

Engender response to the consultation on the Scottish Government's Trafficking and Exploitation Strategy

1. INTRODUCTION

Engender works in Scotland to advance women's economic, social and cultural, and political equality with men. We make visible the ways in which women's inequality impact Scotland, and bring women together to make change happen.

Engender welcomes this opportunity to submit our views to Scottish Government on its Trafficking and Exploitation Strategy. We observed in our submission on the Human Trafficking Bill that around 75% of people trafficked into Scotland are women, the vast majority of traffickers are men, and 'sex trafficking' is the most prevalent form of abuse¹. Cross-border movement of people is heavily associated with commercial sexual exploitation. Globally, 98% of those trafficked for that purpose are female, with 21% children and 79% adult women². The contexts into which the draft strategy describes individuals as being trafficked into in Scotland, including commercial sexual exploitation, labour exploitation and criminal exploitation, domestic servitude, and sham marriages³, are all highly gendered. It is our position that gendered interventions will necessarily be required to meet the strategy's ambitions to "eliminate human trafficking and exploitation" and "investigate the crimes and disrupt the activities of the perpetrators".

We are concerned that the strategy in its current form is not well gendered, and neither identifies the substantive areas in which men's and women's experience of trafficking and exploitation are different, nor effectively takes cognisance of those differences in shaping Scotland's response to this

¹ EHRC (2011) *Human Trafficking in Scotland*

² <http://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang--en/index.htm>

³ Scottish Government (2015) *Trafficking and Exploitation Strategy* p.4

egregious breach of human rights. Ungendered responses to gendered problems are vanishingly unlikely to realise the desired outcomes.

Our consultation response is brief, and focuses specifically on this question of gender and the clear, topline gaps in the strategy that have emerged because gender dimensions have not fully been taken into account. We have not commented on Action Area 1 or Action Area 2, as these relate to delivery of support services and criminal justice responses that lie outwith our areas of expertise. We are aware that other women's organisations will be responding in detail to these elements of the strategy.

2. CONTENT OF THE STRATEGY

2.1 SECTION 1 (PAGES 4 TO 8)

Do you agree that the action areas⁴ taken together will achieve the vision of eliminating human trafficking and exploitation?

Engender's response on the Human Trafficking and Exploitation (Scotland) Bill⁵ warned if the bill "did not set out the imperative to protect women's rights within any approach to prevent human trafficking, the potential to do so will be undermined". We said that "the opportunity for enhanced policy coherence will be missed unless legislation is framed in terms of gender equality, so that the obligations and reporting duties that fall to delivery agents are correspondingly fit-for-purpose."

The first section of the strategy suggests that our concern that an ungendered strategy would flow from an ungendered bill was not misplaced. In the setting out of principles and top-level objectives for the strategy, key children's rights and wellbeing frameworks (UN Convention on the Rights of the child; GIRFEC) are referenced. There are no such parallel references to Scotland's obligations in respect of women's rights frameworks, including the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Palermo Protocol⁶. In order to contextualise Scotland's response to trafficking and exploitation within our commitment to realise women's rights, as well as our shared understanding of violence against women, we would expect to see references to these highly relevant instruments. We would also expect

⁴ The action areas are: identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; address the conditions, both local and global, that foster trafficking and exploitation.

⁵ <https://www.engender.org.uk/content/publications/1502-HT-sub.pdf>

⁶ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

substantive links to Scotland's violence against women strategy, *Equally Safe*, to be made in this section.

The trafficking strategy is out of step with the analysis of violence against women that Scottish Government has adopted in *Equally Safe*. This commits to a prevention approach to ending violence against women that explicitly links women's experience of men's violence with a conducive context of women's economic inequality, women's underrepresentation in decision-making, and in the gender stereotyping that underpins the current framework of gender relations in Scotland and around the globe. In *Equally Safe*, violence against women is acknowledged as a cause and a consequence of women's inequality, and we would expect to see that analysis extended into the profoundly gendered domain of trafficking.

In order to take a gendered approach, it is also vital that the strategy acknowledges the context in which it will operate, which is within a UK immigration and asylum system that has a poor track record on gender issues, despite clear operational guidance.⁷ The strategy must explicitly mitigate the culture of disbelief within UKBA⁸, and act within the fullest extent of Scotland's powers, in order to realise its ambitions of delivering appropriate support services, and an appropriate criminal justice response.

2.2 SECTION 3 (PAGES 11 TO 24)

Action Area 3 (pages 21-24) deals with addressing the conditions that foster trafficking and exploitation. Do you think the particular actions listed on page 24 will help in achieving this?

The list of actions on page 24 is preceded by a description of the links between the Trafficking and Exploitation Strategy and a range of other policies and accountability mechanisms. These do not appear to be substantively linked to the logic model or driver diagram that appears on page 21.

The logic model or driver diagram itself appears to be principally preoccupied with labour exploitation that occurs within enterprises, making several

⁷ Maybe reference? Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women's asylum claims* (OR) Asylum Aid (2016) *Asylum is not gender neutral: protecting women seeking asylum*, for something more recent but less relevant

⁸ Engender (June 2014) *An abuse of power: African women's experience of the asylum process in Scotland* <https://www.engender.org.uk/content/publications/Briefing-7-Asylum.pdf>

references to “products and services related to trafficking”, and focusing on steps to raise public and business awareness of this. There is a presumption that an enlightened public will then report exploitation, and enlightened businesses will be alert to exploitation in their supply chains. There are two significant challenges to the likely effectiveness of this approach.

The first is that human rights, and particularly labour rights, are not well integrated into either procurement processes or into businesses’ thinking more broadly. Scotland’s National Baseline Assessment on Business and Human Rights states that “ ‘Human rights’ is not explicitly addressed in much of the Scottish Government’s procurement policy and guidance which addresses a number of issues that are linked to, or overlap with, human rights – such as equality and sustainable development.”⁹ In response to a baseline survey of businesses in Scotland on human rights “just under a third of respondents viewed gross human rights abuse as relevant to their business”, and they did not perceive labour rights to be human rights. . Although there are questions about the extent to which reporting on equalities is linked to substantive action¹⁰, larger businesses have become increasingly accustomed to carrying out something approximating a diversity audit and publishing their findings. This is not the case for human rights, where the baseline study notes that “corporate reporting on human rights is generally perceived as inconsistent due to the absence of common indicators and the diversity of measurement frameworks”¹¹. The picture painted by the baseline report is one of unfamiliarity on the part of business with human rights imperatives, a lack of mainstreaming of human rights in procurement and other relevant regulation and guidance, a tendency to perceive labour rights as distinct from human rights, and a dearth of tools that might drive better business performance on human rights. This suggests that the approach in the draft strategy may need to incorporate substantive actions specifically to mitigate these challenges.

The second challenge to the effectiveness of an approach that relies on businesses and customers to report and avoid exploitation is that this is evocative of breaches of rights that occur in public or semi-public places such as nail bars, factories, or agricultural settings. Although women *are* exploited in

⁹ Ferguson, J., Wishart, L. and E. Carvalho (2016) *Scotland’s National Baseline Assessment on Business and Human Rights*

¹⁰ https://www.closesthegap.org.uk/content/resources/1376469709_Missingoutonthebenefits-CTG.pdf

¹¹ Ferguson, J., Wishart, L. and E. Carvalho (2016) *Scotland’s National Baseline Assessment on Business and Human Rights*

businesses such as nail bars and agricultural settings, women constitute a majority of those exploited in private spaces by domestic servitude, where the ‘customer’ cannot credibly be unaware of the conditions of labour. A strategy that obscures these contexts is obscuring those gendered realities, reflected in a statement by the Parliamentary Assembly of the Council of Europe a decade ago that “today’s slaves are predominantly female and usually work in private households”¹². Shakti Women’s Aid notes that there have been a number of cases of marriage, forced and arranged (where consent was given freely by the trafficked victim at the time of the wedding), where victims find themselves subject to slavery and servitude including forced or compulsory labour, or commercial sexual exploitation. The strategy must acknowledge and respond to the fact that legitimate immigration routes are used in the trafficking of women such as spouse, fiancé, and even visitor visas for spouses of British citizens, or people with indefinite leave to remain who are under the age of 18. Just as gender advocates worked to open up the “private space” of the household to scrutiny in order to end the human rights violation of violence against women, it is essential that Scottish Government and other stakeholders act to ensure that the rights of those in domestic servitude are not unrealised because they are breached behind closed doors. The strategy must address exploitation that happens within the household.

In 2010, the UN Special Rapporteur on contemporary forms of slavery reported to the Human Rights Council, stating that domestic servitude constitutes a global human rights concern and that “every region in the world is affected”¹³. Some five decades after it first formally acknowledged the systemic abuses of domestic workers’ labour rights, including trafficking and slavery, ILO Convention No. 189 on decent work for domestic workers was adopted in 2011¹⁴. This convention has not been ratified by the UK, but Scottish Government should act where it has the power to do so, including through collaborative mechanisms such as the Fair Work Convention, to implement its content¹⁵. Additional encouragement to tackle the demand for domestic servitude was provided by the UN ESCR Committee examination of the UK’s

¹² Parliamentary Assembly of the council of Europe, Recommendation 1663, adopted on 22 June 2004

¹³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/151/69/PDF/G1015169.pdf?OpenElement>

¹⁴ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_490778.pdf

¹⁵ Including raising public awareness of the value of domestic work to society in Scotland; ensuring widespread understanding of the rights and responsibilities of workers and employers; implementation of effective strategies to ensure compliance with labour laws; and working towards social dialogue and collective bargaining to ensure the voice and representation of the workers and employers.

compliance with the International Covenant on Economic, Social, and Cultural Rights in 2016. The Committee expressed its concerns about “the high and increasing concentration of migrant workers in low-paid work and that migrant domestic workers are at greater risk of being victims of abusive working conditions”¹⁶, and called on the UK Government to “adopt all necessary measures to ensure that all migrant workers, including migrant domestic workers, enjoy the same conditions as other workers.” This strategy must heed those calls.

Efforts to disrupt the conditions in which women and girls are trafficked for the purpose of sexual exploitation must also consider the system of prostitution in Scotland. *Equally Safe* reiterates that “commercial sexual exploitation such as prostitution, pornography, and human trafficking” falls under the Scottish Government’s definition of violence against women. It is impossible to de-gender prostitution, because it sits at the nexus of a host of gendered structural inequalities. Various parts of the prostitution system depend on the relative impunity with which men can abuse and control women and girls, an economy-wide lack of good quality flexible or part-time work, women’s unequal responsibilities for unpaid care, occupational segregation, a system of social security that is increasingly failing to provide a safety net for women¹⁷, and a cultural acceptance of the centrality of men’s sexual desires and expectations. In order to effectively disrupt the context into which women and girls are trafficked, the demand for opportunities to sexually exploit women and girls whose rights have been so comprehensively breached must be addressed. The draft strategy does not currently include any such action.

In response to the question of responses to the prostitution system as a whole, which obviously interrelates with, but does not completely overlap, trafficking for the purposes of sexual exploitation, Engender has proposed the development of a Scotland model. At the moment, significant knowledge gaps abound around prostitution. The work that Scottish Government has commissioned to provide a richer sense of the Scottish context around prostitution is to be welcomed, but the evidence base is weak in all countries,

¹⁶ UN Committee on Economic, Social, and Cultural Rights (2016) Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland

¹⁷ Engender (2015) *A Widening Gap: Women and Welfare Reform*

with what Professor Liz Kelly has described as “critical gaps”¹⁸. Our vision of the development of a Scotland model is therefore participatory, and will:

- Include the voices of women who identify as sex workers, the women who identify as survivors of prostitution, and the voices of women who have sold or sell sex but do not identify as belonging to either group;
- Bring in expertise around gender, women’s experience of poverty in Scotland, housing, employability and women’s experience of the labour market, childcare and social care, and the social security system;
- Align with Scotland’s stated policy ambitions for women’s equality, and ending violence against women, as well as international obligations that Scotland is committed to implement;
- Consider supply as well as demand, and particularly the women made vulnerable to exploitation by poverty, gender based violence, and precarious employment.

As trafficking for sexual exploitation interrelates with the system of prostitution as it currently exists in Scotland, Engender would wish to see the trafficking strategy link to the work to respond to commercial sexual exploitation that will be implemented as part of the *Equally Safe* delivery plan.

4. CONTACT DETAILS

Contact: Emma Ritch, Executive Director, Engender

Email: emma.ritch@engender.org.uk

Mobile: 07889 805790

ABOUT ENGENDER

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. We are a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.

¹⁸ Kelly, L., Coy, M., and R. Davenport (2009) *Shifting Sands; A Comparison of Prostitution Regimes Across Nine Countries* CWASU, London Metropolitan University p.52