is a point of debate in Vietnam, the Law on Protection, Care and Education of Children in 1991 (amended in 2004), the 2016 Law on Children still defines a child as being under 16 years old whilst international treaties that Vietnam is signatory to define children as under the age of 18 years old (Van & Guo 2018). It is also worth noting according to the Criminal Code of Vietnam (Article 12, 2015 CCV), persons aged 16 years or older shall bear criminal responsibility for all crimes, while those from 14 years old to under 16 years old shall bear criminal responsibility for very serious crimes and especially serious crimes, including drug-related offences (Centre for Missing and Exploited Children 2018;p. 1).

there was, and to some extent still is, a tendency to send children to work internationally when Vietnamese families see them as ready (Vu et al., 2023). This has resulted in the high (and often highest) numbers of children referred to the UK's National Referral Mechanism. This is not to deny that these children were/are in-fact trafficked legally speaking under British law and ought to be protected in the United Kingdom, but to add context to why, in Vietnam, they are commonly perceived to be smuggled and not trafficked by senders' families and by government officials. The most recent example of this perspective is from delegate Nguyen Huu Cau (Nghe An National Assembly Delegation)—the province that accounts for the majority of the unfortunate lives lost in the Essex lorry tragedy—and his analysis was simple:

“In my opinion, this incident occurred in the UK, so the conclusion on what crime to charge will be up to the UK. In terms of Vietnamese law, this act is not human trafficking, but this act is the act of organizing and brokering for others to flee abroad or stay abroad illegally as stipulated in Article 349 of the Penal Code” (Vietnam News, 2019).¹⁰

Instead, from 2000 onwards, chain migration¹¹ was in process, where family members (defined broadly) and non-family members from specific communes were following associates seeking to better their' lives and remitting money to improve the circumstances of those still in Vietnam.¹² Whilst their work—both illegal and legal—was carried out informally, on the whole, trust and support within the community meant that enough of these journeys proved successful to encourage more to migrate. This is not to say that people were not exploited or that human trafficking did not happen in Vietnam, but this was mostly concentrated among ethnic minorities and the poorest parts of the population, and typically involved sexual and labour exploitation initially within Vietnam or neighbouring countries, principally China. This continues to this day. As Le and Wyndham (2022;p. 45) analysis of court records of human trafficking cases reveals, it is the case that H'mong people (who are the poorest and most disadvantaged ethnic group in Vietnam) are far more likely to be trafficked than the Kinh Vietnamese

majority. “And both traffickers and their victims have relatively low education level with the traffickers (at least those (prosecuted) very likely to be poor and disadvantaged prior to their crimes”. As within the United Kingdom (Gadd & Broad, 2024), there is a contrast between the groups of small, and inexperienced traffickers who are convicted in the courts and Vietnamese media's coverage of human trafficking which focuses on strangers and the dangers of drugging and kidnapping (Le & Wyndham, 2022; Nhien, 2016).

Meanwhile, the Vietnamese State, embarking on rapid growth, encouraged foreign working and the remittances that this brought. With the withdrawal of Cold War arrangements, this meant sending labour to other rapidly growing local markets in Asia, such as Malaysia, South Korea, Taiwan, Singapore and China. Simultaneously, migrations continued to Australia, the United States, Canada and Europe. All of this meant that the infrastructure to efficiently remit money was established as were both formal and informal lending mechanisms and access to visas which enable both sponsored legitimate migration and irregular migration, where leaving the country was legal but the work in the final destination country was not (Vietnam Investment Review 2024; Whittle & Silverstone, 2024). In a country where documents to access services are linked to where you reside, it is inconceivable that Vietnamese authorities and their police service, the Ministry of Public Security are not aware of the multiple agencies offering migration services. Indeed, many of them are state owned, and it is likely that state employees directly benefited from these arrangements. Historically, as today, some of those who migrated to the United Kingdom experienced rapid and smooth journeys (via fake documents and flights and so on) whilst others experienced the opposite (Pham, 2021; Tan & Nguyen, 2017): long arduous journeys by road and sea where exploitation and human trafficking occurred en route and upon arrival. Again, it is hard to generalise here as routes change and exploitation is contingent on an individuals' vulnerabilities and circumstances (Nica, et al. 2021a).¹³

In the United Kingdom, five key trends shape the current picture. Firstly, British courts mostly imprison junior members (for example, crop sitters) of cannabis conspiracies and rarely do the police instigate reasonable avenues of investigation to pursue those who set up the cannabis farms (Burland, 2019; Ramiz et al., 2020).¹⁴ Secondly, many irregular

¹⁰ Pham cites another official from Nghe Ann province as follows: “These people paid to go abroad for work, nobody paid up to one billion Vietnam dong to be trafficked” (Nguyen 2019 cited from Pham 2022;p. 5).

¹¹ In this instance, chain migration is defined in its most basic sense, “to describe a situation in which migrants from a particular place follow other migrants to a particular destination” (Ozmmentlaw 2024;p. 1).

¹² Sometimes, the migrants emanate from countryman associations', which are distinguishing characteristics of Vietnamese diasporic communities. Although they are non-family members, they are from specific communes with similar languages and shared religions and traditions.

¹³ For example, research has always been clear that there are two ways reaching the UK advertised, one basic and one premium with one costing far more than the other. However, the reality is according to, Gentleman 2017; Van Dinh 2020 cited in Pham 2022, is that these arrangements are not always honoured.

¹⁴ It is difficult to substantiate this allegation conclusively, but there are available statistics on the numbers of cannabis plants confiscated (always in the millions annually), with many of them being attended to by 'gardeners' as someone needs to be there to ensure the success

Vietnamese migrants are arrested for immigration offences, and deported back to Vietnam. This is not widely acknowledged but the public record is clear that both the last Labour government and the new Labour government¹⁵ have cooperated with Vietnam in facilitating the deportation of its nationals as much as the Conservatives when in office (UK Border Agency, 2010; Lloyd, 2024) with returnees being assisted with small grants (IOM, 2024). Thirdly, Vietnamese nationals kept arriving and kept being documented in the National Referral Mechanism since its inception (Home Office, 2024). Fourthly, the burgeoning British cannabis cultivation industry continued to grow. Demand remained strong and the availability of equipment and the efficiency of growing cannabis also advanced. In practical terms the time taken to produce a harvest of cannabis reduced to around six weeks which increased its profitability. Cultivators also developed more sophisticated countermeasures to frustrate law enforcement, including heat protection and the use of more remote properties (European Union Drugs Agency (2023); Kirby & Peal, 2015; Silverstone, 2021).¹⁶ Finally, the trafficking narrative that gained most credence was the one associated with young-orphaned children being captured from the streets of Hanoi only to be relocated to worse conditions in London. This led to the British state investing in the support and construction of refuges for returning trafficking victims and support for charities who provide them, despite the safeguarding risks they then presented. The refuges then laid unused (Cabinet Office et al., 2020; HOFFM 2019).

The Impact of the Modern Slavery Act 2015

The 2015 Modern Slavery Act did little, initially, to change the trends in exploitation of Vietnamese nationals, but it did gradually improve the state's understanding of what was actually happening. The Act itself led to the appointment of the Independent Anti-Slavery Commissioner (IASC), and the secondment of civil servants and ex police officers into this office. Eventually the IASC's research function enabled it to shed light on the lacunae of Vietnamese, as well as British and other nationals, including the specific plights of

Romanian women (Eurojust, 2023; UK Feminista 2024) and minority Slovakian men (Eurojust, 2021) who were being exploited and trafficked across the country. In England, it created the Sect. 45 defence, which enables, and assists in the United Kingdom's legal duties under international law not to prosecute the victims of human trafficking. This has improved the outcomes for some Vietnamese nationals, although it is hard to evaluate exactly when it is applied, how widely and to whom. In theory, if not always in practice, it does provide valuable protection for those who are under 18 as for those found in cannabis farms, "if the person has acted as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, an a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act", then they ought not to be prosecuted. Whereas for adults there is an extra test, that their exploitation was compelled, "the compulsion was, or was part of, conduct which constitutes relevant exploitation, or the compulsion was a direct consequence of the applicant being, or having been, a victim of relevant exploitation (Modern Slavery Act 2015).

For Vietnamese nationals this is an important defence (far more so than duress¹⁷). For those caught in cannabis cultivations and/or exploited on their long journeys to the United Kingdom, in practice their potential experience of debt bondage, physical threats and/or attack, fire risk, risk of attack, lack of documentation not speaking the language or trusting law enforcement will support a claim of compulsion and exploitation. Factors such as possession of a mobile phone, keys to a property and money and/or documents will mitigate against it. As Burland (2015; 2019) and other researchers (Ramiz et al., 2020) have pointed out, unfortunately the implementation of the defence is episodic and is not always considered pre-prosecution as the non-punishment principles permit. As of three or four years ago there were still many Vietnamese migrants who, presented as trafficked yet, were rarely offered appropriate defences.¹⁸ Meanwhile some in law enforcement and in regulatory bodies (IASC 2020; HMRSC 2019), worry that the defence was and is, used unscrupulously to stop prosecution and stay working illegally in the country and have tried somewhat successfully to reduce its applicability. Initially, simply by tabling the defence, the prosecution would have to then prove beyond reasonable doubt that it was not accurate, but more recent case law has put more pressure on the defence. As judgements stress the importance of the defence providing evidence beyond simple witness testimony and that there

Footnote 14 (continued)

of the cultivation. This contrasts with the number of convictions for human traffickers which historically has only ever reached three figures. For example, the head of Modern Slavery Lead, Crown Prosecution Service, noted in 2023, that only 271 modern slavery cases were referred to them and only 72% of them were charged (House of Lords 2024;p. 1).

¹⁵ According to the UK Border Agency (2010; p. 1) "We have had a productive Returns' MOU with Vietnam since 28 October 2004".

¹⁶ In Australia, Vietnamese cannabis cultivators have also started to grow cannabis outside (Luong 2021).

¹⁷ Duress is less helpful as it usually applies to serious and immediate threat which mitigates the defendants' actions (CPS 2024).

¹⁸ Also See AFU V R (2023) EWCA Crim 23.

is an element of compulsion linking the offence the defendant is charged with, with the defendant's human trafficking¹⁹ (Knight, 2023).

It is also argued here that a concern over the unscrupulous use of this defence cannot indeed be dismissed. The United Kingdom's adversarial system enables the legal profession to legitimately offer the Sect. 45 defence on the basis of victim testimony and in the absence of Vietnamese defendants admitting guilt. What follows is a large grey area between someone who is a clearly a victim of human trafficking (for example has independent/supporting forensic or physical evidence) and someone who is not, and as the courts have directed, it is ultimately up to the jury to decide (not the police/expert) this. Recent academic reports dispute that the defence and indeed the National Referral Mechanism are being exploited (UK Findley 2024; Parliament, 2017) but in the Vietnamese cases, it has been long observed that for example, adults are erroneously posing as children and the following case is worth considering as being potentially and unfortunately, indicative of broader patterns of behaviour (Silverstone, 2021; Silverstone & Savage 2010). This was evidenced by Operation Renard²⁰ where a group of Vietnamese women claimed, erroneously to be trafficked. In this instance, prison calls were recorded, and officers heard alleged trafficking victims "discussing their parents and telling others on the calls to be quiet and to remember they are dead". Facebook evidence showed a timeline of the girl's movement to the United Kingdom, they claimed to have been raped within a container in France and had seen others killed at the hands of traffickers. Facebook in fact corroborated that the alleged victims "were at pool parties and bars in Vietnam". In in direct relation to the NRM "a defendant claimed she was fifteen ... however a laptop recovered from the group identified her Facebook page and revealed she was in fact thirty years old and had children in Vietnam" (IASC 2020; pp. 21-22).²¹

¹⁹ The legal meaning of compulsion in Sect. 45 defences is evolving and disputed (Knight 2023).

²⁰ Also see R v AAD (2022) EWCA Crim 106, Mr AAD was also claiming the Sect. 45 defence and to be trafficked. However, the judgement concludes: "Indeed, the entire contents of the significant number of discussions on Facebook Messenger contradict the suggestion that the appellant was being forced to work against his will. He was able to communicate freely with members of his family or friends in Vietnam, without any complaint about his situation".

²¹ Also see the BBCs' recent investigative interview with an alleged Vietnamese human smuggler, who reflecting on his own journey to the United Kingdom, states the following: "Thanh admitted that he had not been trafficked to the UK. He had made up that story as part of his asylum claim. And he went much further, claiming that all the Vietnamese migrants he knew of had been told to offer a version of the same lie. Yes. A lie. I was not trafficked, he said" (Harding et al., 2024; p. 1).

Similar issues beset the NRM. The United Kingdom is legally obliged to ascertain who is a genuine victim of human trafficking and to offer them protection. Failure to do so is a breach of Article 4 of the European Convention of Human Rights (ECHR) and the United Kingdom's international obligations under Article 26 of the Anti-trafficking Convention. In the Vietnamese case this can and is still difficult as rapid, accurate and independent corroboration is hard to ascertain between those making the NRM decision and witnesses of a potential victim's journey or witnesses Vietnam. The decision-making process of the NRM have now undergone several iterations to improve its objectivity (HMCPSI 2023; Magugliani et al., 2024)) However, the issue here is that unfortunately, it has become less helpful to defendants who are also victims of human trafficking as it is not accepted as expert evidence in court as the decision making process for a conclusive decision (decided on the balance of probabilities) is lower than the criminal bar of 'beyond a reasonable doubt'²² and can only be referenced within other expert testimony. Although it is the case that prosecutors may in certain limited circumstances disagree with a positive conclusive grounds decision.²³ Therefore, the current situation is an invidious one for a Vietnamese migrant arrested in cannabis cultivation as in practice there is now a resource-intensive two-tier system in place, with both the NRM²⁴ and the Criminal Courts²⁵ severely delayed in providing outcomes. Self-evidentially, this confounds the misery for genuine trafficking victims who potentially are also then wrongfully imprisoned²⁶ and enables those who are disingenuous, (who if not on remand) to commit more

²² Brecani v R (2021) EWCA Crim 731 (19th May 2021) also see DS (2020) EWCA Crim 285 (February 2020, in relation to the jury not the expert being the ultimate arbitrator of whether someone is trafficked).

²³ VCL and AN v United Kingdom the ECtHR set out a test which must be satisfied if a prosecutor or court is to disagree with a SCA decision that a person is a VoT. Any disagreement with a positive CG decision must take place solely on the basis of 'clear reasons which are consistent with the definition of trafficking contained in the Palermo Protocol and the Anti-Trafficking Convention (Cited from Haynes 2024; p200).

²⁴ The average decision take for an NRM rose from a target of five days to several hundreds of days by 2021. According to the IOM (2024; p. 1) with the Home Office "introducing new decision making in July 2023 following the High Court decision in June, the median waiting time to receive a reasonable grounds decision made between July and September 2023 was 47 days". However, in 2023 the Single Competent Authority was averaging over 700 days to make a conclusive decision. Also see Braganza (2023).

²⁵ The time taken for a case to be concluded will vary contingent on the plea and whether it progresses to Crown Court. It is estimated by the Ministry of Justice (2023) that this process often takes at least six months.

²⁶ In the United Kingdom, 2% of foreign prison population is now Vietnamese (Sturge 2021).

offences. This is especially acute issue for Vietnamese nationals who most often abscond from ‘secure’ accommodation, and who are at risk of being trafficked back into the criminal economy or who return to it, of their own accord (Pham, 2021).

The Role of Cannabis Cultivation

Meanwhile, as countries across the globe have adopted more liberal regulatory frameworks to regulate the use and harm caused by cannabis the UK has continued with its punitive policies (EMCDDA, 2023; Ferreira, 2017; Manthey et al., 2024). Despite a national review of drugs laws and drug policy (Black, 2020, 2021) and some references to decriminalisation when Boris Johnson was prime minister, nothing substantive has happened in the UK (Courea, 2019). Even though a wealth of studies consistently show that the enforcement of drug laws disproportionality effects black communities (Shiner et al., 2018; Stop Watch, 2020) and contributes to an unsustainable number of prisoners, the approach to cannabis has toughened over the last decade. It was reclassified to a class B drug in 2009 (Turnbull, 2009) and considerable police resources have been devoted to month-long crackdowns, aimed at dismantling and disrupting organised crime groups (OCGs) across England and Wales behind large-scale cannabis cultivations (Griffith, 2024; ITVX, 2023; Robinson, 2023). Whilst this captivated press headlines that emphasised the power of state, consumption patterns still drive the market. Since, 2022/3, 31.1% of people in England and Wales aged between 16 and 59 had used cannabis at least once during their lifetime. The comparable figure twenty years prior was 28.9 percent (Clark, 2024). In the interim, the amount of cannabis seized at airports has trebled—partly due to decriminalising legislation in Thailand and the United States—and cannabis seizures form the majority of drugs seizures made by Border Force and UK police forces. (Flash, 2024; OHome Office, 2024).

Indeed, the illegal market remains buoyant and arguably impossible to eradicate due to its size and its complexity. The cannabis market (perhaps uniquely) consists of a wide range of actors with multiple motivations (Ancram & Treadwell 2017; Potter, 2010). With demand high, the profits obtained through cannabis cultivation remain alluring in the UK, for criminal groups whether British, Albanian or Vietnamese nationals, working alone or together (Bateman, 2019; NCA 2022). The reason for this is simple. No senior, savvy criminal is going to work in a cannabis farm when they can get irregular labour to do this and can hire people who do not know the local economy, do not trust the local authorities and who are unable or unwilling to inform on them. Whilst the police will, in very large cases, pursue forensic evidence to track those behind them, this is rare (BBC Sounds,

2021²⁷). More often, they arrest ‘gardeners’, only intermittently using victim-centred and trauma-informed responses recommended as best practice (Pajon & Walsh, 2022, 2024) and the Crown Prosecution Service makes the argument that it is in the public interest to prosecute them rather than follow the non-punishment principles permissible under the Sect. 45 defence (HM Government, 2022).

Overall, it is argued here, that domestic cannabis cultivations are now established as relatively low risk and high profit undertakings which enable human smuggling and human trafficking from Vietnam. The methodology is widely understood in many parts of the Vietnamese diaspora (Luong, 2020, 2021) and the imprisonment of some of those involved, is neither equitable nor an effective deterrent. For an already stretched police service, more enforcement measures are neither desirable nor achievable, as other European governments have realised.

Current Developments

However, rather than addressing this complex reality the United Kingdom’s last Conservative government embarked on another piece of fantastical ‘acting out’, committing to delivering the “the most effective border in the world” (Cabinet et al., 2020). Some of the legislation brought forward purportedly to achieve this has already been successfully challenged in the courts, not least because it reneges on the UK’s international obligations to provide protection to victims of trafficking²⁸ under Article 4 of the ECHR and the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) (Ventrella & Morano Foadi, 2022). The UK may well find itself subject to further sanction by the courts as “it ends the victim identification process, which is a precondition for the application of the principle of non-punishment victims of modern slavery and human trafficking compelled to commit criminal offences” (Jovanovic, 2024; p1).

In Vietnam, as part of protecting the UK’s borders agenda, the government has gone on the record with an aspiration to dramatically reduce the numbers of Vietnamese smuggled into the United Kingdom, citing their alleged successes in Albania. Of course, media campaigns are one way of enlightening potential migrants to the risks they may face, but the budget invested in these campaigns in a country

²⁷ This documentary features a case where officers from Wiltshire police did do this, when investigating the industrial production of cannabis within a disused bunker BBC Sounds (2021).

²⁸ Matrix Chambers, ‘Secretary of State for the Home Department Withdraws Public Order Disqualification Policy’ (22 January 2024) Secretary of State for the Home Department withdraws Public Order Disqualification policy—Matrix Chambers (Matrix 2024; matrixlaw 2024.co.uk);

of 75 million people is incredibly small. Unsurprising given the geography, Vietnam is not in the British sphere of influence and there are far larger missions from Australia and the United States. Whilst other European missions may also be well resourced, relationships fluctuate between countries, and countries may issue types of visas that facilitate routes into Europe contrary to British efforts to reduce migration to the United Kingdom (Whittle & Silverstone, 2024). It is also the case that, in reality, Vietnam is a difficult country for the United Kingdom to effectively co-operate with,²⁹ partly due to its continued use of the death penalty (NPCC, 2023).³⁰ but also because Vietnamese state actors have been implicated in recent trafficking cases. In 2021, public officials were involved in the trafficking and eventual killing of a young Vietnamese women in Saudi Arabia (OHCR, 2021). Likewise, a recent kidnap of a Vietnamese official in Germany implicated Vietnamese public officials and their connections within the Vietnamese German diaspora (Nguyen, 2019). There are longstanding issues of corruption documented in the Vietnamese Ministry of Public Security, therefore the fact the co-operation between the two countries included the secondment of two officers to Police Scotland was remarkable and risky, even if their eventual impact was muzzled due to the unanticipated impact of Covid (Policing Insight, 2021).

Conclusion

Ultimately, it is argued here that recent British governments have ‘acted out’, the public bombarded by immigration rhetoric which promises enforcement, punishment and deterrence when the reality is that Brexit, Covid and the cost-of-living crisis have reduced the ability to liaise with international law enforcement let alone effectively distinguish between those who are victims of human trafficking and those who have paid to be smuggled.

What can be done to avert another tragedy occurs? This is a real prospect as currently there are many Vietnamese in the northern provinces and in in France waiting to migrate to the UK (BBC Sounds 2021; Harding et al., 2024; Reed,

2021). Belatedly, at an operational level, the Foreign and Commonwealth Office has started to focus on the deterrence strategies, if they could be properly resourced perhaps with some of the savings made by abandoning the Rwanda plan, they may have some impact (BBC News 2024; Gregory, 2024). In addition, certainly a more honest conversation regarding the capabilities of United Kingdom law and border enforcement would be helpful. The United Kingdom is able to investigate and prosecute complex cases of trafficking and has a legal framework that can provide protection for victims, but its capacity to do so is moderated by both the scale of illicit migration and the scale of the market demands for cannabis cultivation. A bold move would be to review the best and worst aspects of countries that have decriminalised or legalised cannabis and to follow suit. Though politically tricky, such a move could free the police and courts to focus more on human trafficking cases and reduce the incentive for people to undertake dangerous migratory journeys to the United Kingdom where they have little choice but to enter criminal markets where protections from endemic exploitation are difficult to enforce.

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²⁹ On the other hand, there are positive relationships, the UK does fund officers from the National Crime Agency and UK Visa Immigration to work in Vietnam and there has been some important co-operation in criminal investigations especially in 2019.

³⁰ UK police co-operation with overseas countries should be subject to Overseas Security and Justice Assistance (OSJA) Human Rights Guidance. This document notes: “Particular consideration must be given to the risk of contributing to the use of the death penalty. HMG opposes the death penalty in all circumstances, as a matter of principle. Any risk that assistance provided by HMG may result in the death penalty must be considered with utmost caution” (NPCC 2023;p. 14).

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