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## The drive for virtual (online) courts and the failure to consider obligations to combat human trafficking – A short note of concern on identification, protection and privacy of victims.

Felicity Gerry<sup>a,1,\*</sup>, Julia Muraszkwicz<sup>b</sup>, Olivia Iannelli<sup>b</sup>

<sup>a</sup> Carmelite Chambers London, Green's List Melbourne and School of Law and Business Deakin University, Australia

<sup>b</sup> Trilateral Research Ltd, London, UK

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### ABSTRACT

This article examines the introduction of virtual (online) court systems being introduced in parts of the UK in the particular context of human trafficking victims.

The justice system in England and Wales is undergoing significant transformation through the use of technology, under a drive for efficiency. The authors argue that online court systems are being implemented without investment into appropriate legal research and with assumptions regarding the approval process, and questions the effect of virtual hearings on the fundamental principles of due process. Whilst identifying vulnerability has been the subject of guidance, it remains unclear how these courts will deal with human trafficking issues. Human trafficking is a highly lucrative industry that extends to all corners of the globe and international as well as UK protocols and legislation exist with the objective to protect and assist the victims of human trafficking, with full respect for their human rights, ensuring a victim-centred approach. The protection of personal data and privacy of all online court users is important; however, trafficked persons belong a particularly vulnerable group, and the protection of their personal data is critical in alleviating the risk of further harm, intimidation, retaliation, or inappropriate use of biometric data. In conclusion, the authors argue that technological solutions to inefficiency have been given priority over justice solutions and just outcomes, without addressing systemic issues in the context of human trafficking.

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\* Corresponding author: Felicity Gerry Carmelite Chambers London, Green's List Melbourne and School of Law and Business Deakin University, Australia.

E-mail addresses: [f.gerry@deakin.edu.au](mailto:f.gerry@deakin.edu.au) (F. Gerry), [julia.muraszkiewicz@trilateralresearch.com](mailto:julia.muraszkiewicz@trilateralresearch.com) (J. Muraszkwicz), [olivia.iannelli@trilateralresearch.com](mailto:olivia.iannelli@trilateralresearch.com) (O. Iannelli).

<sup>1</sup> PhD candidate, Charles Darwin University.

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*An Online Court...is not, incidentally, (as some press reports have suggested) intended to be a court without judges, or a court where matters in dispute are to be determined automatically by some algorithm embedded in a computer, or by a civil servant. But it is a court where the basic problem facing ordinary people, namely turning their heart-felt grievances into something formulated in legal terms, and enabling them to identify and present their documentary and other evidence, is capable of being addressed electronically and cheaply, so that both their opponents know the case to be met, and the court is equipped at the earliest possible stage with the materials necessary to decide it justly. This statement is from Briggs LJ Addressing the Bar of England and Wales on the use of online courts in 2016.<sup>2</sup>*

Whilst this is a hopeful description of what technology can do for the justice system, this paper seeks to show that perhaps our enthusiasm ought to be restrained until we answer key questions. The authors explore these questions using the example of victims of human trafficking. These persons engage with the justice system in a variety of ways. Some are witnesses to trafficking crimes in a criminal prosecution. Others may themselves be on trial for crimes they were compelled to commit as a result of their trafficking situation. Additionally, they can be party to a civil case, e.g., arising out of an employment situation. In each of these cases there is possibility for the victim to be identified, if they are not already, as somebody who has a right to assistance and support. There is an opportunity for the state to carry out an identification and thus, as explained in this paper, fulfil human rights obligations. What happens when cases go online? There are also serious questions with regard to privacy and data protection and how the implementation of online court processes may act as a barrier to identifying victims of human trafficking. The authors, therefore, advocate for great caution to be used with the introduction of virtual justice and call for additional research to be undertaken in order to gain a clear vision of what the current and future effects of this new system may be.

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## 1. Introduction

Against a background of austerity and with little empirical research, justice in England and Wales is undergoing significant transformation through the use of technology, which calls into question whether fundamental principles of due process are being lost in the mantra of modernization and efficiency.<sup>3</sup> The UK justice system attempt at modernization includes the creation of an Online Court. The Online Court will designed to be used by people with minimum assistance from lawyers, with its own set of user-friendly rules. It is anticipated that it will eventually become the compulsory forum for resolving cases within its jurisdiction, and on inception should be dealing with straightforward money claims valued at up to £25,000. Recommendations are made on helping people who need assistance with online systems. Complex and important cases to be transferred upwards to higher courts. Open justice and transparency issues to be addressed.<sup>4</sup>

This article considers and asks how the implementation of these new Online Courts may affect vulnerable populations, such as victims of human trafficking. This is a timely contribution as the criminal justice system is currently in the process of introducing Online Courts through “an ‘agile’ approach to digital development.”<sup>5</sup> However, “the criminal court proposals seem to have been introduced in haste, in many cases without research, evidence or informal or formal consultation with experts and stakeholders.”<sup>6</sup> For this reason, an evaluation of the system at the initial stages of its implementation, is essential to provide important considerations for alterations and future developments and for other jurisdictions who may want to implement similar systems.

This article will begin by giving a brief explanation of online courts, their procedures and what their implementation seeks to achieve. It will then consider and discuss some of the negative and positive effects of the implementation and the potential future development of Online Courts on vulnerable populations, such as victims of human trafficking. This discussion will conclude that although Online Courts may have

<sup>2</sup> Briggs LJ The Online Court Counsel Magazine April 2016 (<https://www.counselmagazine.co.uk/articles/the-online-court>)

<sup>3</sup> Jenni Ward, Transforming ‘Summary Justice’ Through Policed Prosecution and ‘Virtual Courts’: Is ‘Procedural Due Process’ Being Undermined?, (2015), *The British Journal of Criminology*, Volume 55, Issue 2, 1 March 2015, Pages 341–358,

<sup>4</sup> Lexis Nexis, Courting Change – The future is now, (<http://www.lexisnexis.co.uk/pdf/digital-courts-report-public-sector-071717.pdf>) accessed on 6 June.

<sup>5</sup> Susan Acland-Hood, We’re delivering reform – and starting to make a difference, (2017), Inside HMCT Blog, (<https://insidehmcts.blog.gov.uk/2017/09/28/were-delivering-reform-and-starting-to-make-a-difference/>) accessed on June.

<sup>6</sup> Transform Juice, Briefing on the Prisons Courts Bill, (2017), (<http://www.transformjustice.org.uk/wp-content/uploads/2017/03/Transform-Justice-Briefing-on-the-Prisons-Courts-Bill.pdf>) accessed on June.

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