

NICEM Briefing Paper:

Analysis of Current Responses to

Human Trafficking in Northern Ireland

Prepared by

Professor Tom Obokata

Keele University

Executive Summary

Human trafficking has become a serious contemporary problem. Although this practice has existed for a long time in history, it has captured the attention of the general public as well as policy makers in Northern Ireland only recently. Human trafficking is not merely a criminal offence; it is a gross violation of human rights of its victims. This means that any action against this act must be effective not only in prosecuting and punishing those responsible, but also in protecting the victims. Further, given that human trafficking is a global phenomenon, a consolidated response at national, regional and international levels is required. This is particularly true for Northern Ireland as it has to deal with trafficking to/from other parts of the United Kingdom as well as the Republic of Ireland.

There are three key regional and international instruments which are designed to facilitate such a concerted action against human trafficking. The first is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* adopted by the United Nations in 2000. It provides an internationally agreed definition of trafficking and establishes general obligations to prosecute and prevent trafficking and to protect victims. The United Kingdom ratified this instrument in February 2006 and is legally bound by it. Two more instruments are relevant to the United Kingdom and Northern Ireland: *Council of Europe Convention on Action against Trafficking in Human Beings 2005* and *EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims 2011*. These instruments are more human rights friendly as they have stronger provisions on the protection of victims of human trafficking. The United Kingdom ratified the Council of Europe Convention in December 2008. The Group of Experts on Action against Trafficking in Human Beings (GRETA) established under this Convention visited the United Kingdom and

Northern Ireland in October 2011 to monitor the implementation of this Convention, and is due to release an evaluation report in the summer 2012. In relation to the EU Directive, the United Kingdom has agreed to be bound by it, and it has until 6 April 2013 to implement various obligations contained therein.

Although the exact wording and the contents of provisions are not exactly the same, three key obligations can be identified from these European and international instruments: obligations to 1) prohibit/prosecute trafficking/traffickers, 2) protect victims, and 3) prevent trafficking. This briefing paper examines the extent to which these obligations are implemented in Northern Ireland. In relation to the first obligation to prohibit and prosecute trafficking, a good legislative framework, as represented by the Sexual Offences Act 2003 and Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, exists in Northern Ireland. The punishment regime (14 years' imprisonment) is better than other European counterparts and therefore it can be concluded that the legislative framework itself complies with the relevant international and regional standards. Nevertheless, the law enforcement practice raises some concerns. Of particular importance is the sentencing regime as the actual sentences handed down are much lower in practice. This is due to the confusing nature of the relevant guidelines issued by the Government, and there is a need to revise it so that traffickers receive appropriate punishment.

As to the second obligation to protect victims, there has been some improvement in Northern Ireland. The National Referral Mechanism (NRM) operates in this jurisdiction where designated first responders refer potential/actual victims to the Competent Authorities (CAs), which make initial/conclusive decision on their victim status. Victims are provided with an initial reflection period of 45 days to recover from their ordeals and the possibility of further assistance if they are willing

to co-operate with the relevant authorities by providing testimony or other evidence. Nevertheless, a number of problems are also evident. The current reflection period is not long enough for victims to recover, and attaching a condition for provision of support goes against the instruments such as the Council of Europe Convention and the EU Directive. It is also difficult to appeal against the decisions made by the CAs, and this is problematic from a point of view of accountability. A lack of adequate resources among the key service providers is also recognised, and the Northern Ireland Government must make more active use of confiscated criminal proceeds. Moreover, non-criminalisation of victims, who are forced to commit crimes, should be considered to extend sufficient protection.

Finally, in relation to the obligation to prevent trafficking, one of the most pressing issue facing Northern Ireland is addressing the demand for trafficked victims in sexual and labour services. Northern Ireland has a decent legislative framework to address the demand, ranging from the Sexual Offences (Northern Ireland) Order 2008 to the Coroners and Justice Act 2009. However, numerous legislative gaps, particularly relating to punishment, are recognised simultaneously. The sentences relating to hiring and exploiting illegal migrants in sex and other industries, for instance, are somewhat low and do not reflect the seriousness of the trafficking process. There are discrepancies in punishments between Northern Ireland and the rest of the United Kingdom. Further, the current licensing scheme for gangmasters under the Gangmasters (Licensing) Act 2004 is problematic as it does not apply to all relevant industries and business sectors. In summary, although Northern Ireland has come a long way in implementing various measures against human trafficking, their effectiveness can be called into question at the current moment.

Based on the analysis of responses to human trafficking currently being implemented in Northern Ireland, NICEM proposes nine key recommendations for a more effective and efficient framework:

1. There should be a single consolidated statute on human trafficking. The complex and piecemeal nature of the current legislative framework makes it difficult for the relevant stakeholders to understand what is expected of them in implementing action against human trafficking. A single statute can rectify this problem by providing coherence and clarity.
2. The current sentencing guidance on human trafficking should be revised to reflect the severity of this crime and the relevant regional and international standards on the adoption of “effective, proportionate and dissuasive” penalties.
3. Objective research and assessment of the current law enforcement practice must be conducted so that relevant authorities can clearly identify examples of good practice and areas of concern for further improvement.
4. More proactive participation of NGOs in the NRM should be facilitated in Northern Ireland. Some of them have good expertise and experience on human trafficking and are equally capable of identifying its victims properly.
5. The Northern Ireland Government must make more active use of confiscated criminal proceeds and should consider establishing a trust fund in order to provide much needed support to victims of human trafficking. Such support should not depend on certain conditions such as co-operation with the law enforcement authorities.

6. Provision of a reflection period and temporary residence permit, a right of appeal against CAs' decisions as well as non-criminalisation of victims should be incorporated into legislation in order to establish clear obligations and accountability.
7. In order to maximise the deterrence effect, the Northern Ireland Government should tighten up the punishment regime for those who actually exploit victims by increasing sentences for relevant offences and closing legislative gaps which exist in other parts of the United Kingdom.
8. Awareness-raising should be strengthened in order to prevent people in Northern Ireland from trafficking and exploiting vulnerable victims. In so doing, the Northern Ireland Government should consider innovative ways to reach out to the actual or potential traffickers and exploiters.
9. The Northern Ireland Government should appoint an independent anti-trafficking co-ordinator or rapporteur who could facilitate effective action against human trafficking by working closely with relevant stakeholders at the local, national and international levels.

Relevant International & Regional Standards

There are a few key regional and international standards that Northern Ireland must take into consideration in implementing action against human trafficking. The first is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* attached to the *United Nations Convention against Transnational Organised Crime*¹ (Trafficking Protocol). It provides a definition of the crime in Article 3,² and its key aims are to 1) prevent and combat trafficking; 2) protect and assist victims; and 3) promote international co-operation.³ While this legal instrument marks an important step forward for implementing effective action against the practice at the global level, it has been criticised mainly for the fact that it lacks a human rights perspective. This is evidenced in the weak nature of provisions relating to protection of victims.⁴

This lack of human rights considerations in the Trafficking Protocol was rectified when the Council of Europe adopted the *Convention on Action against Trafficking in Human Beings* in 2005⁵ (Council of Europe Convention). Unlike the Trafficking Protocol, this instrument recognises that the protection of victims and their human rights is the paramount objective in its Preamble. This is reflected further in provisions which establish concrete obligations on State Parties, including the United Kingdom, to adopt/implement measures ranging from proper identification of victims and protection of their private life to provision of medical assistance and

¹ A/RES/55/25 (2001).

² Trafficking is defined as “the recruitment, transportation, transfer, harbouring or receipt of 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.”

³ Article 2.

⁴ For instance, Article 6 obliges State Parties simply to “consider” and “endeavour to implement” measures for physical, psychological and social recovery of victims.

⁵ CETS No. 197 (2005).

temporary residence permits.⁶ These provisions are far more extensive than the Trafficking Protocol, and this is to be welcomed from a human rights perspective.

Finally, the *EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims*⁷ (EU Directive) is the most recent legal instrument on human trafficking applicable to the UK and Northern Ireland. Compared to the previous instrument, the Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings,⁸ the EU Directive is more human rights friendly. It has the provisions relating to protection of victims⁹ and makes it clear that assistance should not be conditional upon their willingness to co-operate with the law enforcement authorities.¹⁰ Non-prosecution of victims, who are forced to commit crimes such as immigration offences and drug trafficking, is also provided for.¹¹ This instrument complements Article 5(3) of the EU Charter of Fundamental Rights¹² which obliges States to prohibit trafficking.

Although the wording and the contents of provisions are not exactly identical, three key obligations can be identified from these European and international instruments: obligations to 1) prohibit/prosecute trafficking/traffickers, 2) protect victims, and 3) prevent trafficking. These obligations have also been identified as the key priorities in the recently adopted *EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-2016*.¹³ The United Kingdom and Northern Ireland therefore must observe and implement these obligations through legislative

⁶ Chapter III.

⁷ OJ L 101/1, 15 April 2011.

⁸ OJ L 201/1, 1 August 2002.

⁹ Articles 11-17.

¹⁰ Article 11(3).

¹¹ Article 8.

¹² OJ C 364/1, 18 December 2000.

¹³ COM(2012) 286 final, 19 June 2012.

and other means. What follows is an analysis of the extent to which this has been done to date.

Prosecution of Trafficking and Related Offences

There are several laws that are relevant to the trafficking of human beings in Northern Ireland. The most important are the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 which criminalise trafficking for sexual and labour exploitation respectively.¹⁴ These offences carry a maximum of 14 years' imprisonment. The sentence is somewhat higher than other European counterparts,¹⁵ and therefore it may be stated that the United Kingdom and Northern Ireland generally comply with their obligation to prohibit trafficking. These two statutes were recently amended by the Protection of Freedoms Act 2012. Internal trafficking (e.g. trafficking of victims from London to Belfast) is now established as a criminal offence in England and Wales and the nationality principle is firmly established.¹⁶ This is relevant where a British national carries out trafficking outside the United Kingdom. While these changes have been made to implement the EU Directive noted above,¹⁷ they have no legal effect in Northern Ireland due to devolution of criminal justice matters. In order to rectify this, the Department of Justice Northern Ireland issued a consultation document on amending the relevant

¹⁴ Sections 57-60 of the 2003 Act and Section 4 of the 2004 Act as amended.

¹⁵ For example, the maximum penalty in Finland, Germany, the Netherlands and Sweden is 10 years' imprisonment.

¹⁶ Sections 109 and 110.

¹⁷ Article 10 in particular.

statutes in April 2012,¹⁸ and a Criminal Justice Bill introduced in June contains similar provisions as the Protection of Freedoms Act 2012.

Although the current legislative framework may be regarded as sufficient, its enforcement displays some concerns. To begin with, there have only been a small number of prosecutions and convictions in Northern Ireland.¹⁹ Between January 2007 and June 2012, the Public Prosecution Service (PPS) received 14 cases on human trafficking and related offences involving 27 suspects.²⁰ Of these, prosecution decisions were made in 10 cases (21 suspects).²¹ This may be compared with approximately 600 prosecutions in England and Wales during the same period.²² What is more, there have only been two convictions for trafficking offences to date in Northern Ireland,²³ compared to 49 convictions in England and Wales between 2009 and 2011.²⁴ This lack of prosecution and conviction is due to a number of reasons. It may be that there are a fewer instances of trafficking in Northern Ireland compared to the rest of the United Kingdom. The clandestine and sophisticated nature of trafficking operations also makes it difficult to detect and investigate the cases of human trafficking. In addition, unwillingness of trafficked victims to assist the law enforcement authorities also undermines effective prosecution as they are not able to obtain useful information or evidence. This is further exacerbated by measures such as deportation and repatriation facilitated by the UK Border Agency. Further, some concerns were expressed in relation to the

¹⁸ Department of Justice Northern Ireland, *Amendments to the Sexual Offences Act 2003 & the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 In Order to Comply with the EU Directive 2011/36/EU on Preventing and Combating Trafficking and Protecting Its Victims* (April 2012).

¹⁹ Northern Ireland Assembly, *Human Trafficking in Northern Ireland (Research and Information Service Research Paper)* (June 2012), p. 27.

²⁰ Information provided by the Public Prosecution Service at the meeting held by the Northern Ireland Assembly All Party Group on Human Trafficking on 12 June 2012.

²¹ *Ibid.*

²² Home Office, *Report on the Internal Review of Human Trafficking Legislation* (May 2012), p. 8.

²³ *Matyas Pis*, [2012] NICC 14; and *Chen and Others*, [2012] NICC 26.

²⁴ Home Office, *supra*, p. 9.

level of expertise and training on human trafficking among the concerned agencies.²⁵ There is therefore scope for improvement in the law enforcement practice.

Another pressing issue facing Northern Ireland is sentencing. The recent case of *Matyas Pis*²⁶ is a case in point. He was found guilty of trafficking two women from Dublin to Belfast for the purpose of sexual exploitation and received 3 years' imprisonment for trafficking offences. The court's decision was based upon the Sentencing Guideline on Sexual Offences Act 2003 issued by the Sentencing Guidelines Council in 2007.²⁷ It provides that a starting point for sentencing in relation to trafficking carried out with coercion of victims is 6 years' imprisonment, whereas 2 years' imprisonment is regarded as such for the act done without such an element.²⁸ Finding that there was no coercion and active control of two victims involved in the present case, the court concluded that 3 years was appropriate. Nevertheless, the actual time to be spent in prison was set as 18 months (followed by 18 months on licence). While it is understandable that matters such as a guilty plea, the defendant's previous good character and no risk of reoffending were taken into consideration, a question should be raised as to whether such a sentence can serve as effective deterrence in practice.

There are a number of problems and ambiguities in the 2007 Guideline itself. For instance, the starting points for trafficking with/without coercion are not arguably appropriate, particularly because traffickers transport victims with a clear intention to exploit them or have full knowledge that they will be exploited by others.²⁹ It is also the case that there is no clear guidance as to the nature and extent of coercion.

²⁵ Northern Ireland Assembly, *supra*, p. 28.

²⁶ *Supra*.

²⁷ Sexual Offences Act 2003: Definitive Guideline (2007).

²⁸ Part 6D.

²⁹ See the definitions of trafficking provided under the 2003 and 2004 Acts.

Despite the 6 year starting point, the Guideline also states that a sentence can range from 4 to 9 years, creating further confusion as to what form(s) coercion should attract sentences higher or lower than the 6 year threshold. In addition, the Guideline does not explicitly recognise the involvement of criminal groups/gangs in trafficking as an aggravating factor. This is problematic as their involvement makes the crime more sophisticated and dangerous and increases the vulnerability of victims. Further, there is no mention of corruption by public officials as an aggravating factor. This does not meet the requirement set by Article 4(3) of the EU Directive. Some of these and other ambiguities were recently recognised by Justice Stephen of the Northern Ireland Crown Court in *Chen and Others*,³⁰ highlighting difficulties faced by the judiciary in determining appropriate sentences for trafficking offences. It is therefore apparent that there is an acute need to revise the current Guideline so that it reflects the severity of the offence and the relevant regional and international standards which oblige the United Kingdom and Northern Ireland to adopt “effective, proportionate and dissuasive” penalties.³¹

In Northern Ireland, the Director of the Public Prosecution Service can refer cases involving unduly lenient sentences to the Court of Appeal for its review within 28 days under Part IV of the Criminal Justice Act 1988 as amended by Section 41 of the Justice (Northern Ireland) Act 2002. The Criminal Justice Act 1988 (Review of Sentencing) Order 2006 has extended the range of offences to which the 1988 Act applies, including human trafficking under the Sexual Offences Act 2003. However, trafficking for labour exploitation under the Asylum and Immigration (Treatment of

³⁰ *Supra*.

³¹ See for instance, Article 4(4) of the EU Directive.

Claimants, etc.) Act 2004 is not included.³² It has recently been confirmed that the United Kingdom and Northern Ireland Governments will rectify this anomaly in the near future,³³ and this is to be welcomed.

In analysing the Northern Ireland's obligation to prosecute and punish trafficking, it is also important to stress that the concerned authorities need to work closely with their counterparts in the Republic of Ireland. The case of *Matyas Pis* noted above amply demonstrates that trafficking happens not only within Northern Ireland, but also across the border to/from the Republic. This means firstly that the legislative framework should be aligned as closely as possible between the two jurisdictions to facilitate effective cross-border co-operation. This however, is not the case in practice. The relevant legislation in the Republic is the Criminal Law (Anti-Trafficking) Act 2008. Compared to the UK/Ni legislation, this Act provides a clearer and more detailed definition of human trafficking in line with the relevant regional and international standards. One of the unique aspects of this definition is the inclusion of "provision of accommodation and employment" as part of the trafficking definition, in addition to the recruitment, transfer or harbouring.³⁴ However, different understanding of trafficking can hamper proper identification of the crime and its victims as well as implementation of measures such as the European Arrest/Evidence Warrants. Another important aspect is the punishment regime. Trafficking carries a maximum of life imprisonment in the Republic,³⁵ compared to 14 years in the United Kingdom and Northern Ireland as noted above. The problem here is that the same conduct can entail different punishments depending on where a trafficker is arrested and prosecuted, and this raises some concerns from a human

³² Public Prosecution Service for Northern Ireland, *Policy for Prosecuting Cases of Human Trafficking* (June 2012), p. 36

³³ Home Office, *supra*, p. 11.

³⁴ Section 1.

³⁵ Sections 3 and 4.

rights perspective. All of these require a higher level of co-operation and communication among the law enforcement authorities and judiciary in both jurisdictions.

Recommendations:

1. There should be a **single, consolidated statute on human trafficking**. The complex and piecemeal nature of anti-trafficking laws in the United Kingdom and Northern Ireland is undermining the action against human trafficking as it is difficult for all of those concerns to understand various obligations imposed upon them. A single statute will remedy this problem as it will provide clarity and coherence and serves as good guidance for the relevant stakeholders. Other common law jurisdictions including Ghana,³⁶ Ireland,³⁷ Jamaica,³⁸ Malaysia,³⁹ Pakistan,⁴⁰ and the United States of America⁴¹ enacted specific legislation on human trafficking, and Northern Ireland should follow suit.

2. **The current Sentencing Guideline on human trafficking should be revised.** It is not at all clear and creates confusions among judges. Lenient and inappropriate sentences will not act as strong deterrence and this will undermine the ongoing effort to prevent trafficking.

3. **Objective research and assessment of the current law enforcement practice** should be conducted by the Criminal Justice Inspection Northern Ireland established

³⁶ Human Trafficking Act 2005.

³⁷ 2008 Act, *supra*.

³⁸ Trafficking in Persons Act 2007.

³⁹ Anti-Trafficking in Persons Act 2007.

⁴⁰ Prevention and Control of Human Trafficking Ordinance 2002.

⁴¹ 2000 Act, *supra*.

under the Criminal Justice (Northern Ireland) Act 2002 in order to identify examples of good practice and areas of concern for further improvement. This body can also facilitate better co-ordination among the relevant statutory, voluntary and community organisations.

Protection of Victims

The next key obligation is the protection of victims. Given the gross violation of human rights many victims experience during the course of their journey and upon arrival in destination through sexual and labour exploitation, the United Kingdom as well as Northern Ireland must provide sufficient protection. The first obligation relates to proper identification of victims, which is a starting point for providing protection.⁴² In 2009, the National Referral Mechanism (NRM) was introduced to meet this obligation stipulated under Article 10 of the Council of Europe Convention. In order to take advantage of the NRM, so called first responders⁴³ have to refer a victim to the Competent Authorities (CAs), which consist of the UK Human Trafficking Centre and the UK Border Agency. Upon referral, these CAs⁴⁴ have 5 days to decide whether there are reasonable grounds to believe that the individual referred is a victim of trafficking. If a positive decision is made, then the victim can receive initial assistance such as safe accommodation and a recovery period of 45 days. During this period, the CAs will issue conclusive decisions as to whether individuals are indeed trafficked victims. If these victims are willing to co-operate

⁴² O [2008] EWCA Crim 2835.

⁴³ They include the local authorities, the police, UK Human Trafficking Centre, and civil society organisations such as the Poppy Project, Migrant Helpline and Kalayaan.

⁴⁴ Currently there are 120 trained staff who take part in the NRM. HC Deb, 23 May 2012, vol. 545, col. 674W.

with the law enforcement authorities, they can be granted a temporary residence permit of up to 12 months in the first instance.⁴⁵

Although there is no doubt that some progress has been made to facilitate proper identification of victims, the current system is still inadequate. It is commendable that some NGOs are designated as first responders. However, their involvement in the NRM is somewhat limited in Northern Ireland. Migrant Help, which deals with trafficking for labour exploitation, is recognised as one of the first responders, but other key organisations such as the Women's Federation Northern Ireland are not. In addition, while the recovery period of 45 days is longer than what is provided for under the Council of Europe Convention,⁴⁶ it is rather unrealistic to expect the victims of trafficking, who have potentially suffered from gross violations of human rights, to recover from their ordeals very quickly. Other EU Member States such as Italy provides for a 3 month initial period, and this has been recommended by various stakeholders, including the UK Parliamentary Joint Committee on Human Rights.⁴⁷ Further, conducting interviews with the victims for conclusive determination during the reflection period is inappropriate as they have to recount their experience and this can add further distress and trauma. Also, there is no formal process of appeal or review of the decisions made by the CAs.⁴⁸ Although the victims can challenge their decisions through judicial review, this is often lengthy and expensive. It should also be noted that judicial review relates to the conduct of the CAs and is not designed to re-examine the merits of each case.⁴⁹ This can put

⁴⁵ Serious Organised Crime Agency at <<http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>> (Last visited 24 July 2012).

⁴⁶ A minimum of 30 days under Article 13.

⁴⁷ Joint Committee on Human Rights, *Human Trafficking: Twenty-Sixth Report of Session 2005-2006*, para. 203.

⁴⁸ Ant-Trafficking Monitoring Group, *Wrong Kind of Victim?* (June 2010), pp. 41-42.

⁴⁹ *Ibid.*, p. 42.

the victims at a more disadvantaged position if the facts or individual circumstances are misinterpreted, for instance.

Finally, provision of support based on the willingness of victims to co-operate is problematic from a human rights perspective and not in line with the Council of Europe Convention⁵⁰ and the EU Directive.⁵¹ In a recent case *In the Matter of an Application by W for Judicial Review*, the High Court of Northern Ireland, in citing *Rantsev v Cyprus and Russia*⁵² before the European Court of Human Rights, affirmed that:

A breach of the obligation to protect victims of trafficking will arise if:

- a) The State was aware or ought to have been aware of circumstances giving rise to a credible suspicion of that an individual had been, or was at a real and immediate risk of being, trafficked; and
- b) The authorities fail to take appropriate measures within the scope of their powers to remove an individual from that situation or risk.⁵³

By attaching the co-operation as a condition for protection, the United Kingdom and Northern Ireland may be breaching this obligation as they are not necessarily removing the risk from the victims.

In terms of specific assistance and protection measures provided to victims, there are three main organisations which provide direct assistance: Women's Aid Federation Northern Ireland (for female victims), Migrant Help (for male victims) and Northern Ireland Health and Social Care Trusts (for child victims).⁵⁴ While these service providers receive some financial assistance from the Northern Ireland Government, they are still under-staffed and resourced,⁵⁵ and there is an acute need

⁵⁰ Article 12(6).

⁵¹ Article 11(3).

⁵² Application No. 25965/04, Judgment of 7 January 2010.

⁵³ [2012] NIQB 37.

⁵⁴ Northern Ireland Assembly, *supra*, p. 22

⁵⁵ Anti-Trafficking Monitoring Group, *supra*, pp. 131-132.

for improvement in this area. The effective use of the confiscated criminal proceeds is a key to solving this problem, and the United Kingdom and Northern Ireland should ensure that these are effectively used to protect victims. In 2009, for instance, a total of £28,000 in cash and £150,000 in other assets were seized and/or frozen.⁵⁶ Of these, £25,000 was allocated to provide support to victims.⁵⁷ More money should be allocated, and wider publicity of this is also necessary in order to send a clear message that traffickers will not be able to benefit from their activities. Finally, reflection periods and temporary residence permits for victims are still given on a discretionary basis in Northern Ireland and the United Kingdom. This gives enormous powers on the part of the CAs, and it is extremely difficult to hold them accountable as noted elsewhere. There is therefore a need to incorporate these into legislation in the future for clarity and certainty.

One final point which might be considered further is non-criminalisation of victims of trafficking. It is imperative that the victims who are forced to commit criminal offences such as drug production and trafficking, immigration offences (illegal entry and stay, possession of false identity documents), as well as offences associated with prostitution (loitering/soliciting) are not prosecuted or punished. Currently the PPS cannot offer immunity from prosecution due to its statutory obligation under the Justice (Northern Ireland) Act 2002, but has discretion not to prosecute trafficked victims based upon the public interest test.⁵⁸ In addition, a general defence of duress can be relied upon.⁵⁹ The courts can also rely on the principle of abuse of process and stay criminal proceedings if they consider that a

⁵⁶ Organised Crime Task Force, *2009 Annual Report & Threat Assessment*, p. 19.

⁵⁷ *Ibid.*, p. 20.

⁵⁸ *R v LM* [2010] EWCA 2327.

⁵⁹ See, for instance, CPS Guidance on Human Trafficking and Smuggling, available at <http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#human> (last accessed 24 July 2012). See also *R v O*, *supra*.

decision of the prosecutorial authority is inappropriate.⁶⁰ However, the inclusion of a provision on non-criminalisation of trafficked victims in legislation can further strengthen the protection of victims and would be more in line with Article 8 (Non-Prosecution or Non-Application of Penalties to the Victims) of the EU Directive as well as Article 26 of the Council of Europe Convention. It is worth noting in this regard that Finland,⁶¹ Malaysia,⁶² South Africa,⁶³ Spain,⁶⁴ and the United States of America⁶⁵ have statutory provisions on non-criminalisation of victims, and Northern Ireland and the United Kingdom should follow suit.

Recommendations:

4. More proactive participation of NGOs in the NRM should be facilitated in Northern Ireland through designation of key organisations, such as the Women's Federation Northern Ireland, as the first responders. These NGOs have the right expertise and experience in human trafficking and are equally capable of identifying its victims. As they are often fearful of law enforcement action, victims are more likely to approach these NGOs in the first instance to seek support. Organisations such as Kalayaan and the Poppy Project are designated as the first responders in

⁶⁰ *R v N; R v LE* [2012] EWCA Crim 189.

⁶¹ Section 7 (2) on Border Offences of the Criminal Code of Finland provides that "(a) foreigner who has committed the act referred to in subsection 1 (immigration offences) due to the fact that he or she has been subjected to trafficking in human beings....shall not be sentenced also for a border offence."

⁶² Section 25 of the Anti-Trafficking in Persons Act 2007.

⁶³ Section 71(5) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007. This goes further to include other offences. It says: "(a) person who has been trafficked is not liable to stand trial for any criminal offence, including any migration-related offence, which was committed as a direct result of being trafficked."

⁶⁴ Article 59 Organic Law of Spain 4/2000 on the rights and freedoms of aliens in Spain and on their social integration.

⁶⁵ According to Section 102(b)(19) Victims of Trafficking and Violence Protection Act 2000, "victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation."

England, and there is no reason why the Northern Ireland Government cannot do the same.

5. The Northern Ireland Government must make more **active use of confiscated criminal proceeds** and consider **establishing a trust fund for victims**, which would consist not only of criminal proceeds, but also of donations from local businesses and other stakeholders. Their engagement can ensure more effective awareness-raising among the potential users of trafficked victims. The relevant stakeholders should also be made aware of the Small Grant Facility jointly launched by the United Nations Office of Drugs and Crime and the Westminster All Party Group on Human Trafficking on March 2011, as part of the United Nations Voluntary Trust Fund for Victims of Human Trafficking which was established in 2010.⁶⁶

6. **Provision of a reflection period and temporary residence permit, a right of appeal against CAs' decisions, as well as non-criminalisation of victims should be incorporated into legislation** in order to establish clear obligations and accountability.

Prevention

One of the most pressing issues in terms of prevention of trafficking in Northern Ireland is to address its end purposes by reducing the demand for trafficked people. In addition to prosecution and punishment of trafficking offences, there are a number of statutes which are designed to curb such demand in Northern Ireland. For instance, the Coroners and Justice Act 2009 prohibits slavery and forced labour with a maximum of 14 years' imprisonment. This statute applies to all form of

⁶⁶ *Meeting Report of the Launch of the 2011 Small Grants Facility of the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons* (March 2011).

exploitation experienced by victims of trafficking. In relation to sexual exploitation, Articles 62-64 of the Sexual Offences (Northern Ireland) Order 2008 criminalise the acts of causing/inciting prostitution, controlling prostitution for gain, and keeping/managing a brothel with a maximum of 7 years' imprisonment. Another important piece of legislation is the Policing and Crime Act 2009 which has introduced an offence of paying for sexual services from those subjected to force (i.e. trafficked victims) with a maximum penalty of a £1,000 fine.⁶⁷ In relation to labour exploitation, one of the important legislation is the Gangmasters (Licensing) Act 2004. This creates an offence of acting as a gangmaster without a proper license with a maximum of 10 years' imprisonment under Section 12(4). In addition, Section 21 of the Immigration, Asylum and Nationality Act 2006 criminalises the act of knowingly employing illegal migrants, attracting 2 years' imprisonment upon conviction. It also provides for a civil penalty of £10,000 per illegal migrant.⁶⁸

While these statutory provisions are important in addressing the demand for sexual/labour exploitation in Northern Ireland, there are a number of problems simultaneously. For instance, 7 years' imprisonment for causing/inciting prostitution, controlling prostitution for gain and keeping/managing a brothel are not necessarily appropriate because of the additional elements of coercion, physical/sexual violence and other gross violations of human rights experienced by the victims of trafficking. This sentence therefore should be increased up to 14 years if the offence involves trafficked victims. This should also apply to the offence of "soliciting" under the Sexual Offences (Northern Ireland) Order 2008 (as amended by Section 20 of the Policing and Crime Act 2009), if a client solicits sexual services from a trafficked

⁶⁷ Section 15 amends the Sexual Offences (Northern Ireland) Order 2008. The Department of Justice and Equality in the Republic of Ireland issued a consultation document in June 2012 which touches upon this as well. See *Discussion Document on Future Direction of Prostitution Legislation*.

⁶⁸ Section 15.

victim. A question may also be asked whether a £1,000 fine under the Policing and Crime Act 2009 serves as strong deterrence. There are cases where clients may purchase sexual services with full knowledge that the providers are trafficked victims. An added problem is that this is a summary offence and a limitation of 6 months applies.⁶⁹ Consequently, it makes sense to increase the level of punishment, possibly with the imposition of a custodial sentence. In Finland, for instance, the offence of knowingly using sexual services of trafficked victims carries a maximum of 6 months' imprisonment⁷⁰ and a similar sentence can be imposed in Northern Ireland. In addition, other measures such as Sex Offender Registration might be considered particularly for repeat offenders.

In relation to labour exploitation, there is much scope to strengthen the current legislative framework. For instance, the system of licensing employers under the Gangmasters (Licensing) Act 2004 is not adequate. Currently this applies to a food production sector (agriculture, shellfish and packing and processing). This means that trafficked victims working in other industries such as garment production, domestic work and hospitality are more vulnerable to abuse and exploitation. There is therefore scope to extend the current system to other relevant industries. Further, the system operates in rural but not urban areas, and this needs to be rectified for consistency. In addition, 10 years' imprisonment for acting as a gangmaster without a proper license might be regarded as relatively short, if they are dealing with the trafficked victims. Another point to note is that a summary conviction for this offence in Northern Ireland attracts a maximum of 6 months' imprisonment, while it is 12 months in England and Wales.⁷¹ Similarly, entering into arrangements with

⁶⁹ Article 19 of the Magistrates' Court (Northern Ireland) Order 1981.

⁷⁰ Chapter 20, Section 8 of the Finnish Criminal Code as amended in 2006.

⁷¹ Section 12.

unlicensed gangmasters entails a summary conviction of up to 6 months' imprisonment in Northern Ireland under Section 13 (51 weeks in England and Wales). There is no reasonable justification for these anomalies among different jurisdictions, and therefore the Northern Ireland Government should consider further amendment in this regard.

Further, the 2006 Act does not apply to those who enter into the United Kingdom legally such as EU nationals and possibly other groups, including those who seek asylum.⁷² This gap needs to be addressed so that the focus is placed upon one's exploitation rather than immigration status. It should also be noted that illegal migrants are generally more vulnerable to abuse and exploitation, as they are reluctant to report to the police due to a fear of law enforcement action against them for breaching the UK immigration laws and regulations. Therefore, the imprisonment of 2 years is too lenient. Further, a summary conviction for this offence carries a maximum of 6 months' imprisonment in Northern Ireland, and this is different for England and Wales (12 months).⁷³ Finally, there is a legislative gap in relation to summary conviction for the offence of slavery and forced labour under the 2009 Act, where the offence carries only 6 months' imprisonment in Northern Ireland when it is 12 months in England and Wales.⁷⁴ These legislative gaps must be rectified as soon as possible for consistency across all jurisdictions.

⁷² In *Naillie and Another*, [1993] 1 All ER 75, the Court of Appeal held that people who disembarked without a right of entry were not automatically illegal entrants. In this case, an entrant who claimed asylum while still within the designated area was accepted as such.

⁷³ Section 21.

⁷⁴ Section 71.

Recommendations:

7. The Northern Ireland Government should tighten up the punishment regime for those who exploit trafficked victims to maximise a deterrence effect by increasing sentences for relevant offences and closing gaps evidenced in other parts of the United Kingdom. This should be coupled with stronger naming and shaming in the local/national news and media.

8. More effective awareness-raising should be instituted in Northern Ireland.

The Blue Blindfold Campaign was widely regarded as ineffective as it failed to target those who are likely to be in contact with trafficked victims. In Northern Ireland, the Government claims that the Campaign was recognised by approximately 500,000 people, constituting 35% of the entire population.⁷⁵ While it is impossible to measure the true effectiveness from a single campaign, there are lessons to be learned. If the Government is to reach out to the actual/potential traffickers and exploiters in Northern Ireland, then it should consider **more innovative/creating means** to target them. One example would be to place an advert in so-called “Lads’ Magazines” such as *Nuts*, and *Zoo*, as well as in tabloid newspapers or to make active use of social networking sites such as Facebook.⁷⁶

Final Recommendation to Fulfil 3P Obligations:

9. A creation of an independent anti-trafficking co-ordinator or rapporteur should be seriously considered. The main task of this office would be to facilitate a co-ordinated and consolidated response to human trafficking by working closely with

⁷⁵ Organised Crime Task Force, *2011 Annual Report & Threat Assessment*, p. 34.

⁷⁶ A good example of this is “No More Traffik On Our Street” Campaign instituted in Northern Ireland by Members of Civil Society (<http://www.nomoretraffik.com/>).

relevant stakeholders in Northern Ireland and the United Kingdom. In so doing, the post would ensure that 3P obligations explored in this paper are implemented effectively and without delay. S/he would also facilitate effective awareness-raising among the general public and also be expected to work with relevant regional and international partners such as the European Union and the United Nations. The UK Government currently does not support the establishment of a rapporteur as it believes that the Inter-Departmental Ministerial Group on Human Trafficking fulfils its functions.⁷⁷ Although the Group can co-ordinate activities across relevant government departments, this is a political body and therefore its work may not be perceived as totally independent or impartial. Moreover, it only meets twice a year,⁷⁸ and it is doubtful whether the Group can sufficiently and effectively address numerous issues arising from human trafficking. Therefore, the Northern Ireland Government has a unique opportunity to take the lead in establishing an independent rapporteur which may be used as a model for other jurisdictions in the United Kingdom. A regional rapporteur may also be regarded as appropriate as he/she would be able to take local issues into consideration more thoroughly and devise an appropriate response.

⁷⁷ Statement by Damian Green (Minister of State for Immigration), HC Deb, 13 June 2012, vol. 546, col. 481W. This Group consists of the Home Office, Ministry of Justice, Department for Education, Department of Health, Department for Business, Education and Skills, Department for Work and Pensions, Department for Communities and Local Government, Department for International Development, Foreign and Commonwealth Office, Justice Department (Scotland), Department for Communities and Local Government (Wales), Department of Justice (Northern Ireland), and Office of Solicitor-General. See HC Deb, 22 March 2012, vol. 542, col. 814W-815W.

⁷⁸ Home Office, *supra*, p. 8.