



Company Registration No: NI. 36868
Inland Revenue Charity No: XR 11970

Submission to the Public Prosecution Service Consultation on Prosecuting Cases of Human Trafficking

August 2012

1. Introduction

NICEM is an independent non-governmental organisation working to promote equality and human rights and to eradicate racism and discrimination in our society. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.²

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

2. Using relevant Human Rights and Equality Standards as a Baseline for the Policy

NICEM welcomes the fact that the observance of international human rights standards is recognised in the aims of the Public Prosecution Service (PPS). Moreover, as a designated public authority, the PPS is under an obligation to promote equality of opportunity and good relations under section 75 of the Northern Ireland Act 1998.

In addressing human trafficking, the PPS must fulfil the obligations set out in the following international instruments: the United Nations Convention against Transnational Organised Crime (Trafficking Protocol)³ and the Council of Europe Convention on Action against Trafficking in Human Beings⁴. The use of these instruments in defining human trafficking in the draft policy is to be welcomed. However, it is regrettable that there is very little reference to these instruments in the rest of the policy document and it is suggested that the document is reviewed and these standards are inserted where appropriate as they provide useful guidance and mainstreaming in such a policy document will ensure that the PPS is upholding its duties,

In addition, Northern Ireland must incorporate the provisions of the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims⁵ into domestic legislation. Furthermore, the EU Directive on Victim's Rights, which is due to be finalised in late 2012/early 2013, will be particularly relevant for this policy and it is recommended that the PPS incorporate the key tenets of that Directive into this policy.

¹ Currently we have 28 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

³ A/RES/55/25 (2001).

⁴ CETS No. 197 (2005).

⁵ L 101/1, 15.4.2011.

In general terms, all of the international instruments propose to do three things in relation to combatting human trafficking: prevention, prosecution and protection of victims. The recently published EU Strategy on Human Trafficking⁶ follows this trend. The strategy has also identified protecting and assisting victims and increased prosecution of traffickers as two of its key priorities.

In this consultation response NICEM will also focus on these two key areas as in order to combat human trafficking it is necessary to both support and protect victims on the one hand and equip law enforcement officials with the relevant skills and an appropriate legislative framework to deal with the specific nature of this crime on the other hand. Victims of human trafficking are in an extremely vulnerable position and are often some of the most marginalised in society. Therefore, the rights of victims should be considered first and foremost in the formulation of policy on this issue and this is a key priority for NICEM.

3. Rights of Victims of Human Trafficking

Victims are referred to throughout the policy and there is a particular focus on victims in sections 6-10 and section 14. It is essential that the PPS adopts a victim-centred approach throughout this policy given the vulnerability of victims. It is also essential that every possible measure is taken to avoid unnecessary repetition of the story so that this does not lead to repeat victimisation.

In addition, the emphasis is placed on keeping the victim informed of and involved in the prosecution process. It is essential that at every point of contact the victim's needs are taken into account in terms of information being provided in an accessible format and in a language the victim understands. Moreover, interpreters or translators used by the PPS should be specially trained so that they are aware of the indicators of human trafficking. This is particularly important so that the victim will feel safe to give evidence and will have confidence that the information will be presented to the officials accurately.

3.1. Non-prosecution or non-penalisation of the victim

As is acknowledged in the draft policy, it is often difficult for victims to report incidents of human trafficking given the potential for criminal proceedings to be brought against the victim. It is necessary to provide safeguards for the victim so that the perpetrators of human trafficking can be prosecuted. It is stated on page 17 of the draft policy that the PPS cannot offer blanket immunity from prosecution for trafficked victims due to the Justice (Northern Ireland) Act 2002. Non-prosecution has been pursued in a number of other jurisdictions, such as the USA, and should be considered by the PPS.

However, if the necessary change in the law does not take place, which would provide the opportunity not to prosecute, the PPS should consider other options as if the public interest test does not allow for the equal treatment of all victims. For example, Article 8 of the EU Directive on Human Trafficking provides for non-application of penalties to the victim, which is something the PPS should take into consideration.

3.2. Child victims

⁶ European Commission, *EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, COM(2012) 286 final, 19.6.2012.

In section 1 (introduction) it is acknowledged that child victims “will need extra support” and child victims are referred to throughout the draft policy. However, there is no specific section detailing the kind of support measures and inter-agency work that will take place. It is essential that all state agencies involved in the provision of such services act in a manner that is child-centred and child-friendly.

In section 6 (Victims and Witnesses) it is stated that all child victims will be considered to be in need of care and protection. It is imperative that any such care plan is devised with respect to the four overarching principles of the UN Convention on the Rights of the Child (CRC)⁷, particularly non-discrimination (Article 3). As it is likely that child victims of human trafficking in Northern Ireland will belong to an ethnic minority group, it is essential that state agencies, including frontline staff, working with child victims do not suffer further by experiencing discrimination.

In section 7 (prosecuting suspects who might be trafficked victims) it is mentioned that child victims may be investigated by the police for offences. Given the particular vulnerability of child victims, it is necessary that any engagement with the criminal justice system is conducted in a child-friendly manner.

4. Role of the PPS: Relevant Considerations

4.1 Prosecution decisions

Section 5 of the draft policy sets out the procedure an investigator within the PPS must follow when deciding whether or not to prosecute. This is quite a general overview which makes references to trafficking as an example of an offence.

It is submitted that this is not enough and investigators should be specially trained to recognise cases of human trafficking, even if the PSNI had not identified the incident as being such. Therefore, it is necessary for the PPS to develop a non-exclusive set of indicators to help investigators identify a particular situation as human trafficking.

In that regard, the indicators developed by the International Labour Organisation (ILO) and European Commission should be used as a guide.⁸ There are four sets of indicators namely, indicators of trafficking of adults for labour exploitation; indicators of trafficking of adults for sexual exploitation; indicators of trafficking of children for labour exploitation; indicators of trafficking of children for sexual exploitation. These indicators vary in strength, i.e. weak, medium and strong, and they cover a wide range of incidents such as deceptive or coercive recruitment and exploitation. NICEM strongly urges the PPS to consider these indicators in making a decision whether to prosecute for human trafficking or not.

4.2. Training of law enforcement officials

Training and quality assurance is referred to in section 21 of the draft policy but no details are provided as to what form this training might take. It is submitted that in the final policy

⁷ Namely non-discrimination (Article 2); best interests of the child (Article 3); the right to life, survival and development (Article 6) and the right of the child to be heard (Article 12).

⁸ ILO European Commission, *Operational indicators of trafficking in human beings*, March 2009 (rev. September 2009).

document a more extensive list of specific mandatory trainings should be provided to ensure that all staff have the skillset required to deal effectively prosecute human trafficking.

It is of the utmost importance that all staff, including frontline service staff, are properly trained in the area of human trafficking, particularly in relation to the indicators of trafficking and identifying victims. Moreover, staff should receive training on the relevant human rights standards applicable, referred to in section 2 above.

Staff should also receive anti-discrimination and equality training in order to ensure that they can deal appropriately with victims, as often victims will be from an ethnic minority background.

5. Further Information

For further information in relation to this consultation response please contact:

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