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Submission to the Northern Ireland Assembly Justice Committee on the Criminal Justice Bill 2012

August 2012

1. Introduction

NICEM is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination and where equality and human rights are guaranteed. 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.

This brief submission will only address the sections of the Bill that refer to human trafficking, commenting specifically on sections 5-6 of the Bill. This submission will comment on the extent to which the relevant sections of the Bill implement the EU Directive 2011/36/EU (hereafter 'the Directive').³

2. Section 5 of the Criminal Justice Bill 2012

This provision would insert a new section 58A into the Sexual Offences Act 2003 to create an offence where a person is trafficked for sexual exploitation into, within and out of countries outside the UK. In terms of the actions of an accused trafficker, Section 58A(1)(a) suggests 'arranges' or 'facilitates' will be enough to commit an offence. This is not in line with the language of the Directive and may be open to litigation and could be the subject of judicial interpretation. In order to ensure that the Northern Ireland legislative framework is in line with the EU Directive it is recommended that the words 'arranges or facilitates' is replaced with the following:

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

¹ Currently we have 27 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 EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA of 5 April 2011.

the consent of a person having control over another person, for the purpose of exploitation.⁴

In accordance with Article 3 of the Directive, it is recommended that a clause is included to extend this offence to persons who may incite, aid, abet or attempt to commit the offence.

Section 5(1)(3) of the Bill sets out the penalties for persons guilty of an offence but does not include penalties for legal persons, despite the fact they are covered by section 5(1)(2)(e) of the Bill. Article 6 of the Directive suggests sanctions for legal persons such as judicial winding-up and disqualification. It may be useful for the legislature to consider such options as the Bill should include sanctions against legal persons as well.

3. Section 6 of the Criminal Justice Bill 2012

Section 6 is quite similar to section 5 of the Bill and therefore the same recommendations apply to this section where relevant in order to ensure that national legislation reflects the language and intention of the Directive in order to ensure effective implementation as set out above.

In addition, section 6 refers to the notion of exploitation but it is not defined in the Bill as it stands. It is recommended that a definition be included to reflect Article 2(3) of the Directive:

Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

In that vein, the legislature should also take Article 2(4) of the Directive into consideration, which provides that the consent of the victim shall be irrelevant where exploitation has taken place.

4. Further necessary legislative steps to implement the Directive

The Directive includes a wide range of provisions relating to investigation and prosecution of traffickers, prevention of human trafficking and the protection of victim's rights as well as the provision of support, including compensation, to victims, particularly child victims. It is acknowledged that the Public Prosecution Service is currently consulting on a policy relating to prosecution guidelines and NICEM intends to submit to that process. However, in relation to prosecution it may be necessary to amend the legal framework as the Directive calls for the non-

⁴ Article 2(1) of the EU Directive 2011/36/EU.

prosecution of victims, which is currently not possible due to the Justice (Northern Ireland) Act 2002.

Moreover, the legislature should also bear in mind that Northern Ireland is legally bound by other international instruments in terms of its efforts to combat trafficking, i.e. the Council of Europe Convention on Action against Trafficking in Human Beings 2005⁵ and the Protocol to the United Nations Convention against Transnational Organised Crime⁶.

On the whole, while recent developments are to be welcomed, NICEM is concerned that a piecemeal approach to legislative reform in this area will undoubtedly lead to a complex and potentially weak legal framework which could make it more difficult for law enforcement officials and legal practitioners to combat human trafficking and protect and support the victims of this crime.

5. Further Information

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

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⁵ CETS No. 197 (2005).

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, A/RES/55/25 (2001).