



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

Submission to Department of Justice Consultation
on Human Trafficking and Slavery: Strengthening
Northern Ireland's Response

***Comments specifically relating to the proposed
UK Rapporteur on Human Trafficking***

April 2014

1. Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² 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.

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.

NICEM have engaged extensively on matters surrounding human trafficking, forced labour and sexual exploitation. We are actively represented on the DoJ NGO Engagement Group on Human Trafficking, the All Party Group on Human Trafficking, the Forced Labour Migration Group and a range of relevant fora. We have also recently formed a BME women's group, many of whom served in our delegation to the UN Committee on the Elimination of Discrimination Against Women in June 2013. Furthermore, to support and expand our research on violence against women, we are also in the process of developing a policy paper on the vulnerability of BME women to domestic and sexual violence and exploitation. We have also submitted evidence on a range of existing legislation on human trafficking, including the Criminal Justice Act (Northern Ireland) 2013 and the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. We also advised the UKBA Migrant Advisory Committee on forced labour and exploitative working conditions encountered by migrant workers in low skilled sectors, specifically in the food processing industry in December 2013.

In addition, we recently commissioned research on *Analysis of Current Responses to Human Trafficking in Northern Ireland* (2012) and *Bayanihan! The Filipino Community in Northern Ireland* (2012) which outlined high levels of labour exploitation, racial harassment and discrimination in the workplace experienced by Filipino Agency Workers. Prior to this, our research conducted in partnership with the Polish Association NI, *Za Chlebem": The Impact of the Economic Downturn on the Polish Community in Northern Ireland* (2009) highlighted the precarious and vulnerable

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.

position of low skilled migrant workers³. Similarly, our forthcoming research report on the *Impact of the Economic Downturn on the Black and Minority Ethnic People in the North West of Northern Ireland* (2014) highlights issues over the vulnerability of migrant workers to labour exploitation.

2. Ensuring Compliance of the Mandate of the UK Rapporteur on Human Trafficking with International Human Rights Standards

NICEM broadly support the recommendation of the Department of Justice to introduce a Legislative Consent Motion at the Northern Ireland Assembly to extend the remit of the National Rapporteur under the Modern Slavery Bill to Northern Ireland. Especially in light of the fact that immigration remains a reserved matter and that the authorities deemed competent to make a decision on who has been trafficking remain the UK Human Trafficking Centre and the Home Office. NICEM is concerned that the Home Office remains as a competent authority, UK wide oversight mechanism would be able to independently access the appropriateness of the current NRM arrangements and their compliance with Article 4 ECHR. It is imperative that such mechanisms are equipped to adequately identify victims. The current arrangement is particularly concerning given the reported low rate of suspected victims referred to the NRM.⁴

NICEM are concerned at the limited mandate and statutory powers of the UK-wide Rapporteur envisaged under the Modern Slavery Bill. The current provisions do not correspond with international standards and fail to adequately replicate the best practice model adopted in Finland or the Netherlands.⁵

Therefore, it is vital the Modern Slavery Bill complies with Article 29(4) of the Council of Europe Convention on Action against Trafficking in Human Beings which requires 'Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements'. The UK are also under an obligation to introduce a UK Rapporteur on Human Trafficking under Article 19 of the Council Directive 2011/36/EU (2011) which stipulates that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this

³ McVeigh & McAfree, "'Za Chlebem": The Impact of the Economic Downturn on the Polish Community in Northern Ireland' (Polish Association, NICEM 2009) p15

⁴ SOCA Annual Human Trafficking report 2013

⁵ Indeed, the Home Affairs Select Committee criticized the United Kingdom Human Trafficking Centre (UKHTC) in May 2009 for its failure to effectively coordinate anti-trafficking efforts across the UK's internal borders.

field, and reporting'. These provisions are not adequately transposed in the Modern Slavery Bill and should be strengthened as a priority.

4. Limitations in the Independence and Effectiveness of the Existing National Rapporteur

The role of the UK Rapporteur is currently being assumed by the Inter-departmental Ministerial Group on Human Trafficking (IDMG), comprised of political representatives. NICEM are concerned that this mechanism lacks independence and does not adequately fulfil the requirement of the Directive to introduce a national monitoring system on anti-trafficking. The role of the IDMG is merely 'managerial and supervisory', providing a monitoring role in relation to the National Referral Mechanism⁶. It provides no wider data collection or monitoring function. Moreover, the IDMG only meets twice a year, and it is highly doubtful whether the Group can sufficiently and effectively address numerous issues arising from human trafficking⁷.

Therefore, it is essential that the mandate for the UK Rapporteur on Human Trafficking be expanded to improve its statutory powers and better promote compliance with international human rights standards. Indeed, the Dutch National Rapporteur, Corinne Dettmeijer-Vermeulen was reported to have attributed the 'long-standing effectiveness' of her post to its 'statutory independence and the trust engendered as a consequence'⁸. However, it remains clear that clause 30(4) of the Draft Modern Slavery Bill does not provide sufficient safeguards for the independence of the office of the UK Rapporteur. Indeed, it empowers the Secretary of State to provide the Commissioner with 'such staff as the Secretary of State considers necessary'. This provision should be amended to enable the Rapporteur to directly appoint His/Her staff rather than afford undue discretion to the Secretary of State.

5. Insufficient Collection and Analysis of Data

The ability of the UK Rapporteur to assess the effectiveness of human trafficking policies is severely hampered by data gaps. The scarcity of available data impedes the formulation of an effective and targeted legislative and policy response across devolved administrations. It also creates barriers to the identification of trends or measurement of the

⁶ http://www.antislavery.org/includes/documents/cm_docs/2011/n/national_rapporteur.pdf p1

⁷ Professor Tom Obokato, *Analysis of Current Responses to Human Trafficking in Northern Ireland* (NICEM Belfast 2012) p25

⁸ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16607.htm>

impact of policies. It also obscures vulnerabilities and risk factors, which are key to protecting victims and preventing further trafficking. Indeed, the Anti-Trafficking Monitoring Group have highlighted the dearth of data from statutory agencies on the treatment of victims of trafficking, particularly in relation to outcomes for victims following the ‘reflection and recovery period’⁹. Whilst the current Northern Ireland Human Trafficking Action Plan 2013-14 seeks to improve analysis of trends and levels of human trafficking as a priority, this objective can only be achieved by ensuring the mandate of the UK Rapporteur is sufficiently robust.

6. Necessary Expansion of Statutory Powers

NICEM recently commissioned research into the *Analysis of Current Responses to Human Trafficking in Northern Ireland* (2012). The findings recommend that a UK Rapporteur 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. Indeed, the remit of the UK Rapporteur must be widened to include data collection and monitoring, powers to access information and request investigatory visits, and make recommendations to Government within a mechanism that would ensure they are being incorporated into Government decision-making. Furthermore, the national rapporteur must be entirely independent of Government in order to carry out these functions and comply with human rights standards. The current IDMG is part of Government.

Indeed, the mandate should include statutory investigatory powers to request and access data on trafficking, including authorisation to access anonymised information on victims of trafficking who have withheld consent to be entered into the National Referral Mechanism. The remit of the UK Rapporteur should be expanded to provide rigorous scrutiny of the compliance of the Government response to human trafficking meeting human rights standards. Its ability to make recommendations to improve Government policy and response to human trafficking in a system in which they will be incorporated in the heart of Government decision-making is paramount, and access to information is a vital part of making this effective. One such mechanism could mirror the reporting system for international treaty bodies, wherein the UK Rapporteur would annually develop recommendations to which the Government would have to reply, detailing their progress on identified issues and best practice.

Our research on responses to human trafficking in Northern Ireland also recommended the UK Rapporteur would assume responsibilities in ensuring

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http://www.antislavery.org/includes/documents/cm_docs/2011/n/national_rapporteur.pdf

3P obligations are implemented effectively and without delay. However, under the provisions of the Modern Slavery Bill, the 'remit constricted to examining the response of law enforcement would prevent the Commissioner from undertaking additional functions, such as comprehensive data-collection, monitoring of victim assistance, including the statutory child protection response for child victims, and prevention work, in line with the acknowledged three 'Ps' of anti-trafficking work (prevention, protection and prosecution)',¹⁰.

Indeed, NICEM support the view of the Dutch Rapporteur that 'protecting victims and prosecuting criminals are two sides of the same coin'¹¹. It would also mirror the conclusion of the Modern Slavery Bill Evidence Review which recommended the UK Rapporteur should 'represent and give a voice to the concerns and best interests of victims and survivors of modern slavery'¹². Mainstreaming a victim-centred approach to the role and function of the UK Rapporteur on Human Trafficking was recently advocated by the UN High Commissioner for Refugees¹³.

7. Concerns over Proposals for Northern Ireland Rapporteur on Human Trafficking

NICEM are concerned at the recommendation under the draft Human Trafficking and Exploitation (Further Support for Victims) Bill to establish a Northern Ireland human trafficking Rapporteur. The deviation of Northern Ireland's anti-trafficking efforts from standardised procedures in place across the remainder of the UK is a cause for concern. This approach is likely to generate inconsistencies and jurisdictional confusion which may be detrimental in relation to the effective coordination of anti-trafficking efforts. Moreover, Justice Minister David Ford has urged caution over the application of clause 16 of Lord Morrow's Bill on the introduction of an NI Rapporteur on Human Trafficking over concerns it may not easily align with the existing national rapporteur structure¹⁴.

¹⁰ http://www.antislavery.org/includes/documents/cm_docs/2014/a/atmg_briefing_antislavery_commissioner_march_2014.pdf p2

¹¹ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/166.pdf>

¹² Report of the Modern Slavery Bill Evidence Review, p41.

¹³ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/166.pdf> p85

¹⁴ Statement by Damian Green (Minister of State for Immigration), HC Deb, 13 June 2012, vol. 546, col. 481W

Further Information

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