

Organised Immigration Crime Team

Specialist Crime 2
Home Office
5th Floor Fry Building
2 Marsham Street
London SW1 4DP

27 March 2006

Anti-Slavery International's views on Tackling Human Trafficking -- Consultation on proposals for a UK action plan

Introduction

Since 2000, significant progress has been made against trafficking in human beings, most notably in relation to awareness raising and through the introduction of domestic legislation which makes trafficking for both sexual exploitation and labour exploitation criminal offences with a maximum penalty of 14 years in prison (in the *Sexual Offences Act 2003* and the *Asylum and Immigration Act 2004*, respectively). Consequently the UK has ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the UN *Convention against Transnational Organized Crime*.¹

The Consultative Group on Trafficking, established at the end of 2005 and jointly chaired by the Under Secretary of State for the Home Office and the Solicitor General, is a good forum for information sharing. It also provides the opportunity to build on other positive examples of inter-agency co-operation in relation to trafficking, such as Counter Trafficking Steering Group and the liaison that took place in West Sussex in the late 1990s between social services, police and immigration.

Anti-Slavery International welcomes the consultation process on the proposals for a UK Action Plan on trafficking in human beings as such a plan provides the opportunity to outline a comprehensive response to the problem of trafficking in human beings with concrete activities and outcomes which will be achieved within a specific timeframe.

Q1 Trafficking is not just organised immigration crime²

There is a structural weakness throughout the plan in that there is an assumption that all trafficking can be tackled as an organised immigration crime. This is not the case as people are trafficked through regular migration channels. For example, cases of nurses, agricultural workers and migrant domestic workers have all been documented in which the individuals entered with the correct visas, but were then subjected to forced labour, most commonly through the removal of their documents and/or debt bondage. Similarly, there are many trafficked people who come from EU states or have EU passports (e.g. Lithuanians in sexual exploitation, Victoria Climbié, or indeed UK nationals).

Responses to trafficking must be through a broader prism than organised immigration crime otherwise many trafficked people will not be identified and assisted. A framework that focuses on the exploitative outcomes of trafficking (which is the purpose of trafficking, as defined in Article 3 of the Palermo Protocol) would be more comprehensive and effective as it would incorporate all aspects of trafficking, regardless of whether they are the result of organised immigration crime, internal trafficking or criminal activities of individual traffickers.

Q2+Q3+Q4 Trafficking for forced labour

There is a lack of good quality information on trafficking for labour exploitation in the UK. One of the aims of the plan is to "increase our knowledge and understanding of trafficking, in particular trafficking for the purposes of labour exploitation. Despite correctly identifying this information gap, there is no commitment to undertake research in this area (organised immigration crime and the off street prostitution market are the only research areas foreseen by the consultation paper).

However, the available information indicates that this is a significant problem in various industries. ECPAT UK's report *Cause for Concern? London Social Services and child trafficking* (2004), documents the details of 35 cases of child trafficking in 17 London boroughs. Approximately half of these children were trafficked for domestic work, benefit fraud, restaurant work and involvement in illegal activities.

A report prepared by COMPAS and the TUC, *Forced Labour and Migration in the UK* (2005), clearly indicates that forced labour of migrant workers, using threats, coercion and debt bondage, takes place in agriculture, catering, building, packing and processing and other industries.

Research carried out by Anti-Slavery International in 2005-06, documented more than two dozen cases of individuals who were victims of trafficking for forced labour in the UK. In addition to this, a recently published article referring to an audit into gangmasters supplying casual labour for the food and farming industry, revealed a significant number of cases involving bonded or forced labour.

Specific research should be undertaken as part of the Action Plan on trafficking for labour exploitation and child trafficking.

There also appears to be much less engagement on trafficking for labour exploitation than there is on trafficking for sexual exploitation, particularly in terms of awareness and media coverage of the problem. While both trafficking offences came into force in 2004, there have been 14 successful convictions for trafficking for sexual exploitation, but no cases have been brought in relation to trafficking for labour exploitation.

The very limited knowledge about the scope of trafficking reflects the lack of co-ordinated national data collection. There is a need for centralised and systematic data collection and analysis that would ensure the collection of information from all relevant actors working in the area of people trafficking and the exploitation of migrant workers. This is the practice in many other EU countries and the annual report of the Dutch National Rapporteur on Trafficking in Human Beings would be a good model for the UK to adopt.³

Q5 Prevention needs to be carried out at several levels, embedded in a comprehensive co-operative framework

Information provision and awareness raising are important short-term and primary prevention methods, particularly in the countries of origin of (potential) trafficked people.

Secondary and tertiary levels of prevention are especially relevant for the destination countries from a medium and long-term perspective. Such prevention measures need to include a referral mechanism that provides support and assistance measures and helps to prevent re-trafficking. It is also essential that awareness raising initiatives are accompanied by programmes that provide information on regular migration opportunities and what migrant workers' rights and responsibilities are when they are in the UK. Information cards with basic information and numbers for assistance could be distributed to potential migrants. Programmes which offer greater protection of migrants' rights and more opportunities for regular migration could reduce the likelihood of people resorting to traffickers.

Prevention measures which only focus on publicising prosecutions of traffickers and highlighting the risks of trafficking are not likely to have a significant impact as there will always be people who know and understand the risks, but are willing to take a chance or feel they have no alternative.

Prevention of trafficking must not be confused with measures to combat smuggling and illegal immigration in general. The consultation paper highlights projects to prevent trafficking through awareness raising initiatives in Bangladesh, India, Afghanistan, Nepal and Pakistan (page nine). This is worrying given the fact that these countries are not considered to be the major source countries for trafficking to the UK at present. On the other hand, there is no mention of African countries as countries of origin despite the fact there have been a number of cases of trafficking of women from countries such as Nigeria and Cameroon as well as child trafficking. There are also allegations that Africans have been trafficked for labour exploitation.

Providing alternatives to individuals, including in country of origin, should be a key part of any programme to prevent trafficking. There should be specific policies to encourage the regular migration of unskilled labour and the new points based immigration scheme should be reviewed specifically to assess its possible impact on trafficking, particularly measures which could increase the vulnerability of would-be migrants.

Migrant workers should be entitled to the protections outlined in the 1990 United Nations *Convention on the Protection of the Rights of All Migrant workers and their Families* and should be informed of their rights and how to access support in the country of destination. These are key issues with respect to prevention of trafficking for labour exploitation.

Q7

There is a definitional deficiency in this question. It is necessary to clearly define what form of demand is to be tackled. There is the demand for sexual services that is in some instances met through the trafficking of women and children. There is also a demand for cheap labour (and cheap goods in the second instance), which creates demand for vulnerable and exploitable labour force that in some instances is met through trafficking.

Awareness raising campaigns among clients of prostitutes which inform them about the human rights violations involved in trafficking and encourages them to help women who have been forced into prostitution have been carried out in several countries, including Germany and Switzerland. The evaluation of these initiatives has shown that campaigns that are based on the concerns and questions of the (potential) clients (for example using hotlines for clients of prostitutes and men seeking general information) can be successful in conveying this message and providing assistance, as the clients of prostitutes are one of the few groups that are in direct contact with trafficked people.

Addressing the demand for cheap and unprotected labour is pivotal in tackling the trafficking of people for labour exploitation. Initiatives which increase opportunities for regular labour migration and the enforcement of labour standards need to be implemented.

In enforcing labour standards the Government should ensure the promotion of the rights of all workers irrespective of whether they are indigenous, regular or irregular migrant workers. In creating migration opportunities it is important that the structure does not exclude certain categories of migrant, limit their rights or make them vulnerable to exploitation by creating a dependence of workers on their employers (e.g. through visa and work permits tied to one employer).

Q8

The Action Plan indicates an intention to "do some work on scoping the issue of child trafficking into the UK" and notes that the available evidence shows that "there is little, if any, demand for trafficked minors for the purposes of prostitution".

This assessment contradicts the available evidence. Just under half of the 35 cases of child trafficking identified in 17 London boroughs in ECPAT UK's 2004 research were trafficked for sexual exploitation. Small numbers of minors have also been identified by the police and indeed one of the successful prosecutions using the new trafficking for sexual exploitation related to a man who had trafficked a minor into prostitution in the UK.

Q9

Law enforcement has, to date, focused on trafficking for sexual exploitation, as reflected in the fact that there have been no prosecutions for trafficking for labour exploitation.

The new offence of knowingly employing an illegal migrant worker seems to be aimed at immigration rather than trafficking. If employers are seeking to exploit trafficked or irregular migrants they are likely to be breaking a series of other laws (minimum wage, health and safety regulations, etc.) and this offence is unlikely to deter them, particularly given the ineffective nature of existing legislation which compels employers to check that an individual has a right to work in the UK.

A review as to why legislation has not been used to prosecute individuals for trafficking for labour exploitation should be carried out in order to identify the reasons and remedy this problem.

Q10+11

Successful prosecution in relation to trafficking offences should be a performance indicator for law enforcement. Awareness-raising and training initiatives should highlight the exploitation outcomes of trafficking and should make a clear distinction between trafficking and human smuggling. Specific attention should be given to awareness-raising among the immigration service with respect to the identification and treatment of trafficked persons.

Focusing solely on organised immigration crime in relation to trafficking can have a negative impact on anti-trafficking initiatives by:

- Criminalising those involved in immigration offences rather than punishing traffickers. For example, through the immediate deportation or detention of persons that "do not state that they were trafficked" without allowing time for proper identification etc.)
- Failing to identify trafficked people who are EU-nationals. For example, by "releasing" women from EU states after raids without ensuring proper identification and referral to assistance.
- Failing to identify trafficking cases that do not constitute "organised crime".

Q12 Services for persons trafficked for labour exploitation

There is a complete absence of protection and support facilities available to people trafficked for labour exploitation. The title of the Citizens Advice Bureau report on the exploitation of migrant workers, *Nowhere to turn*, reflects the lack of support services for people trafficked for labour exploitation. The need to address support provisions are dealt with in more detail below. Despite the fact that trafficking for labour exploitation and trafficking for sexual exploitation are seen as equally grave offences in legislative terms, the treatment of the victim differs greatly depending on the type of exploitation they have been subjected to. Those trafficked into sexual exploitation are considered victims and provided with advice, support and assistance, whereas those trafficked into labour exploitation are seen as immigrants who should be removed immediately.

In this context, Anti-Slavery International is very concerned at the proposal in the plan to use the Joint Workplace Enforcement Pilot to identify the exploitation of illegal migrant labour and "then deliver effective enforcement action." Such action is not in the interests of the migrant or the police and runs contrary to existing experience and international standards on how to effectively counter trafficking.

The *Gangmasters (Licensing) Act 2004*, which establishes a system for registering labour providers in the agricultural, shellfish gathering and associated packing and processing sectors, should help to reduce exploitation and forced labour in these industries. The first licences are due to be issued in April 2006. Although the original scheme of businesses covered by the Act has been broadened, it is necessary to consider extending the scheme to industries with similar (mal)practices in place, such as hospitality, construction etc.

The introduction of a points based immigration system with its focus on skilled migrants, does appear likely to increase the risks of trafficking as the opportunities for regular migration are more limited. For example, if we consider the implications for migrant domestic workers. The NGO Kalayaan, which works with migrant domestic workers found that, between 2001 and July 2003, 49 per cent of domestic workers registered with the NGO had their documents taken by their employers (511 people). The removal of documents and debt bondage are key mechanisms by which employers coerce people to continue working against their will.

Under the new rules migrant domestic workers will only be given six month visas and they will be tied to one employer. This means they will not be able to leave their employers even if they are abusive, and reverses changes to the current practice which had removed the link between the granting of a work permit and a requirement to stay with a single employer in the UK (which has internationally been referred to as an example of a good practice). This proposal constitutes a considerable step backwards and is likely to encourage exploitation and trafficking.

Migrant workers should be entitled to the protections outlined in the 1990 United Nations *Convention on the Protection of the Rights of All Migrant workers and their Families* and should be informed of their rights and how to access support in the country of destination.

Services for persons trafficked for sexual exploitation

The consultation document notes that the Government is committed to looking at criteria, capacity and location of existing support services and will select a provider for the April 2006 - March 2008 period.

This is welcome as between March 2003 and January 2005, the Poppy Project had 411 referrals - some 140 a year, many of whom were not given full access to the project because they didn't meet the criteria or because it was full (in 2004 they turned away over 30 women who otherwise met the criteria for entry into the project).

We would like to see specific commitments in the action plan to remove the current requirement that women have to have been prostituted in the UK in the last 30 days. This requirement does not reflect the reality of the trafficking environment. Trafficked women who have been or are about to be subjected to any form of sexual exploitation should be allowed access to support and assistance.

There is a need for additional places for the existing project, but it is absolutely essential that specialised accommodation and assistance should be available to men, women or children trafficked into labour as well as sexual exploitation. Furthermore, there is an urgent need to raise awareness among the Social Services in relation to the identification and referral of trafficked persons and about the basic precautions that need to be taken in cases of child trafficking.

We support the proposal to build in outreach and long term support for trafficked people into the plan (creation of a national referral mechanism). This should include supporting and accompanying trafficked people throughout the judicial process and assisting them in getting compensation. This currently does not happen, probably due to the overlap between criminal and immigration areas of law and the difficulty of following up cases when the individuals do not have regularised immigration status.

Anti-Slavery International is also concerned that procedures for providing trafficked people with long term protection do not seem to be working effectively. At the end of 2004, none of the trafficked people assisted by the Poppy Project who had been given a final decision were granted refugee status or humanitarian protection on their initial application, but six of the 11 who have had final decisions obtained protection on appeal.

Q15

The Government has raised concerns around reflection periods and residency permits. So far, there is no evidence from countries like Netherlands and Belgium, that have been operating reflection periods for several years, to suggest that they would act as "pull" factor to the UK. Twenty five European countries have signed the Council of Europe Convention on Action against Trafficking in Human Beings, including: Albania, Austria, Belgium, Croatia, Georgia, Germany, Greece, Italy, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Serbia and Montenegro, Sweden and Ukraine, hence committing themselves to provide all identified trafficked persons with a minimum reflection period of 30 days (there are countries, such as Italy, Belgium and the Netherlands that offer a longer reflection period to trafficked persons).

Furthermore, only the UK, Ireland and Denmark have not signed up to the EU Directive which sets out the criteria for issuing a residence permit to victims of trafficking and also offers them a reflection period.

The evidence from other countries is that such systems are effective. Officials in Italy reported that issuing residence permits on the basis of risk and not making them conditional on co-operation in a prosecution, has assisted in securing convictions of traffickers. In the five years to June 2001, over 7,500 individuals were investigated, charged or sentenced for trafficking related offences. The UK's experience is not dissimilar as police have been assisted in 11 court cases by trafficked people supported by the Poppy Project.

Q16+17

Proper identification of victims and the provision of adequate assistance and protection are crucial in order to prevent re-trafficking and enable their sustainable integration or re-integration.

Identification is a process that takes time. As soon as the competent authorities consider that there are reasonable grounds to believe that a person is trafficked, they should not remove the person from the territory of the receiving states. It is also essential that they are then given access to assistance and support. Furthermore, the identification process needs to be carried out independently of criminal proceedings.

A pro-active approach by the relevant bodies (police, NGOs, social services etc.) in carrying out the identification is of utmost importance. It is unlikely that a trafficked person would identify herself or himself as a victim for various reasons (not knowing that they have been trafficked, fear, and mistrust of the authorities, etc.). Repeatedly, victims have not been referred to specialized services or offered assistance because they have not stated that they had been trafficked. Failure to identify and refer victims to assistance is one of the contributory factors to re-trafficking.

Despite the development of the Home Office Toolkit and improved awareness of trafficking amongst officials, NGOs and the general public, the identification and protection procedures are still inadequate for those adults and children trafficked into sexual exploitation and non-existent for those trafficked into labour exploitation.

This was highlighted when a massage parlour was raided in Birmingham on 29 September 2005 and the police arrested 19 women. Those with irregular immigration status were sent to Yarlswood detention centre pending deportation, but two were later identified as trafficked people and admitted to the Poppy project. Those women with EU passports were released immediately after the raid, but did not have access to any specialised assistance or advice.

The identification of trafficked people and their referral for support is the responsibility of all agencies and individuals. It cannot be assumed that trafficked people will simply identify themselves as such to the authorities. A representative from a support provider should interview people who may have been trafficked and provide them with information separately from the police, as happens in Germany, Austria, Netherlands, Czech Republic, etc.

Identification and referral mechanisms could be improved through further training. For example, Anti-Slavery International and the Police Academy in the Netherlands have developed a training manual for the Identification and Assistance of Trafficked Persons.

Granting of a reflection period to trafficked people is essential as it allows time for the individual to adjust and make informed decisions, but also because it provides the opportunity to carry out a thorough risk-assessment before returning victims to their countries of origin. Risk assessment should consider a number of factors, including the risk of reprisal from the traffickers against the individual or their families; social exclusion and discrimination; the involvement of family members in the trafficking of the person (this is particularly important when returning unaccompanied minors to their families); and the availability of adequate support services in the country of origin. Furthermore, every trafficked person who is returned should be referred to a local support organisations or, if they prefer given contacts details for such an organisation.

Q18

Research into trafficking for labour exploitation is required as is the provision of specialised support and assistance. The needs of people trafficked for labour exploitation have to be properly assessed taking into account the particular circumstances of the individual involved, including whether they have been trafficked into isolated settings (e.g. care workers, domestic workers), group settings (e.g. agriculture, construction) or semi-isolated settings (e.g. cleaning outside of regular office hours). Their circumstances will be of key importance in determining effective mechanisms for identification and outreach.

Other countries have already started to identify the needs of people trafficked into labour exploitation and indicate that they have a broader set of needs because of the variety of different settings in which they find themselves.

The Action Plan does need to directly address the Council of Europe Convention on trafficking

The Council of Europe Convention provides a comprehensive framework for safeguarding the human rights of trafficked people based on current good practice. Its ratification would help to resolve the gaps that currently exist in protecting and supporting trafficked people in the UK. The Convention covers both transnational and internal trafficking and has a number of important measures, including the following:

Article 5: Covers prevention measures, including enabling migration to take place legally, social and economic initiatives targeted at the vulnerable and promoting a human rights based approach to counter trafficking policies;

Article 10: Identifying trafficked people via training of appropriate staff and ensuring that, where there is reasonable grounds to believe someone have been trafficked, they are not removed until a full identification process has been undertaken.

Article 12-15: Contain minimum standards for the protection of the rights of trafficked persons (including a reflection period of 30 days, assistance to trafficked people, residency permits, child protection components, non-discrimination clauses, compensation provisions, etc.). Assistance should not be made conditional on their willingness to act as a witness.

Article 20: Criminalising the retention, removal, concealing or destroying documents for the purpose of trafficking a person.

Article 36: Establishes an independent body of experts (GRETA) to monitor the implementation of the treaty by those states that have ratified it.

Summary of Recommendations

- Responses to trafficking must be through a broader prism than organised immigration crime otherwise many trafficked people will not be identified and assisted.
- The Government should sign the Council of Europe Convention on trafficking and timetable a list of activities into the Action Plan that would allow the UK to ratify it.
- The criteria for entry into existing or new support facilities should be amended as outlined in this paper and additional places funded so all women who have been trafficked for the purposes of sexual exploitation can access the project.
- Specific research should be undertaken as part of the Action Plan on trafficking for labour exploitation and child trafficking.
- Those trafficked into labour exploitation should be provided with similar assistance and support to those trafficked into sexual exploitation. Specialised assistance should be available to children who have been trafficked and best interests of the child applied when considering their long term future.
- A review as to why legislation has not been used to prosecute individuals for trafficking for labour exploitation should be carried out in order identify the reasons and remedy this problem.
- Exclusions to the Gangmasters (Licensing) Act must be kept to a minimum. The operation of the scheme should be reviewed after a year to monitor its effectiveness and consider whether it should be expanded to cover other industries.
- The proposals in relation to domestic workers reverse changes made over the last 10 years to protect this category of migrant from exploitation and the evidence suggests that the measures will encourage an increase in forced and exploitative labour in this sector.
- Prevention of trafficking and the identification of trafficked persons must not be confused with measures to combat smuggling and illegal immigration in general.
- Providing alternatives to individuals, including in country of origin, should be a key part of any programme to prevent trafficking. There should be specific policies to encourage the regular migration of unskilled labour and the new points based immigration scheme should be reviewed specifically to assess its possible impact on trafficking.
- Migrant workers should be entitled to the protections outlined in the 1990 United Nations *Convention on the Protection of the Rights of All Migrant workers and their Families* and should be informed of their rights and how to access support in the country of destination.

¹ Hereinafter referred to as the Palermo Protocol.

² For a full list of these questions see page 22 of the Home Office report *Tackling Human Trafficking -- Consultation on proposals for a UK action plan*

³ The Council of the European Union Resolution 2003/C 260/3 invites the member states to: "promote measures to set up a monitoring system on trafficking in human beings in order to provide updated data through the continuous and regular collection of information from the competent National Authorities such as National Bureaux and National Rapporteurs". The Resolution builds upon the Hague Declaration of 26 April 1997 that invited the states to explore possibilities of appointment of National Rapporteurs on Trafficking in Women. Note: The following organisations expressed their agreement and endorsed this submission: Liberty, 21 Tabard Street, London; Safe Exit, Toynbee Hall, 28 Commercial Street, London