European Master’s Degree in Human Rights and Democratisation

The nexus between human trafficking and asylum. Can women trafficked for the purposes of sexual exploitation successfully claim asylum?

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E.MA Academic Year 2012-2013
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Abstract

Can women trafficked for the purposes of sexual exploitation successfully claim asylum in accordance with the United Nations 1951 Convention relating to the Status of Refugees (the Refugee Convention)? This question surprisingly lacks definitive answers, in law and in practice.

There is no doubt that women trafficked for the purposes of sexual exploitation (VHT) require assistance, support and protection - but should this be provided through the asylum system or the trafficking system? This paper explores the nexus between the two systems and examines how they should be linked to ensure the most appropriate and effective protection for human trafficking victims with international protection needs.

The Refugee Convention protects people with a well-founded fear of being persecuted on account of their race, religion, nationality, political opinion or membership of a particular social group. VHT will usually claim asylum on this last ground. But some asylum authorities do not accept that women or VHT can constitute a particular social group and reject their asylum claims. How can the diverging approaches be reconciled to ensure these women are protected?

A critical issue is the lack of consistent definition of ‘particular social group’ for VHT. Four solutions are discussed in this paper, any of which could lead to consistent practices if agreement is reached amongst asylum-authorities. However in the absence of such agreement, VHT may continue to be deprived of reliable processes to protect them from future persecution. This paper proposes these solutions to bring convergence to the different applications of the Refugee Convention and ensure a fairer and more consistent application of the Refugee Convention to women who have been trafficked for the purposes of sexual exploitation.
Acknowledgments

I would like to express my gratitude to:

Professor Dr. Manfred Nowak and Dr. Julia Planitzer: for your valued expertise, support and insightful comments.

Mum and Dad: thank you for always supporting my projects, hopes and dreams - especially through these past long years of study. They say *happiness is having a large, loving, caring, close-knit family... in another city*. Thank you for being mine.

Ross Buchanan: *never let small minds convince you that your dreams are too big.* Thank you for teaching me such life lessons and for being my “panic button” responder!

My best friend Fiona Ireland: thank you for reassuring me when I was lost, for making me laugh, and for reminding me not to take myself too seriously. *Maybe we can’t stop the downpour, but we can always walk together in the rain.*

A special thanks to my first teacher, in life and technology: my brother Trent. Your technical assistance has been very much appreciated.
Acronyms

CGRS  Center for Gender and Refugee Studies (California)
ECHR  European Convention on Human Rights
ECtHR  European Court of Human Rights
EWCA  England and Wales Court of Appeal
FMCA  Federal Magistrate’s Court of Australia
GRETA  Group of Experts on Action against Trafficking in Human Beings
HCA  High Court of Australia
LRA  Lord’s Resistance Army
OSCE  Organisation for Security and Cooperation in Europe
PSG  Particular Social Group
RMJ  Refugee and Migrant Justice
RRTA  Refugee Review Tribunal of Australia
UK  United Kingdom
UKIAT  United Kingdom Immigration Appeal Tribunal
UKUT  United Kingdom Upper Tribunal
UN  United Nations
UNHCR  United Nations High Commissioner for Refugees
UNODC  United Nations Office on Drugs and Crime
US  United States
VCLT  Vienna Convention on the Law of Treaties
VHT  Victim/s of Human Trafficking (specifically, women trafficked for the purpose of sexual exploitation)
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2013

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https://doi.org/20.500.11825/620

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