



Human Trafficking (Scotland) Bill Engender Consultation Response, January 2014

Introduction

Engender welcomes the opportunity to comment on the Human Trafficking (Scotland) Bill. We advocate for policy change that challenges the extreme imbalances of power between women and men in our society. Human trafficking is a particularly devastating manifestation of economic and social gender inequality, and women's lack of access to power. 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 abuse.¹ It is therefore imperative that any anti-trafficking strategy is adequately gendered.

Engender, and the Scottish Government (SG), recognise the sale of sex as commercial sexual exploitation (CSE). CSE is not natural or inevitable, but exists within a spectrum of systemic gender inequality. As such, human trafficking is intrinsically bound up with other gendered power imbalances, which limit women's access to resources, decision-making and physical autonomy and safety. These include issues that the SG is committed to tackling, such as occupational segregation, women's participation in public life and violence against women.

Our submission highlights these structural dimensions of human trafficking and the attendant need to reflect them in related policy, programme and service initiatives. Drivers of women's economic and social inequality, and factors shaping demand for trafficked women must inform the responses prescribed by legislation. We also endorse the detailed recommendations submitted to this consultation by Rape Crisis Scotland.

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

Yes

Engender agrees with the aims and summary objectives of the proposed Bill. Revised statutory measures are necessary in order to:

- Take an unequivocal stand against human trafficking and tackle its occurrence
- Provide clarity in the criminal justice system
- Ensure that survivors' rights are clearly articulated in the law and that appropriate safeguards are in place to protect those at risk of further harm

- Provide much greater recourse to justice
- Achieve broader Scottish Government (SG) commitments to tackle violence against women.

Enslavement and human trafficking are not new phenomena, prosecution is notoriously difficult, and piecemeal attempts to deter traffickers and to support victims do not work. Therefore, the objective to reduce demand for trafficked services, within a systems-wide approach, as well as the proposed multi-agency model will be crucial.

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

Many policy-level attempts to tackle violence against women and gender inequality fail to deliver because of a lack of political investment at the highest levels. In order for any anti-trafficking strategy to be converted into decisive action, Scottish ministers must be collectively held to account. Without this impetus and leverage, those tasked with implementing the legislation will struggle against competing policy and resourcing priorities. The EHRC inquiry into human trafficking in Scotland identifies low awareness as a key enabling factor for traffickers. A Ministerial Duty would ensure a needed degree of political will and ultimately empower service providers to move forward.

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

We agree that there is a need to widen and clarify how human trafficking is criminalised in Scotland, and we support a rights-based approach such as is proposed in the draft Bill. In addition, we would draw specifically on instruments and articles that protect women's rights, and stipulate non-discrimination and the use of gender mainstreaming.ⁱⁱ The criminal offence of trafficking must be linked to a broad definition of commercial sexual exploitation, or else the complex dynamics of coercion and legal ambiguity around the notion of consent will continue to be exploited by traffickers.

All responsibility related to trafficking offences should be removed from the UK immigration and asylum system. In broad terms, this places blame and onus for the crime of trafficking on victims, rather than traffickers. Specifically, the UKBA's appalling record on gender issues, despite clear operational guidance, also demonstrates the need for specialist and unified treatment of trafficking. Although, the asylum system nominally covers 'non-sex forms' of human trafficking, the gendered dynamics of coercion and control remain highly relevant. In particular, the majority of those trafficked into domestic servitude are also women, many of whom

are subjected to diverse forms of abuse. Measures must be taken to ensure that the gender-blindness and the prevalent culture of disbelief within the UKBA are not replicated in any new approach to criminalisation.

We support Rape Crisis Scotland's recommendation that "there should be a Statutory Aggravation to ensure associated offences are recognised as part of the dynamic of trafficking– e.g. assault aggravated by human trafficking or fraud aggravated by human trafficking."

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

We support the rights-based and multi-agency approach articulated in the Bill. We would add that proactive obligations to protect women's rights should be explicitly addressed. Gender analysis should be mainstreamed in development of the criminal justice response, and across the proposed 'multi-disciplinary specialism' on human trafficking.

Common failures of the criminal justice system with regard to sexual offence cases should also be addressed. These include the consistent failure to recognise impacts of trauma and coercive control on survivors, and inappropriate use of personal information to undermine the credibility of witnesses. This normative discrimination within the system contributes to very low conviction rates for sexual violence and trafficking cases. It will therefore be crucial that proposed training programmes include adequate gender components that aim to tackle this.

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

We fully support a victim-centred approach to Scotland's anti-trafficking strategy. This includes the non-prosecution and non-penalisation of survivors, as part of a zero tolerance stance that prioritises the needs of victims and tackles the structures of human trafficking.

We support Rape Crisis Scotland's recommendation that "[c]onsideration should be given to the complex situations which frequently arise, where an individual is unable to disclose or denies being trafficked but where there is objective evidence to suggest Human Trafficking."

Question 6: Do you agree with the approach of 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

As above, tackling demand will be key to an effective strategy over the long-term, and to the human rights protection goals at the heart of this Bill. This will require a holistic plan to tackle demand, incorporating civil society and the private sector, as well as cross-departmental coordination across SG and the criminal justice system.

In order for the rights of trafficked women to be upheld, gender equality imperatives must be integrated across the strategy's objectives, including action to harness wider involvement. All actors must receive gender responsive training and be held accountable to the minimum standards discussed below.

Question 7: Do you agree with the approach to 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

Minimum standards and independent services that are robustly gendered will be vital to safeguard survivors from further harm. Women's experiences in the criminal justice and asylum systems confirm significant gaps between policy and practice related to gender-based violence and broader gender issues. Development and implementation of a support system must therefore explicitly seek to combat this, and integrate gender analysis, anti-discrimination processes, cultural awareness and sensitivity to trauma from the outset.

We also welcome recognition of the invaluable work undertaken by the Trafficking Awareness Raising Alliance to support survivors and of the limits on current funding arrangements. The role of third sector organisations and expert stakeholders will be key to delivery of client-centred support services that are truly gendered and culturally-sensitive. Additional resources will be needed to fund this.

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?

The Bill holds potential to advance gender equality agendas, including equity objectives within the SG National Performance Framework and the violence against women strategy. However, in order to do so, legislation must be explicitly framed in terms of gender equality, so that obligations and reporting duties that fall to delivery agents are correspondingly fit-for-purpose.

Public bodies involved in design and delivery must ensure compliance with the Public Sector Equality Duty, with particular focus on equality impact assessments and the multiple discrimination some survivors face in accessing services. In addition to the diverse cultural and linguistic issues that are inherent to tackling human trafficking, LBT women, disabled women and young women will all experience different barriers to accessing support. Private sector contractors and third sector partners must be held to the same equalities standards.

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?

n/a

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

This Bill can play an important role in reiterating the instrumental links between sexual exploitation across local and global scales, and the increasing commodification of women's bodies through trafficking and the globalised sex industry.

We support the recommendations of the Equality and Human Rights Commission report *Inquiry into Human Trafficking in Scotland*. In addition, all related measures, including this Bill, must be subject to rigorous gender mainstreaming practices with support from relevant experts. Without adequate accountability, monitoring and evaluation, and mandated cross-departmental action, reference to the importance of gender dimensions will ultimately deliver little for women trafficked into Scotland.

Policy coherence will also be key to the success of an anti-trafficking strategy for Scotland. For instance, this Bill and the SG violence against women strategy currently under development must complement one another and articulate a clear route to challenging the demand for human trafficking.

For further information please contact Jill Wood, Policy Manager, Engender Jill.Wood@Engender.org.uk 0131 558 9596

About us

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.

ⁱ EHRC (2011) *Human Trafficking in Scotland*

ⁱⁱ UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Articles 3 and 5 of the Council of Europe Convention on Action against Trafficking in Human Beings