

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

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1. Prof. Christina Boswell, Dr Angus Bancroft and Dr Sarah Kyambi at the School of Social and Political Science, University of Edinburgh, are researchers on a major EU project exploring European policy measures to address the demand in trafficking (DemandAT).¹

2. We welcome the opportunity to feed into the Scottish Parliament Justice Committee's consultation on this Bill.

3. While responses to trafficking have traditionally focused on combating the criminal networks involved in trafficking or protecting the rights of victims, European countries are increasingly exploring ways of influencing demand for the goods and services produced using the labour of trafficked persons, as well as, the demand for trafficked persons themselves. The DemandAT project aims to understand the role of demand in trafficking in human beings and assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

4. Our submission will not directly address most of the questions listed in the call for evidence. Our research does not study the technicalities or impact of particular trafficking offences and their associated penalties. Neither does our research examine the impacts of specific provisions for the protection and support of victims of human trafficking. Therefore, it would be inappropriate for us to comment on those particular provisions of the Bill.

5. Instead, this submission seeks to bring the Committee's attention to: (i) the need to frame law and policy on trafficking in human beings to address demand-side issues as well as the supply side, and, (ii) the need for smarter enforcement strategies alongside punitive measures to combat trafficking. We hope that our evidence will prove useful to the Justice Committee in assessing the overall approach of the Bill to addressing the problem of trafficking and exploitation of human beings in Scotland. We also believe that this evidence will be helpful in framing the issues to be considered under any duty to be placed on Scottish Ministers 'to prepare, publish and regularly review and update a trafficking and exploitation strategy'.

¹ The DemandAT project is co-ordinated by the International Centre for Migration Policy Development, Vienna. The other project partners are the University of Bremen, the International La Strada Association, the University of Lund, the University of Durham, the European University Institute, the Geneva Centre for the Democratic Control of Armed Forces and La Strada Czech Republic. The project runs from 1 January 2014 to June 2017. It is funded by the European Commission (DG research), 7th Framework Programme (EC Contribution 2.5 million).

6. Approaches to trafficking in human beings have tended to prioritise tackling the supply-side of trafficking such as addressing the factors that make people vulnerable to trafficking and exploitation, and tackling the networks that traffic people. However, the need to address demand-side factors driving trafficking in human beings has gained prominence over the past decade.² Indeed, the need to tackle those factors driving the demand for trafficked persons and the goods and services they provide was already referenced in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 9, para. 5 states: “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage *the demand* that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” (our italics)

7. The need to discourage demand in trafficking is also found within the European instruments against trafficking. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings includes measures to discourage the demand that leads to trafficking under Article 6. This is taken up within the EU Directive 2011/36/EU as ‘measures to discourage and reduce the demand that fosters all forms of exploitation’ at Preamble, para. 25 and Art. 18, para. 1. The EU Directive also states: “In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation...” at Art.18, para 4.

8. Within the context of forced labour, demand arguments emerge as part of the international debates in the 2000s. In 2002 the ILO Special Programme of Action to Combat Forced Labour was established. This programme saw ‘unsatisfied demand’ for labour as a driver of trafficking: “If demand for certain kinds of labour in diverse sectors of the economy is not matched by available labour supply, either nationally or regionally in Europe or through orderly migration, then there is a real risk that the bottlenecks may create the preconditions for a further rise in trafficking within Europe itself.”³ However, despite an increased focus on demand driving forced labour, demand related arguments were not included in the 2014 Protocol to the Forced Labour Convention beyond a general reference to ‘root causes’.

9. Discussion and understanding of the role of demand in human trafficking remain dogged by a lack of clarity and rigour and a need for further research.⁴ However, there is value in considering the demand-side of trafficking and exploitation alongside the supply side. A comprehensive anti-trafficking approach should include measures that tackle both the demand side and supply side of trafficking. This involves measures tackling direct demand for people who have been trafficked and measures tackling indirect demand for the goods and services produced by trafficked

² Marshall, Phil: 2012, *Addressing the Demand Side of Trafficking*

³ Plant, Roger (2002) ‘Forced Labour, Migration and Trafficking’ in *Labour Education*

⁴ See further: Gallagher, Anne T. (2010) *The International Law of Human Trafficking*; Lederer, Laura: 2012, *Ending Demand: An Annotated List of Books, Articles, Organizations, and Projects Addressing the Demand Side of Human Trafficking*

people as well as measures tackling the supply of persons vulnerable to trafficking and the networks that facilitate trafficking.

10. Measures that address demand in trafficking in human beings include: (i) improving labour standards to prevent demand for cheap labour expressing itself as demand for exploited labour (ii) improving supply chain analysis to allow consumer demand for cheap goods and services to express itself as demand for cheap goods and services that are nonetheless exploitation free. Addressing demand in trafficking does not necessarily mean criminalising demand for goods and services in sectors where trafficking is more common, although this is a viewpoint frequently promoted by groups seeking the criminalisation of demand for commercial sex. Addressing demand in the context of combating trafficking requires approaches that examine how that demand operates and enquires how law and policy can intervene in such demand to eliminate exploitation.

11. Research conducted at the University of Edinburgh within the DemandAT project has focused on the efforts of policymakers to steer demand for illegal and/or harmful goods and services in other policy areas. The purpose of this is to consider transferable policy lessons for tackling demand in the context of human trafficking and exploitation. Case studies investigated efforts to steer demand for tobacco, heroin and irregular employment.

12. The research classified policy interventions using a typology of: 'command and control' interventions, economic incentives and competition, peer pressure or moral suasion, and design-related interventions. While all interventions relied on penalties to aid enforcement at some point, the case studies investigated how drawing on economic incentives, peer pressure or design could increase compliance beyond the straight-forward application of penalties. For example, the plain packaging of tobacco and public smoking bans were investigated as examples of design-related policies reducing demand for tobacco by changing the look of the product or the context in which the product is consumed. In the case of the latter it is striking that demand reduction effects occurred without this being the main aim of the policy intervention.

13. Our most pertinent findings derive from the study of efforts to steer employers away from exploitative employment practices. The research highlights the need for 'smarter', more strategic enforcement approaches that change employer behaviour in ways that are more systemic and sustainable.⁵ Enforcement efforts struggle with the limited ability of agencies to inspect workplaces with sufficient frequency to act as an effective deterrent.⁶ The case study discussed methods for improving employer compliance with labour laws through better targeting of inspections, building inspections into supply chains, multiplying deterrence effects by using media and industry knowledge. These 'smarter' enforcement strategies utilise elements of peer pressure, design and economic incentives to align employer preferences and behaviour with the policy objective of reducing exploitative practices. For example, using 'hot goods' remedies in the garment industry made use of the changed

⁵ Weil, David (May 2010) *Improving Workplace Conditions Through Strategic Enforcement: A report to the wage and hour division*

⁶ SRA (January 2008) *Reducing Recidivism: Evaluation of Goals, Measures and Compliance Tools and Options for Improvement*

business model in this sector in ways that made retailers anxious to use suppliers that would not fall foul of inspections.⁷ Using smarter enforcement techniques increased compliance with labour laws. On this basis of this we suggest that legislators and policymakers consider the enforceability of the proposed Bill and work towards creating smarter laws as well as stricter laws.

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⁷ Weil, David, Carlos Mallo and Amanda Pyles. 2003. *Final Report on Regulatory Performance in the Garment Industry*.