



## **Proposed for a Human Trafficking (Scotland) Bill**

### **Response from Amnesty International Scotland**

#### **Introduction**

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We are independent of any government, political ideology, economic interest or religion and represent more than 230,000 supporters in the United Kingdom alone.

Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights.

We endorse the view expressed in the Consultation that *'Human trafficking is modern day slavery. It is a crime and a violation of human rights.'* We agree that a comprehensive approach to this issue is required, and that as part of this there is a need to *'create unified, clear, and consistent legislation on human trafficking for Scotland.'*

#### **Human Rights**

Amnesty International has a strong history of documenting evidence of human trafficking, raising awareness of its existence and supporting the rights of victims of trafficking around the world. We believe that human trafficking grossly violates a number of human rights and ruins lives.

Amnesty International placed human trafficking in Scotland under the spotlight in our 2008 publication 'Scotland's Slaves'. Through this we urged the Scottish Government to take a lead on the implementation of the parts of Council of Europe's Convention on Action Against Trafficking in Human Beings, for which it is responsible within its devolved powers. These include:

- Article 10 on Identification of victims
- Article 12 on Support and accommodation for victims
- Article 16 on Non-Punishment of victims for crimes they have been coerced into<sup>i</sup>

There is a global trend toward protecting the rights of trafficked people. The UK Government, and as a result Scotland, became a member of the Convention on Action Against Trafficking in Human Beings on 1 April 2009. Amnesty supports the proposal contained in the consultation to uphold and meet the requirements of the Convention in Scotland.

Amnesty recognises and broadly welcomes the development of similar legislation in other parts of the UK. This includes the Northern Ireland Assembly's Human Trafficking and Exploitation (Further Provision and Support for Victims) Bill and the UK Government's Modern Slavery Bill, currently in draft. Scotland must not be left behind in relation to human rights and human trafficking in the face of these proposed legislative improvements.

## **THE CONSULTATION PROPOSALS**

**Question 1: Do you agree with the aims and summary objectives of the proposed Bill? Please indicate "yes/no/undecided", with reasons for your position.**

Yes.

In the face of the growing number of victims of human trafficking, the criminalisation of these victims and the low number of convictions of those responsible, it is imperative that Scotland uphold its commitment to international human rights law. Amnesty believes the measures outlined in the consultation will help deliver this.

We believe the proposed Bill should also include specific measures to enhance international cooperation in combating human trafficking. Consideration should be given to joint anti-trafficking programmes with countries where a numbers of victims come from, in an effort to address the supply of trafficked people.

We also believe the following principles are worthy of highlighting:

- A human rights-based approach<sup>ii</sup> should be used in the development, implementation and assessment of the policies and programmes.
- Gender equality should be ensured in any measures to address human trafficking. The EU Directive 2011/36/EU recognises that women and men are often trafficked for different reasons. Assistance and support measures should therefore also be gender-specific where appropriate.

- Children’s vulnerability to human trafficking should be explicitly recognised and their best interests should be the primary consideration (UN Convention on the Rights of the Child).

**Question 2: Do you agree with the proposal for a legal duty on Scottish ministers for a Strategy for Scotland against Human Trafficking? Please indicate "yes/no/undecided", with reasons for your position.**

Yes

Only by the Scottish Government taking leadership, and being held accountable by the Scottish Parliament, can we be assured that the measures necessary to address human trafficking will be fully and successfully implemented across the public and private sector. Amnesty is therefore supportive of this general aim, which builds on the recommendation from the EHRC’s Inquiry into Human Trafficking in Scotland<sup>iii</sup>.

Whilst the duty will be on the Scottish Ministers, it is vital that police, justice and immigration officials and any other agencies involved with trafficked people should recognise their responsibility to uphold human rights to the highest standard. Amnesty believes that developing and implementing the proposed strategy using a human rights-based approach will help achieve this.

In addition to the Scottish Parliament’s oversight, Amnesty believes an independent and specialised human trafficking commissioner is required, with authority to monitor, investigate and report on responsibilities relating to human trafficking. The Council of Europe’s Group of Experts on Action against Trafficking in Human Beings highlights the independent assessment of the effectiveness of anti-trafficking measures as one of the five key priorities for those addressing human trafficking<sup>iv</sup>.

Amnesty is concerned that the references to ensuring a *‘Systematic approach is taken to reduce the demand for the goods and services that feeds demand for trafficked exploitation’<sup>v</sup>* and *‘reducing the...demands for commoditised sex...that give rise to demand for trafficked prostitutes’<sup>vi</sup>* could suggest measures would be included within the proposed Bill to address prostitution. Human trafficking and prostitution are two separate and complex issues and those engaged in selling sexual services and human trafficking are very complex social phenomena.

We believe human trafficking and prostitution require more considered separate policy and legislative responses. The Convention on Action against Trafficking in Human Beings and the EU Trafficking Directive<sup>vii</sup> expressly provide measures to be taken for discouraging and

reducing the demand for trafficking victims. The criminalisation of the purchase of sexual services is not one of the measures they recommend.

Amnesty does not, therefore, believe that it would be effective or appropriate to attempt to address prostitution as part of the proposed Bill relating to human trafficking.

**Question 3: Do you agree with the approach to criminalising human trafficking in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

Yes

Amnesty believes action needs to be taken to ensure Scotland is compliant with European Union and Council of Europe treaties on trafficking. The EHRC found in its 2011 study that *'legislation against human trafficking in Scotland had developed piecemeal; was inconsistent; and lacked clarity on what trafficked exploitation is.'*<sup>viii</sup>

In particular, the Government must fulfil its international obligation to establish as criminal offences the conduct of *"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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."*<sup>ix</sup>

We believe that it is crucial that the proposed Bill adopts such a broad definition of human trafficking, as documented in the Palermo Protocol, which is recognised and adopted by the Council of Europe.

**Question 4: Do you agree with the approach to the criminal justice response to human trafficking in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

Yes.

In particular, we believe that it is crucial that the authorities responsible for investigation and criminal prosecution have a legal duty to fulfil the positive human rights obligations established in international and regional treaties. We also believe that a human rights-

based approach must lie at the heart of the development, implementation and assessment of the criminal justice response to human trafficking.

It is also essential that the criminal justice response be backed up by greater awareness raising and training. Officials likely to come into contact with victims or potential victims of trafficking, whether in the prevention of or fight against trafficking, should be provided with adequate training in the specifics of trafficking and the related human rights implications. The Government must also invest in measures to raise awareness amongst the public and to encourage people to report potential cases of exploitation and trafficking.

Specifically, we support the proposal that the performance of the Police and Crown Office and Procurator Fiscal Service in relation to their duty to investigate and prosecute human trafficking should be reviewed<sup>x</sup>. We believe that this should be included as part of the remit of a commissioner dedicated to the task of addressing and eliminating human trafficking in Scotland.

**Question 5: Do you agree with the approach on the non-prosecution and non-penalisation of trafficking survivors in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

Yes.

Amnesty believes that it is essential that victims of human trafficking are protected from prosecution or punishment for criminal activities that they have been compelled to commit as a direct consequence, or manifestation of, being subject to trafficking. We also believe that the need to avoid detention of people who are suspected of being trafficked should be addressed either as part of the Bill or the policy emanating from it.

**Question 6: Do you agree with the approach to harnessing regulators, the private sector, and civil society against human trafficking, as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

Yes.

Amnesty agrees that regulatory bodies must be aware of their responsibilities in relation to human trafficking and monitored to ensure they are meeting these. We would propose greater scrutiny of their success in addressing trafficking on an ongoing basis via the creation of a commissioner with specific responsibility for this issue.

**Question 7: Do you agree with the approach the Survivors Service and minimum standards for victims as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

Yes.

Amnesty is strongly supportive of the proposed devolved national referral mechanism and its pioneering and strong victim-centred approach. We would particularly highlight the importance of the following proposals:

- Not allowing assistance and support for victims to be conditional on cooperation in the prosecution of traffickers.
- Removing concerns such as asylum from any decision making as to the needs presented by a trafficked person.
- The benefit of doubt being given in cases where the age of a person is unclear or disputed, but where they may be under 18, ensuring children receive immediate assistance, support and protection.

We believe the issue of effective and appropriate protection for victims and witnesses should be addressed directly within the proposed Bill. Article 28 of the Convention on Action against Trafficking in Human Beings requires that states *'adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators'*.

Victims require to be protected from retaliation and intimidation, and from the risk of being re-trafficked, during or after investigation and prosecution. Protection is also required for those who report offences and witnesses who give testimony, and possibly the family of the trafficked person.

We would also request that consideration is given to extending the reflection and recovery period to at least 3 months from the date of a positive reasonable grounds decision.

**Question 8: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

Amnesty believes that the proposed Bill would have a positive equality impact.

Equality must be promoted by supporting specific policies for men and women. The latter, for example, are more likely to be exposed to practices which qualify as torture or inhuman

or degrading treatment (physical violence, rape, genital sexual mutilation and trafficking for the purpose of sexual exploitation).

**Question 9: What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?**

We do not believe the limited financial implications arising from the proposed Bill, and our proposal of a new commissioner, are significant in the face of such a significant abuse of human rights within Scotland.

**Question 10: Do you have any other comments on or suggestions that would prevent trafficking in Scotland?**

No.

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- <sup>i</sup> Amnesty International (2008) *Scotland's slaves: An Amnesty International briefing on trafficking in Scotland*
  - <sup>ii</sup> According to the UN, the human rights-based approach to combating trafficking in human beings requires that, "The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims". This principle relates to the obligations of States to prevent, investigate and prosecute traffickers and to assist and protect trafficked persons. It suggests that, when States make decisions about their priorities with respect to anti-trafficking measures and other related issues, considering issues about migration and the effectiveness of the criminal justice system as well as human rights, priority must be given to the human rights obligations accepted by the State under international human rights law. Giving primacy to human rights also implies that anti-trafficking measures should not "adversely affect the human rights and dignity of persons". To find out which measures have adverse effects (if any), it is essential that the relevant authorities evaluate the impact of their anti-trafficking measures in order to check their effects, both expected and unexpected. (UN High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principle 1, in *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Office of the UN High Commissioner for Human Rights, New York and Geneva, 2002.)
  - <sup>iii</sup> EHRC (2011) *Inquiry into Human Trafficking in Scotland*
  - <sup>iv</sup> Council of Europe (2013) *3<sup>rd</sup> General Report on GRETA's activities*
  - <sup>v</sup> Bullet point 3 in paragraph 35, page 9, of the consultation
  - <sup>vi</sup> Paragraph 44 (b) (ii), page 13, of the consultation
  - <sup>vii</sup> Directive 2011/36/Eu Of The European Parliament And Of The Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims
  - <sup>viii</sup> EHRC (2011) *Inquiry into Human Trafficking in Scotland*
  - <sup>ix</sup> Palermo protocol, Article 5.
  - <sup>x</sup> Bullet point 6 in paragraph 37, page 10, of the consultation