

## Justice Committee

### Human Trafficking and Exploitation (Scotland) Bill

#### Written submission from Community Safety Glasgow (TARA Service)

#### Introduction

1. Community Safety Glasgow (CSG) is a charitable organisation formed by Glasgow City Council and Police Scotland to prevent crime, tackle anti-social behaviour and promote community safety in the city. CSG has specific responsibility for taking forward work on violence against women on behalf of the Council. This includes the TARA Service, Routes Out, ASSIST and the Glasgow Violence Against Women Partnership.

2. Glasgow City Council has had a clear approach to tackling commercial sexual exploitation since 1999<sup>1</sup>. This has meant that since 2004 CSG has been at the forefront of Scotland's response and has continuously received funding from the Scottish Government to tackle the issue of trafficking in women for commercial sexual exploitation. The frontline support service, TARA, was formally launched in 2005 and our funding was increased in 2008 to enable access to this support for women identified and recovered from across Scotland.

#### Executive Summary

3. Community Safety Glasgow welcomes the publication of the Human Trafficking and Exploitation (Scotland) Bill and in particular the inclusion of the fundamental rights of Victims of Trafficking (VoTs) to practical measures to protect them from further abuse and harm.

4. However CSG are concerned that the bill requires further clarity and strengthening. We intend to highlight our concerns with a particular focus on:

- Part One – Offences
- Part Two – Protection of Victims
- Part Five – Strategy and Reporting
- Miscellaneous Recommendations

5. Given the current demand/supply model applied to the phenomenon of Human Trafficking, the clear links with the sex industry and our understanding of systems of prostitution being a form of violence against women we would be remiss not to highlight the necessity of tackling the, predominantly, male demand to purchase sex. We recommend the Committee considers the inclusion of the criminalisation of the purchase of sex, decriminalisation of the sellers alongside clear support to exit prostitution. It may be useful to note that Article 10 of the Council of Europe Convention on Action Against Trafficking in Human Beings<sup>2</sup> enables member states to consider the 'criminalisation of the use of services of a Victim of Trafficking (VoT)'.

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<sup>1</sup> <https://www.glasgow.gov.uk/index.aspx?articleid=8003>

<sup>2</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

## EVIDENCE

### Part One: Offences

6. There have been numerous calls for the Scottish Government to include a definition of Human Trafficking in our domestic legislation.<sup>3</sup> The Scottish Government has suggested that the offence of 'Human Trafficking', as drafted, provides this definition.

7. The internationally accepted definition of Human Trafficking advises that there are 3 key elements required for trafficking to be present: the ACT, the MEANS and the PURPOSE<sup>4</sup>. TARA is of the opinion that the offence of Human Trafficking, as drafted, does not reflect these 3 elements and so does not provide the clear definition of Human Trafficking being sought.

8. The use of the word, 'travel', throughout s(1), does not reflect the Council of Europe's Article 4 definition<sup>5</sup>. It appears to only focus on a single aspect of the process of human trafficking and does not include all of the other methods traffickers use to procure women such as recruitment, transport, transfer and harbouring, coercion, threats, deceit or abuse of a position of vulnerability. Human Trafficking is a *process* and by focussing only on 'travel' or movement the drafted offence does not reflect the different 'stages' or 'methods' of being recruited, moved, compelled, exploited and controlled.

9. Additionally the use of the word 'travel' suggests *international* trafficking, rather than internal. The Committee may wish to consider if British cases of commercial sexual exploitation may be difficult to prosecute under this legislation.

10. s1(2) refers to the irrelevance of consent only in the context of 'travel'. TARA is strongly of the opinion that the irrelevance of consent, for both adults and children, should also apply to the MEANS and PURPOSE elements.

11. The offence makes no specific reference to children. TARA recommends that consideration is given to including a specific offence of trafficking in children. The Anti Trafficking Monitoring Group (ATMG) has produced a useful briefing on the importance of such an offence.<sup>6</sup>

12. Whilst s 1 (7) 'Securing Services and Benefits' is clearly designed to future proof against new forms of exploitation it should, in our opinion, explicitly include 'criminal exploitation'. We have supported women, who were not only sexually exploited but also compelled to shop lift, make fraudulent benefit claims/loan applications and to be 'gardeners' for cannabis cultivation.

13. The factors listed under s 3 (8) (a) as the grounds on which someone may be 'chosen' for exploitation do not adequately capture the multiple reasons why someone may be vulnerable to human traffickers. Vulnerability is often complex,

<sup>3</sup> [http://www.scottish.parliament.uk/S4\\_Bills/Human%20Trafficking%20Bill/b57s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Human%20Trafficking%20Bill/b57s4-introd-pm.pdf)

<sup>4</sup> <http://www.nationalcrimeagency.gov.uk/crime-threats/human-trafficking>

<sup>5</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

<sup>6</sup> [http://www.antislavery.org/includes/documents/cm\\_docs/2014/r/rcc\\_briefing\\_modern\\_slavery\\_bill\\_hol\\_committee\\_child\\_exploitation.pdf](http://www.antislavery.org/includes/documents/cm_docs/2014/r/rcc_briefing_modern_slavery_bill_hol_committee_child_exploitation.pdf)

multi-faceted, impacted by physical and emotional context, a lack of options and can be cumulative, rather than definable by the simple, single elements within the bill e.g. mental/physical health/ disability.

14. There is no reference within the proposed bill that captures the concept of 'abuse of a position of vulnerability' which is included within international definitions.<sup>7</sup> This concept considers the whole context (e.g. emotional/practical/geographical) in which traffickers approach vulnerable women in order to begin the trafficking process<sup>8</sup>. This 'vulnerability', much of which is not reflected within the bill, is easily abused by perpetrators, especially in patriarchal cultures, where women do not question those they perceive to be in 'authority' and view themselves as having little or no choice in order to survive.

15. Gender itself is an important indicator of vulnerability and is explicitly mentioned within the EU Directive 2011/36/EU<sup>9</sup>. A report published in 2013 by the European Commission<sup>10</sup>, using information from member states, found that between 2008 and 2010 80% of *all* VoTs were women and children and of *all* VoTs, 62% were trafficked for the purpose of commercial sexual exploitation.

16. s 3 (8) includes the words 'young' or 'youth', neither of which are defined within the Bill. 'Child' should instead be used and defined as any person under the age of 18. The Modern Slavery Bill initially included the term 'young', however this was subsequently replaced by 'child' and accurately defined.

17. CSG TARA is concerned that there is no reference to the presumption of age required when there is a lack of clarity regarding the age of a potential Victim of Trafficking. A presumption of age clause is included in Part 5, clause 50, of the Modern Slavery Bill<sup>11</sup>.

### **Slavery, servitude and forced and compulsory labour**

18. Omitted is an 'Irrelevance of consent' clause, as present in s 1(2). This is now present in the Slavery, servitude, forced and compulsory clause in the Modern Slavery Bill<sup>12</sup>.

### **Aggravation as to human trafficking**

19. As in previous evidence submitted to the Justice Committee on the aggravation as to Human Trafficking, s1 (5) and s1 (6), Community Safety Glasgow is supportive of these offences.

### **Part Two – Protection of Victims**

20. s7, as drafted, requires the Lord Advocate to publish Guidance on the prosecution of victims of trafficking where the offence is directly related to their being

<sup>7</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

<sup>8</sup> [http://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Guidance\\_Note\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability\\_E.pdf](http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf)

<sup>9</sup> See pg 1, paragraph (3) - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

<sup>10</sup> [http://www.eurojust.europa.eu/Practitioners/operational/THB/Documents/DGHome-Eurostat\\_THB-statistical-data-report-2013\\_EN.pdf](http://www.eurojust.europa.eu/Practitioners/operational/THB/Documents/DGHome-Eurostat_THB-statistical-data-report-2013_EN.pdf)

<sup>11</sup> [http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/lbill\\_2014-20150069\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/lbill_2014-20150069_en_1.htm)

<sup>12</sup> [http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/lbill\\_2014-20150069\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/lbill_2014-20150069_en_1.htm)

trafficked. The current Lord Advocate, Solicitor General and Police Scotland have publically stated their commitment to a ‘strong presumption’<sup>13</sup> not to prosecute VoTs and are understanding of the complexities. We have direct experience of Police Scotland advocating on this issue on behalf of a vulnerable PVoT.

21. However, CSG recommend that consideration is given to legislating for the *principles* of non prosecution and a statutory defence in order to ensure consistency of approach and legal protection at all stages. As drafted the provision falls short of the international standards which provide for a broader non-prosecution principle<sup>14</sup>.

22. TARA understands that Article 8 of the EU Directive is not limited to criminal penalties but also includes administrative sanctions. An example could be a fraudulent claim for benefits applied for under coercion but resulting in sanctions against the VoT.

### Support and assistance

23. We are delighted that the Scottish Government reflected their victim centred approach and have prescribed the basics of support within the draft bill. We recommend, however, that consideration is given to explicitly **including financial assistance, access to psychological services** and that the clear requirement for **gender specific responses**<sup>15</sup> (including support) is also incorporated.

24. We seek clarification on the following points:

a. Does this support include provision for VoTs’ dependants, children and adults? If so we’d recommend the provision of childcare and meeting the needs of child and adult dependants is clearly outlined within guidance.

b. Will those who have been identified as being held in slavery, servitude and forced/compulsory labour also be entitled to access support?

c. We recommend that instead of ‘repatriation’ that the phrase ‘safe return’ is inserted. This is to ensure that all those, including UK nationals, will have a risk assessment and personalised safety plan undertaken by all key partners to prevent re-victimisation.

d. We are concerned that the language used throughout s8 strongly mirrors that of the current UK National Referral Mechanism (NRM). We seek clarification on whether access to support will be dependent on entry to the NRM. From experience TARA are concerned about some women’s capacity to provide **informed** consent to this process due to, for example, mental health concerns, mental capacity, influence of traffickers or limited alternatives to access support and, that by default, access to protection will be dependent on entry to the NRM.

e. Whilst s 8 (3)(c) is clearly retaining flexibility for the length of support provision dependant on individual need which is laudable and reflects current practice, we

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[http://www.scottish.parliament.uk/S3\\_EuropeanandExternalRelationsCommittee/General%20Documents/LetterfromTheLordAdvocate.pdf](http://www.scottish.parliament.uk/S3_EuropeanandExternalRelationsCommittee/General%20Documents/LetterfromTheLordAdvocate.pdf)

<http://www.copfs.gov.uk/component/content/article?id=886:heads-of-prosecution-services-meet-at-historic-human-trafficking-summit>

<sup>14</sup> Article 8 - <http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF](http://lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF)

<sup>15</sup> Article 17 - <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

would like to see this extend to the period before an individual consents to the NRM, again reflecting current practice. Therefore, we seek clarity to ensure that the ability to provide support as per s8 (4)(a to h), whilst a PVoT is **deciding** to consent to the NRM process or not, and while information continues to be gathered.

25. There should be a duty on public authorities to identify, assess and provide support to victims. Incorporation of such a duty into the bill would further ensure collective responsibility to proactively identify and support this group of vulnerable people.

26. Scotland's Guardianship Service has already evidenced the benefits of an independent Guardian<sup>16</sup>. We are of the view that this would be further enhanced with statutory powers, for example a duty to refer to the service could be considered. The Guardianship service currently in place in Scotland is not too dissimilar to that provided for in Northern Ireland<sup>17</sup>. Including a Child Guardianship provision in this Scottish Bill will therefore only be bringing existing policy into legislation, and thus have no cost implications. It will also ensure consistency across the devolved administrations.

27. We are of the view that clear entitlement to all of the above rights and protections will encourage VoTs to seek justice and improve the number of successful prosecutions within Scotland.

## **Part Five – Strategy and Reporting**

### **Duty to cooperate on strategy**

28. We would like to see the *meaningful* involvement and participation of Civil Society and VoTs during any future consultation process to develop and/or revise any strategy reflected preferably within the bill or provided in any guidance around such a strategy.

### **Duty to notify and provide information about victims**

29. We are keen to see that this mandatory duty includes not only information regarding the VoT but, if available, information about the perpetrators of this crime.

## **Miscellaneous Recommendations**

### **Anti Slavery Commissioner**

30. There are a number of concerns regarding the apparently limited remit of the Commissioner to focus on law enforcement. Please refer to the ATMG briefing on the Anti Slavery Commissioner for further details<sup>18</sup>.

31. We recommend that the bill contains explicit reference to the role of UK Anti Slavery Commissioner as it pertains to Scotland and places clear legal obligations and duties on the office to represent Scottish interests in all aspects of that role as appropriate.

<sup>16</sup> [http://www.scottishrefugeecouncil.org.uk/assets/0000/6798/Final\\_Report\\_2108.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/6798/Final_Report_2108.pdf)

<sup>17</sup> Part 3 – clause 21 - <http://www.legislation.gov.uk/niu/2015/2/contents/enacted>

<sup>18</sup>

[http://www.antislavery.org/includes/documents/cm\\_docs/2014/a/atmg\\_hol\\_2r\\_briefing\\_antislavery\\_commissioner.pdf](http://www.antislavery.org/includes/documents/cm_docs/2014/a/atmg_hol_2r_briefing_antislavery_commissioner.pdf)

## Prevention

**32.** TARA notes that there is no provision within the bill which reflects our obligations to **Prevent**<sup>19</sup> human trafficking. There is arguably provision to prevent re victimisation but no reflection of our duty to prevent the issue in the first instance. We consider it important that we reflect our international obligations alongside our national and local obligations.

**33.** Whilst Transparency in Supply Chains is a reserved matter and is legislated for in Part 6 of the Modern Slavery Bill<sup>20</sup> we believe it is important that this is reflected within the Scottish Bill.

**34.** Community Safety Glasgow, Glasgow City Council, the Glasgow Violence Against Women Partnership and a significant number of NGOs and other Local Authority led partnerships across Scotland are keen to explore measures to specifically tackle the demand for sexual services across Scotland which leads to the trafficking and sexual exploitation of women from across the world, including Scottish women.

**35.** The Scottish Government's strategy on tackling Violence Against Women, Equally Safe<sup>21</sup>, includes commercial sexual exploitation and trafficking within the definition of Violence Against Women.

**36.** Reflecting this definition we recommend robust action is taken to tackle demand by considering the creation of the offence of paying for sex in any setting, decriminalising the sellers of sex and providing for support to assist vulnerable adults to exit prostitution and find alternatives.

**37.** Given the recent legislation in Northern Ireland<sup>22</sup>, the recommendation from the Republic of Ireland's Oireachtas<sup>23</sup> to a similar legislative approach, and the recommendation from the Westminster APPG on Prostitution<sup>24</sup> for the UK Government to adopt a similar 'sex buyer' law, an equally robust approach is required for Scotland. We cannot risk the displacement of this crime to Scotland and for Scotland to be viewed as a 'soft touch' for the criminals profiting from this crime through the significant sexual exploitation of women.

**38.** We would welcome the opportunity to provide the Committee with specific and detailed evidence on this key issue but in principle we support and recommend that the Committee refers to the submission by UK Feminista<sup>25</sup> on this proposal.

## Conclusion

**39.** This is an opportunity for Scotland to produce legislation that is viewed as a template for good law across the world. The values of the Scottish Parliament and

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<sup>19</sup> Article 8 - [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF)

<sup>20</sup> [http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/lbill\\_2014-20150069\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/lbill_2014-20150069_en_1.htm)

<sup>21</sup> <http://www.gov.scot/Resource/0045/00454152.pdf>

<sup>22</sup> <http://www.legislation.gov.uk/ni/2015/2/contents/enacted>

<sup>23</sup> <http://www.oireachtas.ie/parliament/media/committees/justice/1.Part-1-final.pdf>

<sup>24</sup> <http://appgprostitution.files.wordpress.com/2014/04/shifting-the-burden1.pdf>

<sup>25</sup> [http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/HTE1.\\_UK\\_Feminista.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/HTE1._UK_Feminista.pdf)

people to creating a fair and just society can ultimately be reflected in a comprehensive and considered Act of Parliament which works in the best interests of the women, men and children trafficked and exploited into and within Scotland by promoting access to social justice, human rights and protection.

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