

## Justice Committee

### Human Trafficking and Exploitation (Scotland) Bill

#### Dundee Violence Against Women Partnership

Dundee Violence Against Women Partnership welcomes the opportunity to provide comment on the Human Trafficking and Exploitation (Scotland) Bill.

#### 1. Part 1 Offences

1.1 The Bill refers to 'travel' which is not included in the Council Of Europe/EU Directive<sup>1</sup> definition as follows:

*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*

Referring to 'travel' could lead to a misunderstanding of Human Trafficking whereby the reader may think (wrongly) that Human Trafficking only involves crossing international borders. Internal trafficking from towns and cities and within towns and cities still constitutes human trafficking. Human Trafficking involves Act, Means and Purpose. The means (as detailed above), which are a crucial aspect of the trafficking process appear to be missing from the Bill.

The Protocol definition of trafficking does not require proof of movement of the victim across borders or otherwise. Trafficking is just as much trafficking even when it occurs in the victim's own home village, town or city - *global concern rightly attaches to the violation of fundamental human rights in both local and international trafficking, and this has been reflected in the growing recognition that domestic trafficking is as serious a human rights violation as international trafficking*<sup>2</sup>. [integration of the human rights of women and a gender perspective , sigma huda united nations e/cn.4/2006/62](#)

1.2 Defining 'child' as per Council of Europe/EU Directive definition should be clearly stated: 'a child' shall mean any person below 18 years of age.

1.3 The issue of internal trafficking of UK nationals (and non UK nationals) and links with Child Sexual Exploitation requires to be recognised and highlighted.

1.4 We would suggest that the interpretation and implementation of the protocol/Human Trafficking (Scotland) Bill should be in line with the [Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in](#)

<sup>1</sup> EU Directive 2011/36/EU

<sup>2</sup> [INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND A GENDER PERSPECTIVE , Sigma Huda United Nations E/CN.4/2006/62](#)

[persons, especially women and children](#) which states *Unlike the purchaser of consumer goods produced through trafficked labour, the prostitute-user is simultaneously both the demand-creator and (by virtue of his receipt of the trafficked person) part of the trafficking chain.*

## 2. Part 2 Protection of Victims

2.1 We would suggest that any support for the victims of human trafficking should take account of the [Trafficking Survivor Care Standards](#)

2.3 A significant number of potential victims did not engage with the National Referral Mechanism<sup>3</sup> and the Aire Centre states that ‘care must be taken to ensure that the implementation of Article 11 of the EU Directive, which sets out the assistance and support which must be provided to a victim of trafficking, is not dependent on an NRM referral<sup>4</sup>.

If the potential victim of Human Trafficking does not consent to referral into the NRM – it is important that the Scottish Government, TARA, Migrant Help are in a position to provide short and longer term emergency funding to cover accommodation and support.

2.4 The situation in relation to EEA Nationals is complex and requires further exploration.

The outcome of the NRM process (negative conclusive decision, positive conclusive decision) and the follow on from the 45 day recovery and reflection period is complex. It appears to be the ‘conclusive decision with resident permit/leave to remain’ which appears to then entitle (under UK legislation) a victim of human trafficking to further benefits and support. However, EEA Nationals who are given a ‘conclusive decision’ will not necessarily have ‘resident permit/leave to remain attached to it as the UK Government view *‘the presumption is EEA Nationals can either remain in the UK exercising treaty rights or return home safely<sup>5</sup>’* According to the [AIRE Centre](#), many EEA National trafficking victims face destitution because they cannot access social assistance benefits<sup>6</sup>. The issue of EEA Nationals has proved to be a complex issue in relation to benefits/entitlements and requires to be clarified.

## 3 Part 4 Trafficking and Exploitation Prevention

3.1 The EU Directive includes the additional definition of vulnerability as ‘*A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.*’ Work requires to be undertaken to ensure all services are fully aware of this additional definition.

<sup>3</sup>65% of the total number of potential victims of trafficking appear not to have been recorded on the NRM. Page 6 <http://www.nationalcrimeagency.gov.uk/publications/15-ukhtc-strategic-assessment-on-human-trafficking-in-2012/file>

<sup>4</sup> Monitoring Report on the Implementation by the UK of EU Directive 2011/36 on preventing and combating trafficking in human beings. July 2012

<sup>5</sup> UK Contribution to Ad-Hoc Query on EEA Citizens as victims of trafficking. April 2013

<sup>6</sup> Victims of trafficking and The Law: Issues of Identification, Adam Weiss, AIRE Centre

3.2 **Reducing Demand** – this appears to be missing from the Human Trafficking (Scotland) Bill. The DVAWP works with the Scottish Government/COSLA definition of VAWG which includes Commercial Sexual Exploitation (prostitution, pornography, lap dancing) and Human Trafficking for the purpose of Commercial Sexual Exploitation.

DVAWP strategy position statement states: *DVAWP believe that pornography and lap dancing (along with prostitution) are forms of commercial sexual exploitation which are harmful to the women involved. Evidence exists of clear links between pornography, lap dancing and on/off street prostitution. Available evidence clearly shows overwhelmingly women and children are the victims of trafficking, with the majority being trafficked for the purpose of sexual exploitation. Demand for prostitution (and other forms of sexual exploitation) therefore encourages a supply of trafficked women (both from within and out with the UK).*

*DVAWP support the view that men buying sex from women working in prostitution are doing so by exercising free choice. Without demand from men, women working in prostitution would not be exposed to this exploitative and harmful activity. The Partnership therefore believes that any interventions should focus on reducing demand from men whilst also supporting women to reduce harm to themselves and to work towards exiting prostitution.* The DVAWP position is in line with the [EU Directive 2011/36](#) and the [Scottish Government Equally Safe strategy](#).

3.3 In 2013 the European Parliament<sup>7</sup> voted to adopt the “Nordic Model” and recommended that the buyer – the man who buys sex – is deemed the guilty party rather than the female prostitute. It concluded that viewing prostitution as simply “work” helps to keep women in prostitution. Viewing prostitution as a violation of women’s human rights helps keep women out of prostitution.

3.4 In March 2014, the UK All Party Parliamentary Group on Prostitution & The Global Sex Trade<sup>8</sup> recommended consolidating legislation in a single Act with the following clear principles underpinning it:

- i. The burden of criminality should weigh heaviest on those who purchase sex – who create demand – and not on those who provide sexual services.
- ii. Given the harm experienced by women involved in prostitution, it is entirely legitimate to seek to reduce instances of the sale of sexual services.
- iii. The law should help, not hinder, the efforts of those who wish to exit prostitution.
- iv. Prostitution is incompatible with attempts to tackle gender inequality, and inconsistent with measures to tackle human trafficking

3.5 The European Commission is due to submit a report to the European Parliament in 2015 assessing the extent to which the Member States have taken the necessary measures to comply with the EU Directive 2011/36 which includes work undertaken in relation to:

Prevention, Article 18

<sup>7</sup> Sexual Exploitation and prostitution and its impact on gender equality, M Honeyball (2013/2013(INI))

<sup>8</sup> Shifting The Burden, All Party Parliamentary Group on Prostitution & The Global Sex Trade, March 2014

18(1) Member states shall take appropriated measures, such as education and training to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

18(4) In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand. 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 as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

#### 4 Part 5 Strategy and Reporting

4.1 Placing a statutory duty on Scottish Ministers to publish a strategy within a set time period and giving statutory responsibility to relevant agencies to work with the Scottish Government to develop and implement a Scottish strategy is welcome.

4.2 It is important to link across National policy/strategy areas for example; the [Scottish National Action Plan on Human Rights \(SNAP\)](#) specifically mentions Human Trafficking. Human Trafficking for Commercial Sexual Exploitation is recognised as a violation of human rights and a form of violence against women and girls<sup>9</sup>. The Scottish strategy **Equally Safe, Preventing and Eradicating Violence Against Women and Girls** (Scottish Government/COSLA 2014) states the intention to *work with partners to reduce the demand for commercial sexual exploitation (CSE)*. This is in line with the [EU Directive 2011/36](#)(Articles 18 and 19) which outlines the measures which should be undertaken to **prevent** human trafficking. There does not appear to be any reference to this aspect of prevention within the Bill.

#### 4.3 Duty to co-operate on strategy

The national strategy should take account of and reflect all aspects and forms of human trafficking. Mechanisms for addressing and accommodating challenges should be agreed at the outset. Regular communication and reporting mechanisms should be supported and established from the outset.

4.5 **Awareness Raising and Training** - Awareness raising, training resources and training are required for all front-line staff who are likely to come into contact with potential victims of human trafficking.

Dundee Violence Against Women Partnership  
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<sup>9</sup> Safer Lives, Changed Lives – Scottish Government/COSLA 2009