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Centre LGS

AHRC Research Centre for Law, Gender and Sexuality

**RESPONSE TO
THE HOME OFFICE CONSULTATION:
'TACKLING HUMAN TRAFFICKING –
CONSULTATION ON PROPOSALS
FOR A UK ACTION PLAN'**

April 2006

CentreLGS is the Arts and Humanities Research Council Centre for Law, Gender and Sexuality.

The purpose of CentreLGS is to act as a national and international focal point for academics, practitioners and policy-makers who work in the area of gender, sexuality and the law. It consists of about 70 scholars in three institutions: the Universities of Kent, Keele and Westminster.

CentreLGS aims to support current research and develop new initiatives in this field through regular policy forums and conferences, the publication of books and articles, exchange and visiting scholar programs, and the supervision of postgraduate research students.

SUMMARY

CentreLGS acknowledges that the Action Plan seeks to strike an effective balance between law and order issues of preventing and punishing trafficking, and that of providing assistance to victims of human trafficking. While we understand and support the need to prosecute those who engage in the global trade in human beings, we question the adequacy of the victim-centred response of the Action Plan in its present form. We are concerned that an overly legal response to the issue of human trafficking obscures the important human rights dimension of the issue. Furthermore, we do not believe that conflating complex issues of immigration, organized crime, and trafficking can provide an effective intervention into this problem. Extant domestic laws such as the 2003 Sexual Offences Act, combined with a more 'victim-centred' and culturally sensitive approach to human rights advocated by the *Council of Europe Convention on Action against Trafficking in Human Beings* (*Council of Europe Convention*) would provide a more inclusive strategy to combat this problem.

The Home Office Action Plan prioritises the apprehension and prosecution of traffickers. As the majority of their 'victims' are women, our main concern is that this focus eschews the vulnerability of victims of trafficking once they enter the criminal justice system. We would urge the Home Office to tackle the practicalities of responding to trafficking cases by placing the needs of victims front and centre. For example, the government needs to be mindful of the 'push' factors that make women easy targets for organized crime gangs. Failing economies, processes of globalization, human displacement due to wars, famines, and ethnic conflicts, as well as the continued international demand for young women as sexual commodities, all contribute to the proliferation of sex trafficking. As early as 1996, the Multidisciplinary Advisory Team for Central and Eastern Europe stated that violence against women in public and private spheres makes women more inclined to want to escape these conditions, making them vulnerable to recruitment by traffickers. The Action Plan

must also interrogate the plight of repatriated victims of trafficking. The cultural stigma attached to prostitution in many source countries often makes it impossible for women to return home and reintegrate safely. Furthermore, fear of reprisals from traffickers at home makes many women more susceptible to being re-trafficked.

Our response to the Consultation paper brings a critical, feminist, and human rights perspective to bear on these issues. Much of what follows will highlight that trafficking is a complicated process that involves key points of international human rights law.

RECOMMENDATIONS

We recommend, more broadly, that:

- **The Action Plan ensures that a nuanced, victim-centred, human rights focus to the issue of trafficking prevails over a narrow law and order approach.**

We recommend, specifically in relation to prevention of trafficking, that:

- **Measures to prevent trafficking at source are properly informed by research that explores the 'push' factors that result in trafficking. This entails acknowledging that trafficking is rooted in broader processes of globalization;**
- **Schemes to assist with 'reintegration' of victims are properly informed by research about the feasibility of such research and the support needs of victims;**
- **Projects to address root causes of trafficking and to raise awareness of trafficking in vulnerable communities do not conflate issues of trafficking with those of illegal immigration;**
- **Government agencies pursue a joined-up approach in relation to domestic approaches to prostitution, forced slavery or servitude;**

- **The discretionary powers given to 'frontline staff' in 'preventing trafficking at source' are limited, and clearly and transparently set out;**
- **'Frontline staff' are given proper training in the exercise of their powers, and avoid entrenching racial, ethnic, gender and socio-economic stereotypes;**
- **UK legislation is enacted to implement the *UN Convention Against Transnational Organized Crime*, and that specific provision is made in this for the rights of victims in the process.**

We recommend, specifically in relation to investigation, law enforcement and prosecution, that:

- **The Action Plan develop clear legal guidelines, procedures and training for the care and rights of victims to assist police and enforcement officers to help victims of trafficking, and to avoid conflation of issues of organized crime and trafficking.**

We recommend, specifically in relation to providing protection and assistance to victims, that:

- **Future legislation and amendments to immigration legislation clearly set out statutory provisions and procedures for victims of trafficking to remain in the UK to recover, drawing on the provisions set out in the *Council of Europe Convention*;**
- **Any such permanent scheme to assist victims of trafficking in the UK has a focus on the needs of victims, and thus is properly informed by independent research regarding the appropriate length of 'reflection period' that victims require. This period should not be made contingent on providing assistance to authorities;**
- **The Action Plan develop specialised training for all relevant authorities dealing with victims of trafficking;**
- **Repatriation schemes for victims of trafficking are properly informed about and take into account the difficulties and dangers associated with returning victims to their home countries;**
- **The Action Plan reaffirm and support the UK's existing obligations under international human rights treaties,**

particularly the *UN Convention Relating to the Status of Refugees 1951*.

CONSULTATION RESPONSE

CentreLGS acknowledges that this Action Plan seeks to strike an effective balance between apprehending and successfully prosecuting those who engage in trafficking of human beings on the one hand, and providing assistance to those who are victims of this complex process on the other. Our response reflects concerns over some areas in the Consultation document where we consider that this balance is lacking, and where a law and order focus prevails at the expense of providing a more nuanced victim-centred solution. Much of the international, regional, and national response to date focuses on catching and prosecuting members of organized criminal gangs. The criminal focus obscures the human rights aspect of trafficking, and as a result, tends to criminalize and stigmatise those who are victims. While we do not condone trafficking on any level, we do have concerns about the continued criminalization of those who are trafficked for the purposes of working in the sex industry.

We are also concerned that while the Home Office recognizes that trafficking in human beings is part of a broader problem, we would like to see initiatives that specifically acknowledge and address the fact that this problem is rooted in processes of globalization and migration, and is fundamentally, a human rights issue.

We have identified a number of key, interrelated areas where we see that the Consultation Paper gives rise to concern, and where a victim-centred approach would improve extant initiatives. Trafficking is a particularly complex issue and many of the points raised we recognize as interlinked. However, for the purposes of this response, we are going to address the themes laid out in the Consultation Paper.

A. Prevention of Trafficking

The Consultation Paper sets out a number of projects which 'tackle the causes of trafficking and which aim to raise awareness of trafficking amongst groups which are vulnerable to recruitment by traffickers' (page 9). We believe that academics and policy makers need to engage in more initial research to properly inform the responses in the Action Plan. In order to deal effectively with the issue, we must have a greater understanding of the variety of 'push factors' that result in trafficking, particularly in key source countries such as the former Soviet Union. 'Traffickers take advantage of poverty, unemployment and a desire to emigrate to recruit and traffic women into sex industries' (Hughes, 2000). We must gain an understanding of the gender inequalities that persist in source countries, the 'feminisation of poverty' (Goodey, 2002), and the particular status of women. For, as Barry (1995) comments, 'trafficking and prostitution are highly gendered systems that result from structural inequalities between women and men on a world scale.' The high rate of battering, sexual harassment, and sexual assault experienced by women in the Russian Federation for example, combined with a failure by Government authorities to acknowledge that such a problem exists, makes women vulnerable to traffickers as they seek to escape violence (Global Survival Network, 1997, 14).

The Consultation Paper discusses schemes to assist with 'reintegration support and employment training for victims of trafficking' (page 9). The Home Office needs to combine these insights with further research that explores whether such programmes are feasible, and acknowledges that, for example, the resulting social ostracism of trafficking may make women more vulnerable to being re-trafficked or becoming involved in the recruitment process themselves (Hughes, 2000; Agustin, 2005). Relevant non-governmental organizations might usefully assist the Home Office in developing and assessing such programmes. The Action Plan needs to engage at some level with debates around domestic legal provisions on

prostitution, particular in the context of reducing demand. Such engagement would need to be mindful of feminist contributions to recent debates on prostitution that highlight the dangers of further criminalization. A joined-up approach of Government agencies and a coordinated strategy on prostitution, forced slavery, or servitude as outlined on pages 5 and 9, would certainly assist in building a fuller picture of the most appropriate trafficking response.

The Home Office's Consultation Paper indicates the ways in which it is supporting and will continue to 'support projects which address root causes of trafficking and raise awareness among those who might be vulnerable to traffickers' (Page 3). Despite this, we perceive that the focus of this section of the Consultation Paper remains on preventive responses to organized crime. Several projects listed in the Consultation Paper seem to focus on criminal aspects of the trafficking issue. For example, in order to 'build capacity in source and transit countries' and to 'highlight the dangers posed illegal immigration' the Foreign and Commonwealth Office has funded work with the Turkish authorities 'to build detention capacity and raise awareness...within the law enforcement community' (page 9). This has the effect of conflating issues of illegal immigration with trafficking. Such a criminal focus may hamper attempts to convey information and raise awareness of trafficking among vulnerable communities, who know that 'corruption of officials through bribes and even collaboration of officials in criminal networks enables traffickers to operate locally and transnationally' (Global Organized Crime Project, 2000, 42). In light of this problem, it is unlikely that the multi-agency task force Reflex will work effectively as a deterrent.

The focus of the Consultation Paper on 'other opportunities to prevent trafficking upstream' also shows a clear focus on criminalization that may lead to further exacerbating the vulnerability of victims. 'The mainstay of the European Union's practical and political response to sex trafficking has been and, arguably, continues to be located within a framework focusing on control of illegal immigration and organized crime. In the aftermath of 9/11, control of unwanted immigration into the EU has been enhanced as

it has been wedded to control of terrorism.’ (Goodey, 2004, 32) This criminal focus will not assist cooperation into research. Nor will it encourage organizations to cooperate with the Home Office, knowing that this will compromise already vulnerable women. In condoning a system that invades privacy, it is supporting a two-tiered approach to human rights where only citizens of particular parts of the world have rights.

We believe that aspects of this section of the Consultation Paper are likely to exacerbate issues regarding legal process, fairness, and accountability. The proposals in the Consultation Paper to raise awareness of trafficking amongst ‘frontline staff’, such as airline carriers, raise potential concerns for abuse of process. The Consultation Paper does not set out the details of the Airline Liaison Officers system. Thus, their role in these processes is unclear, as is the extent of discretionary powers that airline carriers will have in ‘preventing trafficking at source’. Our concern is that giving extensive discretionary powers to actors such as airline carrier staff leaves open real possibility for abuse of such powers. Such statements appear to carry the premise that women from certain geographic locations can only be travelling for prostitution. As feminist researchers, we are aware that punitive measures increase rather than decrease women’s victimization. We would not want to see such measures adopted in the name of protecting women’s rights.

Government strategies that only address the trafficking of women into forced prostitution to the detriment of other forms of trafficking are problematic. This perspective privileges one gender-specific group of victims. ‘It ensures that women, men, and children who are trafficked into other forms of forced labour...are not protected, and that their traffickers are not prosecuted’ (Jordan, 2002, 30). This also raises issues of what sort of training will given to such staff on how to exercise powers, what ‘characteristics’ they will be instructed to look for in ‘profiles of trafficking victims’ (page 18), raising the potential to further entrench racial, ethnic, gender and socio-economic stereotypes. Similar concerns emerge in the proposals to raise awareness and tighten up procedures

around issuing of visas. This is effectively privatisation of Government responsibilities.

In future legislation to implement the *United Nations Convention Against Transnational Organized Crime (2000) (UNTOC)*, and its accompanying Protocols into UK law, we would like to see specific provisions that put a clear focus onto the needs of victims of trafficking in every stage of their encounter with UK authorities. Specifying clear legal processes that emphasize the rights of the victims will be important. The impact on victims of trafficking and their subsequent needs ought to be factored into future research and cost assessment (as outlined on pages 8 and 9). Clear and well-designed processes should also go some way to solving the anxieties expressed on pages 17-18 of the Consultation Paper about fraudulent applications slowing down the process. Clearly, these anxieties should not form the basis of decisions about whether or not to establish regulatory processes, but are surely more appropriate to discussions of resource allocation.

B. Investigation, Law Enforcement and Prosecution

The Consultation Paper sets out a number of initiatives around legal and criminal responses to trafficking in the UK. Our main reservations about the proposals outlined in this section relate to the conflating of 'organized immigration crime' and trafficking. For example, the Paper makes no mention of the ways in which 'frontline personnel' make the distinction between these different groups of people. The Reflex scheme in particular seems to have this tendency. It is important to separate out these issues, particularly in terms of the treatment of victims of trafficking. Specifying clear legal guidelines and processes for care and rights of victims would assist police and enforcement officers in this situation. This would ensure that the reaction to these different, but related issues, is appropriate. Police staff involved should receive adequate support in their training, ability, and attitudes in dealing with victims of trafficking.

C. Providing Protection and Assistance to Victims

The Plan's objectives regarding tackling victimization produced by trafficking is not, in our view, best achieved by some of the measures proposed in the plan. We are concerned that the overall focus of the Action Plan presents a predominantly criminal, legal response that does not adequately take into account the needs of victims, particularly women. The Consultation Paper outlines the Poppy scheme resources, a project that seems to put into place a range of support services as required by Article 6 of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000) (*UN Trafficking Protocol*). However, we perceive that even this response to victims has an overly legal response, making help beyond the bare minimum of 4 weeks 'reflection period' contingent on providing assistance to the authorities. We strongly suggest that further research and evaluation needs to be done about whether this length of time is adequate to assist women who may be severely traumatised by their experiences. In fact, Article 13 of the *Council of Europe Convention* provides that the minimum period must be at least 30 days, with the goal of assisting the victims to recover.

We object to the caveat that long term assistance to victims of trafficking is made contingent on assistance to authorities. This provision preys on and exacerbates the vulnerability of victims, and treats victims as criminals. It is in danger of sending a message to women that their position as a victim of trafficking is in some way their fault. The comments in the Consultation Paper at pages 6 and 17, that the Home Office is concerned that more victim centred provisions in the *Council of Europe Convention* might act as 'pull factors' to the UK, seems to suggest that victims of trafficking deliberately set out to become so. However, the Home Office admits that it 'does not fully understand the scale trafficking into or within the UK' (page 5). Such statements speak to the fact that the Government conflates issues of migration and trafficking, issues of criminal responsibility with issues of victimhood. Article 3 of the *UN Trafficking Protocol* sets out clearly that any 'consent' of a victim to

exploitation is irrelevant, which at least acknowledges important feminist critiques about 'informed consent'. The Action Plan needs refocusing on this issue, to move away from what presents as criminalizing and blaming victims of trafficking.

Future legislation and amendments to immigration legislation should clearly set out automatic rights of victims of trafficking to remain in the UK to recover and the process by which this is done, so as to clarify the ad hoc and potentially discretionary present situation. The fact that witness protection has a statutory footing in the UK (page 16), but the basic rights of victims regardless of their cooperation with authorities does not, only serves to strengthen the need to refocus the Action Plan to address the needs of victims. Adequate and specialised training of relevant authorities is also important. The Consultation Paper sets out some initiatives that might serve as a basis for extending this support for staff (pages 16-17). The Home Office does not refer to how it might interview women in 'women-friendly' environments, such as suites that are away from male-dominated spaces, and that provide for the physical needs of women. For example, a self-contained examination suite containing video interview facilities, counselling rooms and access to forensic medical examiners.

The criminal and legal focus of the Consultation Paper reflects the politicized nature of these issues at the international level. This results in a system that focuses on the criminalization and prosecution of trafficking, where 'the political concerns about emigration, crime and insecurity' obscure the fact that trafficking is also a human rights and humanitarian issue (Goodey, 2004). We are disappointed that the Consultation Paper does not engage with the provisions in Article 14(1) of the *Council of Europe Convention*, which provides for the possibility for renewable residence permits for victims, where a longer stay is necessary owing to their personal situation. The UK faces both moral and legal responsibility for the welfare of victims of trafficking, as acknowledged in paragraphs 8 and 10 of the Consultation Paper's Partial Regulatory Impact Assessment.

This would include residence permits that are not contingent on providing assistance to authorities.

The four-week 'reflection period' also gives rise to serious reservation about the engagement and compliance of the Action Plan with international and regional human rights instruments and commitments. For example, those persons whom the Home Office have defined as 'victims of trafficking' are likely to meet the defined refugee status, and therefore trigger the United Kingdom's legal obligations relating to refugees.¹ Articles 1 and 33 of the *United Nations Convention Relating to the Status of Refugees 1951* are relevant: 'No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his (sic) life would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.' While the Consultation Paper sets out that victims of trafficking are entitled to apply for asylum in the UK, we have real concerns that a four-week period is insufficient for them to put this process into place. This presents an erosion of the right to asylum, whereas the UK is bound by a 'Duty of Good Faith', as required in spirit and letter of the Convention.

We would like to see the UK taking a lead on stronger, more victim-centred processes around issues of repatriation. The Consultation Paper does not give sufficient detail about initiatives that the UK might undertake to assist the safe and sustainable repatriation of victims of trafficking, though there is mention of this on page 18. There is a need for the Action Plan to acknowledge the difficulties and dangers associated with returning victims to their home countries, particularly the stigmatisation that they may face upon return, and their resulting position within their communities. This work would go hand in hand with the prevention and awareness raising activities that are set out at the beginning of the Consultation Paper. Lack of understanding of these

¹ The case *R v. Immigration Appeal Tribunal ex parte Shah; Islam v. Secretary of State for the Home Department* (1999) 2 AC 629 provides consideration of examples of refugee states as a result of persecution based on one's social group, in this context, Pakistani women accused of adultery fearing persecution.

situations reinforces gender, racial/ethnic, socio-economic stereotypes, and pressures. It ignores the status of women in society, and overlooks the fact that vulnerable women of particular socio-economic positions may lack resources and contacts, and find themselves in vulnerable situations where their choices are limited in terms of employment.

The two Protocols that accompany the *UNTOC* highlight the separation of trafficking and migration issues, and both highlight trafficking and migration as human rights issues. While not seeking in any way to minimise the reality and the harm caused by trafficking, nor its criminal status, we are concerned that the Consultation Paper focus on trafficking may in fact provide a 'smokescreen' to criminalize 'undesirable' migration and labour. The language used reinforces our fear that that the Home Office concern centres on migration. For example, page 3 uses the language of migration such as 'closing our borders', 'harm to society', page 6 mentions 'organized immigration crimes'. We have highlighted above the ways in which the Consultation Paper appears to assume that some women who are trafficked have deliberately done so in order to come to the UK.

Finally, we wish to draw attention to the fact that the Action Plan does not fully acknowledge the broader context in which these debates occur. Most states are in a similar position to the UK in the need to consider broader issues about the flow of people across borders, whether from trafficking, migration, or because of the need to seek asylum. In engaging with these issues stemming from globalization, states such as the UK must not continue to ignore wider 'push' factors that contribute to all issues involving the flow of people across borders. A response that seeks only to address these concerns by focusing on criminalizing behaviour in an attempt to provides only a partial answer. While 'Northern' states are anxious to prevent trafficking at the source, there is little acknowledgement of the part that the North plays in maintaining unequal globalization processes, which are the root causes of trafficking. Such a response continues to abdicate political responsibility to the economic

South by adopting coercive measures that ignore human rights and globalized realities (Kapur, 2005).

FURTHER INFORMATION

Method of Consultation

This response is the result of collaboration between Centre members across the three participating institutions in the UK. Members were invited to send their comments on the Consultation to the response co-ordinators, Dr Sharron FitzGerald and Dr Zoe Pearson (Keele University).

The final response was written by Dr FitzGerald and Dr Pearson, with valuable input from:

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