



Amnesty International UK

Human Trafficking and Exploitation (Further Provision and Support for Victims) Bill

Submission to the Northern Ireland Assembly Justice Committee

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Introduction

Amnesty International UK (AIUK) is a national section of a global movement of over three million supporters, members and activists. We represent more than 230,000 supporters in the United Kingdom. Collectively, Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Amnesty International is one of the leading nongovernmental organisations that campaigned for a robust approach to the prevention and combating of human trafficking during negotiations on the text of the Council of Europe Convention on Action against Trafficking in Human Beings (Human Trafficking Convention), and that continues to work to promote states' ratification of and compliance with this Convention.

Amnesty International has a wealth of experience working on this issue at local, national and international level. This includes campaigning for the UK government to sign and ratify the Convention. We have also contributed to a range of reports, including those published by UK Anti-Trafficking Monitoring Group (ATMG), which was established in May 2009 to coincide with the entry into force of the Council of Europe Convention on Action against Trafficking in Human Beings in the UK. The ATMG monitors the UK Government's implementation of the Convention and examines all types of trafficking, including internal trafficking and the trafficking of UK nationals. The Group promotes a human rights based approach which prioritises the well-being and best interests of trafficked persons.

In Northern Ireland, AIUK have worked extensively to ensure the protection and promotion of the rights of trafficked victims. This includes, but is not limited to, lobbying for a Department of Justice (DoJ) engagement group on trafficking, a rights based information leaflet for victims of trafficking, contributing to the DoJ's organised crime communications strategy, inputting to joint DoJ and DHSSPS guidance on the welfare and protection of adult victims of trafficking, lobbying for the implementation of recommendations of ATMG reports and providing support and secretariat to the All Party Group on Human Trafficking.

AIUK recognises and welcomes the strong cross party political will that exists to bring an end to human trafficking in this region. We welcome the clauses of this Bill that provide further support and provision for victims of trafficking. We also recognise that this Bill amalgamates some existing legislation into one single act, a legislative approach for which we see some merit. However, whilst we recognise the legitimate aspirations of this Bill, we believe it fails to provide a comprehensive approach to the issue of human trafficking, particularly with regard to measures to improve research and data collection on the extent of human trafficking in the region, and the human rights impact on those who have been trafficked.

We are also concerned that the approach of combining legal measures to address human trafficking with legal measures to address prostitution, both complex issues, will not be an effective nor appropriate approach in this instance. Indeed one particular clause poses a potential risk to the human rights of vulnerable people involved in selling sexual services in Northern Ireland.

We will outline our concerns in this evidence paper and make a number of recommendations on several clauses of this Bill but the weight of this document is on one particular area of concern – clause 6. We are calling for Clause 6 to be removed from the bill and for further action from the DoJ.

Oral evidence Amnesty International would welcome the opportunity to discuss this paper at an oral evidence session with the Northern Ireland Assembly Justice Committee. Our evidence would be given by Grainne Teggart, Northern Ireland Campaigner for AIUK and lead on anti-trafficking work. Grainne is AIUK and Northern Ireland representative on the UK Anti-Trafficking Monitoring Group, has advised members of the All Party Group on Human Trafficking, the DoJ and is a member of DoJ Engagement Group.

Contact details to make arrangements are provided on the cover.

Detailed comments on proposed legislation

Clause 4

- This clause requires amendment to clarify that this minimum sentence provision does not apply to children and is not, therefore, in contravention of international human rights standards¹.

Clause 6

- AIUK does not support the inclusion of Clause 6 in this bill.
- Those engaged in selling sexual services and human trafficking are two very complex social phenomena which would require more considered separate policy and legislative responses.

Concerns

- The Trafficking Convention and the EU Trafficking Directive expressly provide measures to be taken for discouraging and reducing the demand for trafficking victims; the criminalisation of the purchase of sexual services is not one of the measures they recommend.
- AIUK is concerned that, in the absence of thorough evidence-based research on the links between human trafficking and those who sell sexual services in Northern Ireland, there is potential for clause 6 to be counter-productive by driving trafficking for sexual exploitation and those who sell sexual services further underground, thus increasing the already vulnerable position of those involved.
- We are also concerned with the potential for diversion of criminal justice resources away from tackling trafficking in this region.

¹ Convention on the Rights of the Child
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

- These concerns are reflected by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) in their third general report which states that “The impact of criminalising the purchase of sexual services, seen as an anti-trafficking measure in some of the States evaluated by GRETA, must be assessed in the light of all possible consequences. This includes ensuring that the measures taken do not drive victims of trafficking for the purpose of sexual exploitation underground or make them more vulnerable, and also that they do not mobilise investigation units and prosecution authorities to the detriment of investigations of traffickers.”²
- AIUK is concerned that clause 6 seeks to outlaw the paying for sexual services of a person as a standalone measure, **without** further provision and support provided for those who will be directly affected as a result of this step, nor crucial protection and support for those seeking to exit the selling of sexual services. Further provision and support should be fully informed by a strong evidential base, which would include independent research and consultation with a range of stakeholders including those who sell sexual services – see Evidence section below.

Research and evidence

- AIUK proposes that further research be conducted to establish the degree to which legislation – together with administrative, educational, social, cultural or other measures - could serve to reduce the demand that fuels trafficking, including for the purpose of sexual exploitation.
- Regarding measures to address demand, the Council of Europe Convention’s Explanatory Report advises that, among the minimum measures set out in Article 6, “An essential one is research on best practices, methods and strategies for discouraging client demand effectively.”³
- The most recent GRETA report also states “...that the effectiveness of anti-trafficking measures, should be subject to **thorough independent** assessment to avoid any negative unintended consequences” and that there is a need for evidence-based research to inform policy-making
“only a well-grounded understanding of the empirical situation and a rights-based approach to human trafficking can ensure that vulnerable populations and victims are able to realise and exercise their rights and that people are not harmed by ill-devised, often ideologically driven, schemes to save them”⁴.

² Page 6, 3rd General report on GRETA’s activities, covering the period from 01 August 2012 to 31st July 2013. Published October 2013.

http://www.coe.int/t/dghl/monitoring/trafficking/docs/Gen_Report/GRETA_2013_17_3rdGenRpt_en.pdf

³ <http://www.conventions.coe.int/Treaty/EN/Reports/Html/197.htm>

⁴ (point 75, page 40) 3rd General report on GRETA’s activities, covering the period from 01 August 2012 to 31st July 2013. Published October 2013.

- There is an insufficient evidential basis how this would reduce the demand for human trafficking for sexual exploitation to this region.
- ‘Swedish model’ – Much of the debate on this clause has centred on the Swedish Sex Purchase Act and its effects. At best there is conflicting evidence regarding how effective this model has been. Studies on the effectiveness of this form of legislative approach vary too much for a definitive argument to be made that it is effective in pursuit of respect for victims’ rights, protection of victims, and prevention and combating of trafficking.
- The Swedish National Council for Crime Prevention has found little or no evidence that the Swedish law criminalising the buying of sex had any significant impact on decreasing trafficking for sexual exploitation. Evidence has been presented to show one of the effects was to drive the problem underground and into the realm of modern information technologies, such as the internet and mobile phone technology.⁵
- Country context is highly important – Not only are there questions as to the effectiveness of the ‘Swedish model’ in the country itself, but there are further questions on its transferability to other country contexts. AIUK believes this merits more in depth research and consultation in Northern Ireland before legal measures are proposed to address the selling of sexual services.
- The proposed bill departs significantly from the ‘Swedish Model’ in that it makes no provision to lessen the criminal burden on people involved in selling sex in Northern Ireland, many of whom may be vulnerable individuals. It simply seeks to introduce further criminalisation around sex work and provides no exploration of, or guarantees against, the potential consequences of such a move.
- Inclusion: The wide range of voices of those engaged in the selling of sexual services should be actively engaged with on this issue. The impact of such a change has not been fully explored in relation to those likely to be impacted by potential legal changes, and the range of experiences that exist. There are many areas of policy that would need to be addressed. It is obvious that one of these areas is the impact on already vulnerable people and their safety and wellbeing.
- The Global Commission on HIV and the Law has recently recommended that states “. . .enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work[;] and ensure human trafficking laws are used to prohibit sexual exploitation, as opposed to consensual sex work.”⁶

Clause 10

- We welcome this clause on support provision for victims.

http://www.coe.int/t/dghl/monitoring/trafficking/docs/Gen_Report/GRETA_2013_17_3rdGenRpt_en.pdf

⁵ The Organisation of Human Trafficking: A Study of Criminal Involvement in Sexual Exploitation in Sweden, Finland and Estonia. Bra (Swedish National Council for Crime Prevention), Stockholm, 2008.

p.77

⁶ 2012 Global Commission on HIV and the Law Report, supra note 14, at 10.

- We feel this clause would benefit from clarifying the responsibilities of both Department of Health Social Services and Public Safety (DHSSPS) and DoJ so this is clear in statute.
- AIUK would recommend the overarching requirement for support be placed in primary legislation with a requirement for the DoJ and DHSSPS to set out the detail by Order in secondary legislation. Human trafficking is not a static issue and will change and evolve over time, as will the needs of victims. Northern Ireland policies, processes and legislation must retain a degree of flexibility and be easily amended to ensure they can adequately respond to upholding the protection and promotion of the rights of victims. Secondary legislation will be easier to amend at a later point.

Recommendations

AIUK recommends that;

- Clause 4 is amended to clarify that this minimum sentence provision does not apply to children.
- Clause 6 is removed from this bill and the selling of sexual services is addressed separately.
- Clause 6 - The DoJ undertake further research on the selling of sexual services, including its nature and extent in Northern Ireland, a full needs analysis of the range of people involved in the sex industry and a human rights compliant impact assessment of any further legislation. Research is necessary to provide an evidential base on which to construct a comprehensive approach to address concerns re: the selling of sexual services.
- Clause 6 - AIUK is calling on DoJ to commit to a legislative vehicle to enact the removal of six month statute bar in respect of Article 64A of Sexual Offences Order – where a woman has been subject to force.
- Any visit to Sweden or other countries by Northern Ireland Assembly Justice Committee for comparative purposes is balanced to enable our Committee members to come to a fully informed decision. In Sweden this must include those organisations that work with and on behalf of those who sell sexual services, independent NGOs and academics.
- Clause 10 is amended to clarify the responsibilities of both DHSSPS and DoJ and that the overarching requirement for support be placed in primary legislation with a requirement for the DoJ and DHSSPS to set out the detail by Order in secondary legislation.