

## **Law Centre (NI) comments on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill**

### **Background**

The Law Centre provides specialist legal advice and assistance to victims of trafficking. We have assisted victims who have been subject to trafficking for labour exploitation, sexual exploitation, domestic servitude and trafficking of minors.

Our involvement in trafficking cases usually begins once the victim has already been referred into the National Referral Mechanism.<sup>1</sup> We do not therefore have expertise in the process of identifying and recovering victims from places of exploitation. To date, we have only involved in cases where the victim is subject to immigration control and where the Home Office is acting as the Competent Authority. We therefore do not have direct experience of 'internal' trafficking.

### **Support for Bill**

In general, we support the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. We commend Lord Morrow for bringing this Private Member bill forward. In our view the bill contains a number of innovative features: it has potential to protect victims of forced labour as well as victims of human trafficking; it gives victims a clear legislative entitlement to support and assistance; it provides for a child trafficking guardian and creates a Northern Ireland rapporteur. We believe all these provisions would be extremely valuable.

We are conscious that some aspects of the bill are covered in existing legislation and policy and therefore do not necessarily need to be in this bill. We also recognise that some provisions could be obtained through secondary legislation. The case for secondary legislation is that it can be more easily amended to take into account trafficking developments, whether policy or caselaw. At present, there is no detailed proposal for introducing secondary legislation within a short timeframe. In the absence of this, we think there is value in a single Bill, which draws together provisions found elsewhere, and which sends out a strong signal to the public, perpetrators and victims that Northern Ireland is serious about tackling human trafficking. For these reasons, we are broadly supportive of the bill's content although we do not support Clauses 3 and 4. In addition, we do not support the inclusion of Clause 6 for reasons set out below.

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<sup>1</sup> For some information about the National Referral Mechanism, see here: <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>

## **PART 1**

### **Clause 1**

We welcome the fact that the definition outlined in Clause 1 provides an expansive interpretation of victims as it includes both ‘trafficking offences’ as well as ‘slavery offences’. As the Committee is aware, not all victims of slavery meet the trafficking definition: some victims of forced labour may not be victims of trafficking but nonetheless have endured extreme situations of exploitation and require assistance. However, Part 2 of the Bill restricts assistance only to those who have been trafficked. This means that a victim of forced labour is not eligible to receive the support and assistance outlined in Clause 10. We understand Lord Morrow’s rationale for restricting assistance – currently, only potential victims of trafficking have a legal right to remain in UK – however, we would like the Bill to offer equal protections to both types of victims rather than seek to differentiate between the two.

### **Clause 2**

No comment.

### **Clause 3**

This clause includes a list of factors that the court must treat as aggravating factors. The Law Centre’s view is that sentencing guidelines are preferable as they afford flexibility, enabling the courts to respond to new issues as they arise.

Accordingly, we do not support Clause 3. However, if this Clause is adopted, we think it should include an offence committed by an organised crime network or trafficking ring.

### **Clause 4**

This clause imposes a minimum sentence where an individual is convicted of a human trafficking/slavery offence. A two year custodial sentence will apply unless the court is of the opinion that there are ‘exceptional circumstances’.

The Law Centre has concerns about this clause, partly because it reduces judicial discretion but also because it may impact on plea bargaining, which can be a very useful tool for prosecutors to obtain information. Therefore, we do not support Clause 4.

### **Clause 5**

We think this clause, which clarifies that forced begging is covered by trafficking/slavery law, is useful.

### **Clause 6**

As a general principle, we support Clause 6 for the following reasons:

- We view prostitution as exploitation and a form of violence against those who work in the sex industry and who are primarily women. Thus, we view prostitution as being incompatible with gender equality and we have no difficulty in supporting measures that seek to eliminate prostitution.
- We are mindful that a harm-reduction approach to prostitution, often brought about through legalisation and regulation, can bring some benefits to those working within the sex industry, especially in relation to improved health and safer working conditions. However, such models seem only to benefit persons who have a legal right to work. Our clients tend to be undocumented migrants who are not lawfully permitted to work (and therefore have no entitlement to employment protections, healthcare, etc.) and therefore would not benefit from a harm-reduction approach.
- We acknowledge the libertarian argument that promotes a woman's right to choose how she uses her body and that rejects the introduction of an offence that will effectively restrict this choice. We recognise that there may be a small minority of women (and men) who make an informed and genuine choice to work in the sex industry. However, none of our clients fall within this group and it is our clients' experiences that is informing our thinking on this issue. Furthermore, we believe that, for the majority of those involved, prostitution is rooted in poverty, marginalisation and desperation and is linked to histories of abuse and violence;<sup>2</sup> we believe that policy makers should focus on the majority rather than the small minority.
- We hold in high regard the organisations that developed and support the Republic of Ireland's 'Turn off the Red Light campaign', which includes a number of migrant organisations, human rights organisations, feminist groups and unions. There needs to be consistency across the island of Ireland with criminal laws around prostitution so as to avoid a situation where prostitution from the Republic re-establishes itself in Northern Ireland or vice-versa.

Notwithstanding our principled support, we are aware that a change in legislation could have harmful implications if it is not properly thought through. For this reason, we think a full consultation and informed policy debate needs to take place *before any such a provision is introduced*. This process would examine prostitution in its broader sense rather than in the context of reducing trafficking, which is how discussions have hitherto been framed. We welcome Minister Ford's commitment to conduct research that will give policy makers a much better understanding of the nature of prostitution in Northern Ireland, and, importantly, an understanding of any

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<sup>2</sup> See Department of Justice, 'Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice elsewhere' (2011)

adverse impacts that legislation could have. A timeframe of completing the work within a year should be agreed and published for this work and close arrangements should be put in place with the Irish government. We think the work should include:

- An assessment of the extent to which PSNI / Crimestoppers receive intelligence on possible trafficked victims from those who pay for sex. We are mindful that prostitute users/clients can be 'allies' in the fight against human trafficking<sup>3</sup> and we would not want any measure to be introduced that would diminish the prospect of victims of trafficking being reported to law enforcement. However, at the moment, we simply do not know if any victim in Northern Ireland has been identified by virtue of information being provided by a user.
- An evaluation of the (current) offence to pay for sexual services from a prostitute subjected to force;<sup>4</sup>
- Targeted consultation with prostitutes, former prostitutes and professionals who support both groups including the Belfast Commercial Sex Workers Service.
- An assessment of the role of the land border in trafficking cases<sup>5</sup> and, crucially, some thinking on how the legislative approach taken in the Republic could impact in the North. We note that Scotland has dropped the proposal to introduce a criminal offence. It would be useful to learn more about this and to consider what this might mean for Northern Ireland.
- An assessment of how policing would be affected if purchasing of sex were to be criminalised. Would, as some stakeholders fear, the PSNI's anti-trafficking investigative resources be diluted? If so, can this risk be countered?
- The availability and assessment of the effectiveness of exit strategies for prostitutes. If a law is going to be introduced, it is essential that there resources in place to assist women and men find alternative and *safe* forms of income.

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<sup>3</sup> Turkey's anti-trafficking hotline, which is run by the International Organization for Migration, reports that the highest percentage of its calls come from Turkish clients of victims United States Department of State, *2011 Trafficking in Persons Report - Turkey*, 27 June 2011. We understand, however, that the IOM notes this phenomenon as unusual.

<sup>4</sup> Article 64A of the Sexual Offences (Northern Ireland) Order 2008

<sup>5</sup> Some information has been collected by NGOs, however, knowledge is limited. See: Dudley, R. (2006) 'Crossing Borders: Preliminary Research on Human Trafficking in Northern Ireland'. Belfast: Women's Aid Federation and Allamby, L et al (2011), 'Forced Labour in Northern Ireland, exploiting vulnerability' (Joseph Rowntree)

If, after thorough consideration of the issue, it is decided to introduce a criminal offence, then our preference would be to this through existing criminal justice legislation rather than through this Human Trafficking Bill. This is because we are conscious that although there are links between trafficking and prostitution it may be more beneficial to keep the issues separate so as not to detract attention from other forms of exploitation.

For these reasons, we do not think Clause 6 should form part of this present bill.

### **Clause 7**

We welcome this clause which will ensure that those tasked with investigation and prosecution of offences are properly trained and resourced.

### **Clause 8**

Although the Law Centre is deeply concerned that some victims of trafficking are being charged with criminal offences (we have been involved in a number of such cases), we are uneasy about there being a blanket prohibition on prosecution. Although we are not aware of any case to date, we can just about conceive a situation where a victim of trafficking commits an offence where there is a strong public interest for a prosecution. Furthermore, we recognise that blanket immunity would impede the work of the Director of the Public Prosecution Services in discharging his statutory obligations to review each case received from the investigator in accordance with the Code for Prosecutors.

Rather than blanket immunity, we would prefer this clause to be cast as a presumption against prosecution.

## **PART 2**

The Law Centre believes that this Bill really 'comes into its own' in Part 2. This Part will give victims of trafficking a clear entitlement to services. We are strongly supportive of this.

### **Clause 9**

No comment.

### **Clause 10**

While we welcome the thrust of Clause 10, we are concerned that subsection (1) appears to restrict support to victims where there are criminal proceedings. For various reasons, some trafficking cases do not involve criminal proceedings, however, it is essential that victims in such cases are not excluded from the protections offered by this Bill.

In addition, we believe the Bill should specifically make provision for dependents of victims of trafficking to access support services. The Bill currently makes reference to education (Clause (2)(h)) but makes no mention of medical treatment and other services for victims' dependents. Some Law Centre clients have given birth during the trafficking process; we want to be absolutely sure that any children have a clear entitlement to access services.

We would also like the Committee to consider what assistance and support can be provided to those persons who get a positive 'Reasonable Grounds' decision but then a negative 'Conclusive Grounds' decision. This is a very challenging (and current) issue. The Law Centre has represented a number of victims who have successfully challenged a negative 'Conclusive Grounds' decision. By virtue of there being no right of appeal within the National Referral Mechanism, the only challenge to a decision is by way of Judicial Review, which can take several months, if not longer. If this clause, as currently crafted, were to become law, such victims would not benefit from its protections as the moment they receive a negative decision, they would be excluded from the Bill albeit they may ultimately be recognised as a victim of trafficking and granted immigration status accordingly. Moreover, in Britain there are proposals currently out for consultation to reduce access to judicial review and we would be concerned if similar measures were to be adopted in Northern Ireland.

We also wish to highlight that some people who, despite there being compelling circumstances, are not conclusively recognised as victims of trafficking (this is partly due to the relatively high standard of proof required in trafficking cases and also due to the problems in providing and collecting evidence in very difficult circumstances). These individuals may nevertheless have a number of support needs requiring urgent and compassionate assistance. This should be available on a discretionary basis.

### **Clause 11**

We welcome this clause which should make it easier for victims to obtain compensation. Compensation is necessary, both in terms of restorative justice and in giving the victim some financial security. This is important because poverty can make a person vulnerable to re-trafficking / exploitation.

### **Clause 12**

We support this clause that would introduce a child trafficking guardian.

We think it would be beneficial for this clause to make direct reference to Article 12 UNCRC (i.e. right to be heard).

Access to legal representation for children is *always* essential and therefore we recommend the deletion of “where necessary” in Clause 12 (2)(c).

Clause 12 (2) (d) suggests that the child trafficking guardian would have a role in advising the child. We believe that the guardian’s role should complement rather than substitute the work of legal advisers: it is imperative that the child benefits from advice provided by qualified legal practitioners. For this reason, we recommend that the word “advise” is removed.

### **PART 3**

#### **Clause 13 Protection of victims in criminal investigations**

Again, we support this clause although have some comments about the drafting:

- a) Clause 13 (b) (ii): delete "where necessary" so as to ensure that all interviews are conducted in a ‘child friendly’ environment. This is essential both in terms of the well-being of the child and in terms of the quality of information provided by the child during the interview.

Clause 13 (b) (iii): delete "where necessary" so as to ensure that only appropriately trained persons conduct interviews with children.

Clause 13 (b) (vi): delete "may" and insert "should" so as to ensure that a child has a right to be accompanied by an appropriate adult during the interview.

As a more general point, we note that this clause can only protect victims from secondary victimisation that occurs during police interviews. As currently drafted, it cannot provide protection during interviews conducted by immigration officials. Please see comments on Clause 16, below.

#### **Clause 14**

We welcome this clause.

## **PART 4**

### **Clause 15**

We welcome the duty on the Department to publish a strategy every year. We note and commend the Department's Action Plan, which was published in May 2013, and believe that this could be a useful template for a strategy under this clause.

### **Clause 16**

We are conscious that there have been various calls for different types of an oversight mechanism: this Bill calls for a Trafficking Rapporteur; the Anti Trafficking Monitoring Group calls for a Trafficking Commissioner; the Centre for Social Justice calls for an Anti-Slavery Commissioner. We note that the Home Secretary has recently expressed a willingness to consider a Modern Slavery Commissioner.

The Law Centre is very supportive about the concept of an oversight mechanism. This is necessary because there are no appeal rights within the trafficking process which means there is very limited judicial scrutiny of decisions.

Whatever form the oversight mechanism takes, the terms of reference should encompass forced labour in its widest sense including human trafficking. The person/body must have an entirely independent function, a wide remit, strong investigative powers and should really be able to hold the Executive and agencies to account. We also feel that it is essential that the remit of the person/body goes beyond transferred matters in order to have traction with the Home Office. The Home Office plays a crucial role in the trafficking process: it regularly acts as a First Responder; it is the decision maker for victims who are subject to immigration control; and it is responsible for taking enforcement action against those who are not eligible to remain in the UK. Therefore, while we recognise that immigration is a reserved matter, it is of vital importance that the rapporteur/commissioner is able to scrutinise the Home Office's functions in respect of victims identified in Northern Ireland.

### **Conclusion**

The Law Centre would be happy to provide further evidence to the Committee if that would be helpful.

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