

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from the Scottish Women's Convention

Introduction

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy.

The SWC uses the views of women to respond to Scottish and UK Government consultation papers.

SWC Evidence Source

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to Human Trafficking in Scotland.

Purpose of the Consultation

The overarching policy objectives of the Bill are to consolidate and strengthen the existing criminal law against human trafficking and the offence relating to slavery, servitude and forced or compulsory labour and enhance the status of and support for victims. The Bill would:

- create a single offence of human trafficking for all forms of exploitation for adults and children;
- strengthen the current slavery, servitude and forced labour offence by allowing the court to consider, in assessing whether a person has been a victim of an offence, the victim's characteristics such as age, physical or mental illness, disability or family relationships. The maximum penalty would be increased from 14 years to life imprisonment;
- establish statutory aggravations (a) to any criminal offence where it can be proved that the offence had a connection with a human trafficking background, and (b) where a human trafficking offence has been committed by a public official while acting, or purporting to act, in the course of the official's duties;
- place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking victims who have committed offences;
- place a duty on the Scottish Ministers to secure the provision of relevant immediate support and recovery services for adult victims of trafficking;
- categorise all trafficking and exploitation offences as lifestyle offences in order to automatically trigger the confiscation procedures in the Proceeds of Crime Act 2002;
- establish trafficking and exploitation prevention orders and risk orders;

- place a duty on the Scottish Ministers to prepare, publish and regularly review and update a trafficking and exploitation strategy to be laid before the Parliament; and
- place a duty on public bodies to provide anonymised data about potential human trafficking and exploitation victims to Police Scotland.

The SWC wholeheartedly agrees with the aims and summary objectives of the proposed Bill. Rightfully described as ‘modern day slavery’, the trafficking of men, women and children is one of the most heinous and abhorrent crimes in the world. Human trafficking is borne out of a demand for exploitable labour. Victims are extremely vulnerable, more often than not living in poverty in their own countries. They are frequently discriminated against, suffer low self esteem and many have substance misuse issues, mental health issues, and in some cases learning disabilities. As sexual exploitation is the most common purpose of human trafficking, it stands to reason that the majority of victims are women.

AIMS AND SUMMARY OBJECTIVES OF THE BILL

Clarify and strengthen the law against traffickers and those who exploit individuals

- Creating a single offence of Human Trafficking (HT) for all types of exploitation of both adults and children
- Establishing statutory aggravators of HT for other crimes
- Reframing the current standalone exploitation offence relating to slavery, servitude, and forced or compulsory labour.

Proposals to strengthen the law are welcomed, and the introduction of a single criminal offence is vital in ensuring that those who engage in human trafficking and exploitation are brought to justice. At present, the legislation is described as “*piecemeal and confusing*”, with little clarification as to where definitions lie within Scots law. The current approach is one of the main reasons why prosecutions are not as high as they should be. Punishments for those who commit offences relating to human trafficking are also not as strong as they will be under a single criminal offence, which would reflect the severity of the nature of the crime. By securing more convictions under improved legislation, Scotland could be seen as a ‘leading light’ in the fight against this abhorrent form of modern day slavery.

Introduce new measures to disrupt and prevent trafficking and those who exploit others

- Powers to issue new types of preventative order and associated interim orders to assist in preventing trafficking and exploitation activity and the harm to potential victims;
- Providing for the detention of property of a person arrested on suspicion of a Human Trafficking offence; and
- Placing a duty on public authorities to provide anonymised data about potential Human Trafficking victims and exploitation to Police Scotland.

The issuing of orders is similar to the approach taken under the Domestic Abuse (Scotland) Act 2011 orders available in domestic abuse cases. This reinforces the idea that the Scottish Government takes Violence against Women and Girls (VAWG) seriously, and trafficking for the purposes of sexual exploitation is an extremely severe form of VAWG. The introduction of civil protection orders, which will come with heavy penalties for any breaches, will mean that vulnerable people, women in particular, will be protected. This type of civil protection adds another layer to the multiple ways in which the Scottish Government intend to tackle human trafficking and exploitation through the proposed Bill.

Ensure the rights of trafficking victims to support and assistance

- Placing a duty on the Scottish Ministers to secure the provision of relevant immediate support and recovery services for victims of trafficking

Services which support victims are absolutely vital. Unfortunately, at the moment, they are very limited and are always subject to potential cuts to funding and therefore resources. Placing a duty on the Scottish Ministers to secure support, and enshrining this requirement in legislation, would be extremely beneficial.

Firstly, it would go some way to removing any insecurities with regards to funding. It is also hoped that the support would be available in more parts of the country than it is at present. The main support service (TARA) has limited reach, only available in Glasgow. However trafficking occurs throughout Scotland, particularly as this is a coastal nation and people are often brought in through ports, or are trafficked from within the UK. As well as punishing those who perpetrate these terrible crimes, it is so important that victims are supported to recover from what has happened to them.

Ensure a strategic, cross-agency approach to tackling trafficking and exploitation

- Placing a duty on Scottish Ministers (SMs) to engage with relevant stakeholders to develop and publish a trafficking and exploitation strategy
- Placing a duty on specific public authorities to co-operate with the SMs in preparing the strategy

A dedicated Strategy, which protects and assists victims as well as embedding into Scottish life the importance of raising awareness and tackling the issue, should be at the heart of any proposals. One of the most important aspects of the strategy would be raising awareness amongst communities and key professional sectors. There is a real lack of knowledge amongst ordinary people around the issue, particularly the violence, coercion and control experienced by victims on a daily basis that happens in homes and workplaces across the country.

“There is confusion amongst the public – those who are aware of human trafficking often think it only relates to women brought into big cities for the purposes of prostitution. They don’t realize that these illegal and immoral acts happen in both urban and rural areas, and that people are trafficked for a variety of reasons.”

It is also vital that during the development of a dedicated strategy, the agencies who work closest with victims of trafficking, as well as victims themselves, are consulted in its development. The strategy must recognise that the majority of victims are trafficked for commercial sexual exploitation and this must be reflected in any efforts made to tackle trafficking and exploitation.

SPECIFIC PROPOSALS

Creation of a single offence of human trafficking for all forms of exploitation for adults and children

The criminalisation of any person who arranges or facilitates the travel of another person for the purpose of their exploitation is a very positive step. The broad definition of travel and exploitation is also important. Firstly, it will deal with the levels of deceit and ways in which perpetrators find new ways to exploit victims. It will also hopefully close any potential loopholes which have meant, up to this point, that perpetrators have avoided being brought to justice.

It is positive that the single human trafficking offence would carry a mandatory life sentence; however it is likely that this will often mean 14 years or less. It is vital that not only is the sentence given out but that the tariff reflects the severity of the crime. Strong sentencing will act as a deterrent to traffickers.

Revised slavery, servitude and forced labour offences

Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 criminalises holding a person in slavery/servitude or requiring a person to perform compulsory/forced labour. The proposed Bill will repeal s.47 and replace it with strengthened provisions. Courts will be able to consider, in assessing whether a person has been a victim of an offence, matters such as their age, physical/mental illness, disability and family relationships (where relevant).

The SWC welcomes this change, particularly because of the background of many of the women who are trafficked for commercial sexual exploitation. Victims of trafficking all have one thing in common. They are all extremely vulnerable. These people, more often than not, live in poverty. They are frequently discriminated against, suffer low self-esteem and many have substance misuse issues, mental health issues, and in some cases learning disabilities. Traffickers prey on vulnerability with the promise of a 'better life' in another. Victims of child trafficking are even more vulnerable. Some are stolen from their families, some are willingly handed over by parents desperate to do anything they can so their child have the best start in life, and others simply have no families to be taken from, often as a result of conflict or natural disaster. By taking the characteristics outlined above into account, it is hoped that more victims will be identified and afforded support and assistance rather than punishment.

Establish statutory aggravations of Human Trafficking

This proposal is also welcomed. The introduction of a statutory aggravator, whereby human trafficking forms the backdrop to the main offence (such as, for example, offences relating to immigration) shows that the Scottish Government takes the prosecution of all crimes related to human trafficking very seriously. It also demonstrates the Scottish Government's commitment to ensuring that, even where it will not be possible to secure a conviction for human trafficking itself, when there is any connection this will be taken into account and sentencing will be heavier. It is hoped that the statutory aggravator will mean a rise in conviction rates for offences related to human trafficking, which means improved access to justice for victims.

Place a duty on the Lord Advocate about the prosecution of credible trafficking victims who have committed offences

This is a really important step. At present, there are more women in Scotland in prison for offences committed as a result of their trafficked situation than there are people convicted of human trafficking related offences. This is fundamentally wrong. Enshrining in statute the need for the Lord Advocate to produce guidance, which at the moment is done on a voluntary basis, will ensure that victims – the majority of whom are women – will be given support and assistance instead of custodial sentences.

The SWC fully supports the proposal to provide for non-prosecution and non-application of penalties to victims of human trafficking for criminal acts committed as a direct consequence of their trafficked predicament. The women who are currently serving sentences require support and assistance as a result of being trafficked. They should be treated solely as victims and not as criminals.

It will be necessary to ensure that the relevant agencies which come into contact with victims – for example the police, social work, solicitors and the judiciary – are given adequate training. They must be provided with the basic tools to be able to recognise when a person has been trafficked, in order to handle such a situation appropriately. Any training and support should highlight the particular needs of trafficked women.

Place a duty on Scottish Ministers to secure the provision of relevant immediate support and recovery services for the victims of trafficking

This proposal is one of the most important aspects of the Bill. It shows not only that the Scottish Government is committed to securing more prosecutions and making Scotland an unwelcome place for traffickers, but also that the women whose lives have been blighted by exploitation, rape and other forms of abuse are valued, and that they deserve to be given the support and assistance necessary to move on from their ordeal.

Establish a Scottish National Referral Mechanism (NRM)

The SWC supports the proposal for an Identification, Referral and Assistance, and Monitoring Service for Survivors of Human Trafficking. Weaknesses in the National Referral Mechanism (NRM), as well as the lack of a co-ordinated national response to trafficking, means that survivors are not receiving the support they need.

The Convention on the Elimination of Discrimination against Women (CEDAW) states at Article 6:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

The CEDAW Examining Committee, in its scrutiny of the UK Government’s 7th Periodic Report in July 2013, noted the lack of a comprehensive national framework on trafficking and the need for this to be addressed. The Committee also heard that the NRM has alleged weaknesses, particularly with regards to the identification of victims and the lack of support provided to them. Recommendations included the adoption of a national comprehensive framework and an identification of any weaknesses in the NRM.

At present, the NRM is not functioning properly and is failing to adequately support victims. A ‘Survivors Service’ would provide a comprehensive approach across Scotland, ensuring that the needs of victims are fully taken into account once they leave their trafficked situation. The introduction of statutory minimum Standards for the Assistance and Recovery of Survivors of Human Trafficking (the ‘Survivors Standards’) are also welcomed.

As part of this proposal, adequate resources and training for the Survivor’s Service must be provided. This will ensure that survivors are given the support they need in order to recover from what has happened to them. The Service should draw on best practice, considering the policies and practices of services which currently work with victims of trafficking, such as the TARA project. Survivors themselves must also be consulted and their experiences used to build the Service.

All services, training and resources must respect and support the needs of women.

Scottish Women’s Convention
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