



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Criminal Justice Bill: Trafficking People for  
Exploitation — NICEM Briefing

11 October 2012

# NORTHERN IRELAND ASSEMBLY

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### Criminal Justice Bill: Trafficking People for Exploitation — NICEM Briefing

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Stewart Dickson  
Mr Alex Easton  
Mr Tom Elliott  
Mr William Humphrey  
Mr Seán Lynch  
Mr Alban Maginness  
Ms Rosaleen McCorley  
Mr Patsy McGlone  
Mr Jim Wells

**Witnesses:**

Ms Helena Macormac	Northern Ireland Council for Ethnic Minorities
Ms Karen McLaughlin	Northern Ireland Council for Ethnic Minorities

**The Chairperson:** I welcome the officials from the Northern Ireland Council for Ethnic Minorities (NICEM), in particular Helena Macormac and Karen McLaughlin. Again, this session will be recorded by Hansard. I will hand over to you to outline your submission to the Committee. I am sure that members will then have some questions.

**Ms Helena Macormac (Northern Ireland Council for Ethnic Minorities):** Thank you very much. First, I would like to start by thanking the Committee for inviting us to give evidence this afternoon on clauses 5 and 6 of the Criminal Justice Bill, which relate to human trafficking, based on NICEM's written submission that the Committee received in August this year.

I would like to briefly state who we are and why tackling human trafficking is a key element of our work. NICEM is an independent non-governmental organisation working to promote equality and human rights in Northern Ireland. As an ethnic minority-led umbrella organisation, we represent the views and interests of black and minority ethnic communities. We are also founders of the Belfast Migrant Centre, which provides direct client-facing services to vulnerable migrants. We believe that engagement with non-governmental organisations and, in particular, with ethnic minority-led organisations will help to ensure that legislative and policy decisions on the subject at hand are well informed and communicated effectively.

We were delighted that, during the Committee's discussion on 20 September this year, Department of Justice officials stated that the Department should not take a minimalist approach to the EU directive on preventing and combating trafficking in human beings and that it was energetically seeking to

comply with the letter and spirit of the directive. With that in mind, and in addition to my colleague Karen's analysis of the specific clauses in the Bill, I will briefly touch on the prevention of human trafficking and the protection of trafficking victims, as it is only in conjunction with addressing those two elements, alongside the prosecution of traffickers, that the Department can be said to be taking a human rights-based approach. NICEM believes that the recent consultations by the Department and others, and the discussions and debates stirred by those initiatives, present a genuine opportunity for the Department to go beyond the minimalist approach and develop a dedicated human rights-based legislative and policy framework.

Building on work that NICEM has done over the past five years in campaigning for a human rights-based approach to be taken, we have, in conjunction with Professor Tom Obokata, a legal expert in human trafficking, developed a briefing paper providing an analysis of the current responses to human trafficking in Northern Ireland. We presented an advance copy of that to David Ford at a meeting last month. NICEM, as secretariat of the all-party group on ethnic minority communities, in conjunction with Amnesty International, as secretariat of the all-party group on human trafficking, is organising a cross-party discussion on the findings in the presence of local and international experts in early November. We have provided each Committee member with a copy of the paper. I have that with me and can distribute it along with an invitation to the Chatham House rules discussion, in which we hope to address the issues of legislative and policy-based measures for a holistic human rights-based approach more broadly than we can today. With that, I will hand over to my colleague Karen, who will address the specific clauses.

**Ms Karen McLaughlin (Northern Ireland Council for Ethnic Minorities):** Thanks, Helena. As you are all aware, the Department of Justice's rationale for introducing clauses 5 and 6 is to comply with the EU directive on preventing and combating human trafficking. It is important to bear in mind at the outset that this is not only a matter of EU law but a question of international human rights law. The UK is a state party to the Council of Europe Convention on Action Against Trafficking in Human Beings and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, otherwise known as the Palermo protocol, as well as other instruments relating to violence against women and girls, and forced labour.

A human rights-based approach, which Helena mentioned, requires a three-pronged approach, otherwise known as the three Ps: prosecution of traffickers; prevention of human trafficking; and protection of trafficking victims. Clauses 5 and 6 deal with the first prong, the prosecution of traffickers, and, indeed, article 10 of the directive. However, legislative action is necessary to comply with the three Ps approach and the EU directive, which we referred to in our written submission. More specifically, given the similarities of clauses 5 and 6, we have identified three issues that are common to both provisions, namely scope, definitions and penalties, which will now be addressed in turn.

First, in respect of the definitions, clauses 5 and 6 propose to criminalise the act of arranging or facilitating the movement of persons from countries into the UK as well as within the UK. Here the Bill diverges from article 2 of the directive, as that equates to criminalising only the transport of victims. The Council of Europe convention monitoring body, the Group of Experts on Action against Trafficking in Human Beings (GRETA), has expressed concerns about that shortcoming in its recent evaluation report on the UK's compliance with the convention, which was published in September this year. Therefore, we recommend that the words "arranges or facilitates" are replaced with the definition in article 2(1) of the EU directive. Due to time constraints, I will not read out that definition, but if you would like clarification, I can read it afterwards.

As well as those deficiencies, exploitation, although referred to in clause 6, is not defined in the Bill as it stands. In order to ensure that all forms of exploitation are covered, it is recommended that the definition of exploitation, as set out in article 2(3) of the directive, is adopted. In addition, according to article 2(4) of the directive, the consent of the victim shall be irrelevant where exploitation has taken place. The Bill as it stands is silent on that issue, and we, therefore, also recommend the inclusion of that element.

There are three reasons for recommending those changes to the definitions. First, the definitions that we are proposing appear not only in the EU directive but in the Council of Europe convention and the UN Palermo protocol. So, adopting those definitions is essential in order to ensure compliance with international human rights law obligations as well as the EU directive.

The second point relates to legal certainty. According to GRETA's evaluation, which was published in September, various offences related to human trafficking adopt inconsistent approaches and requirements as regards actions, means and forms of exploitation and do not fully reflect the definition

of trafficking in the convention. However, we noted that, in the recent consultation by the Public Prosecution Service (PPS) on prosecuting cases of human trafficking, the Council of Europe convention definition was used. So we are concerned that both approaches in law and policy could impact on legal clarity and that, effectively, the definition of human trafficking could become the subject of judicial interpretation. I accept the point that that might present difficulties in amending the Sexual Offences Act 2003, which can only cover sexual exploitation. However, that difficulty in itself highlights the need for a single consolidated statute dealing with human trafficking, as that is a crime that does not respect legislative boundaries. My colleague Helena will come back to that point later.

Thirdly, we believe that a robust definition covering all elements of trafficking will help with law enforcement and aid prosecution, and it will also help with the identification of victims and offenders.

So, our second point is on the scope of the provisions. It is welcome that the offences have been extended to include persons habitually resident as well as incorporated bodies. In that regard, there is no definition of "habitual resident" in the Bill as it stands. We would also recommend that a clause be included to extend this offence to persons who may incite, aid, abet or attempt to commit the offence, in accordance with article 3 of the directive.

The final point relates to penalties. There has been much discussion about the length of sentences, and we have sent a submission to the recent PPS consultation on this matter. However, as the Bill stands, there is a clear omission from the penalties set out in clauses 5 and 6. Although incorporated bodies are included in the scope of the clauses, there are no specific company-law-related offences. It is, therefore, recommended that, in accordance with article 6 of the EU directive, specific sanctions for legal persons are introduced, such as judicial winding up and disqualification.

Having set out our concerns about clauses 5 and 6 of the Bill and our recommendations for amendments, I will now hand over to Helena to conclude our presentation.

**Ms Macormac:** A key recommendation of our briefing paper, our consultation response and our analysis of the discussion at hand is that there should be a single consolidated Bill. The complex and piecemeal nature of the current legislative framework makes it difficult for the relevant stakeholders to understand what is expected of them in implementing action against human trafficking. Although the Department contends that it has not encountered those working in the field finding the current regime imprecise, we believe that the proactive approach of addressing problems before they have an impact is the right approach. Trafficking was only recognised as a crime in Northern Ireland in 2007, therefore there are relatively few experts in the area, and many agencies are only just beginning to understand how to address the issue. A single statute could rectify problems by providing coherence and clarity. This is an approach that has been adopted by other common law jurisdictions with notable success.

The issues with the clauses clearly highlight the piecemeal nature of the legal framework. According to GRETA, the Council of Europe monitoring body, steps should be taken to:

*"address the consequences of having numerous pieces of legislation"*

on human trafficking. It points out that dedicated legislation would provide a legal status to victims of trafficking that reflects the human rights-based approach to action against trafficking. The fact that the actions to be criminalised in the Bill only refer to transport and that separate offences in separate pieces of legislation are to be created for different forms of exploitation unfortunately indicates that a human rights-based approach to action against trafficking has not been adopted. Therefore, rather than focusing on putting one section of the EU directive on a statutory footing, we reiterate the recommendations of GRETA and call on the Committee to legislate for a human rights-based approach to action against trafficking. We, therefore, call for a single, robust piece of legislation that addresses all elements of the offence of trafficking and provides for the protection of victims and the prevention of this heinous crime.

As time is restricted, I will not get into the additional points that NICEM would like to raise with the Committee in relation to obligations to protect victims and prevent trafficking. However, I have copies of the briefing paper containing our recommendations for further consideration, and we hope that members will consider our invitation to the Chatham House rules discussion on 14 November.

**The Chairperson:** Thank you very much. I just want to pick up on the issue of the single piece of legislation that you think is so critical. Why is that? Is there a fear that somehow prosecutions will not

happen because the legal profession or the PPS or whoever will not be able to sift through various pieces of legislation? What is the real fear around not having a single Bill that brings everything together?

**Ms Karen McLaughlin:** When I spoke about clauses 5 and 6, the example I used was the definition of exploitation and the definition of the act of trafficking. The Sexual Offences Act 2003 does not have the scope to have an all-encompassing definition of exploitation, which includes:

*"the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs."*

That is a quote from the directive. To our minds, that highlights the fact that some of those elements would be lost because of the piecemeal nature of the Bill. That is why we need a consolidated Bill that covers human trafficking as an offence and all the forms of exploitation that constitute trafficking.

**The Chairperson:** Have you responded to Lord Morrow's Bill?

**Ms Macormac:** No, but we will do. We will be attending the event that he is organising next week. Our briefing paper also contains our recommendations on that.

**Ms McCorley:** In relation to Lord Morrow's Bill, do you think that the element of paying for sexual services would enhance the Bill, or do you think that it would complicate it and therefore should not be included?

**Ms K McLaughlin:** That issue goes beyond the scope of the directive, and we have already heard from Christian Action Research and Education (CARE) on that. Article 18 of the directive mentions other measures, such as education and training. The training of front line law enforcement officials is absolutely crucial to the identification of victims. That will also have to be worked on at a policy level. In the EU strategy, the Commission will produce guidance on indicators for the identification of victims. We see that specific issue in terms of the human rights approach. Those are the things that we think need to be addressed.

**The Chairperson:** Should you criminalise paying for sex?

**Ms K McLaughlin:** I do not think that that is necessarily a question that is related to human trafficking directly and to how we should approach that. There was reference to the issue of demand, but we are talking about complying with the EU directive, the Council of Europe convention and the UN protocol. Those are international instruments and every one of them contains the same provisions in relation to the definition of exploitation and what constitutes trafficking. So, there is no international consensus on that issue. As we heard, there are models, but they have to be tried and tested and their pros and cons have to be debated. However, it is not within the confines of a human rights approach as stated. As we mentioned, it is a three-pronged approach: prosecution, prevention and protection. The most important thing is that we encompass those three elements in any efforts to address human trafficking.

**The Chairperson:** OK.

**Mr McCartney:** You say that the definition of exploitation in the Bill is not tight enough.

**Ms K McLaughlin:** There is no full definition in the Bill. It is referred to in clause 6. It is not referred to in clause 5, but, as I said, that is probably due to the fact that clause 5 is an amendment to the Sexual Offences Act, so, obviously, it would not then be pertinent to go into the other forms of exploitation within that. However, we feel that that highlights the dangers of a piecemeal approach.

**Mr McCartney:** Does the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 define exploitation?

**Ms K McLaughlin:** It does not have the full, encompassing definition because the sexual offences part and sexual exploitation would then be dealt with by the Sexual Offences Act. My recollection is that begging is also not included.

**Mr McCartney:** Are you saying in your briefing paper that articles 2 and 3 of the directive should be included in the Bill specifically in relation to trafficking?

**Ms K McLaughlin:** Yes, we recommend that the Bill spells out exactly the definition of exploitation and the act of trafficking. As I said in the presentation, the act of facilitating and arranging relates to transport only. However, there are also issues such as recruitment, harbouring or reception of persons. There is also the element of transfer of control. It is quite a comprehensive definition, and I can read it out if you wish. As it stands, however, "facilitate or arrange" does not really fulfil the objectives of the directive, the Council of Europe convention or the UN Palermo protocols.

*[Interruption.]*

**The Chairperson:** It is all right. It is only a spilt jug of water; it is just like outside. *[Laughter.]*

**Mr Elliott:** We may as well have a flood inside as outside.

**The Chairperson:** Or as my father would have said to me, "Sure, throw it all around you now." *[Laughter.]*

**Mr A Maginness:** You are throwing it all around me. *[Laughter.]*

**The Chairperson:** If you would like to pick up again where we left off.

**Mr McCartney:** In brief, Karen, are you making the argument in your briefing document that the paragraph that gives the definition should be in the Bill?

**Ms K McLaughlin:** Yes, that is what we recommend. Otherwise, you would be relying on exploitation being defined in the courtroom and certain aspects of the internationally agreed definition would be left out.

**Mr McCartney:** OK.

**The Chairperson:** Thank you very much. That was very helpful.