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Information on submitting organisation: Anti-Slavery International, established in 1839, works to eradicate all contemporary forms of slavery; bonded labour, forced labour, human trafficking, descent based slavery, the worst forms of child labour, and forced marriage.

Executive summary: This submission focuses on trafficking for forced labour and sexual exploitation, and the abuse and exploitation of migrant domestic workers. It argues that the UK's anti-trafficking practice is not compliant with its international obligations and deficient in the areas of identification, protection and prosecution.

1. Trafficking in the UK

The Government¹ estimates that there are 5000 people trafficked to the UK at any one time. Between 1 April 2009 and 31 March 2011, 1481 potential trafficking victims were referred to the National Referral Mechanism, the Government's official identification process. Of these, 74% were exploited as adults and 24% as children, 72% were female and 28% were male. Those referred came from 88 different countries. Victims originated from Nigeria, China, Vietnam, Romania, the Czech Republic, Slovakia and the UK in the greatest numbers. Nearly half of adults were trafficked into sexual exploitation (46%), with 30% trafficked for labour exploitation and 18% for domestic servitude². Children were trafficked for labour exploitation (34%), sexual exploitation (29%) and domestic servitude (13%).³ The number of referrals to the National Referral Mechanism is not a true reflection of the extent of trafficking in the UK. Many trafficked people are not referred into the system, primarily because they did not see the benefit or were fearful of the consequences.⁴

The legal framework and policy response

Trafficking for all forms of exploitation is a criminal offence in the UK and carries a maximum penalty of 14 years imprisonment. Section 71 of the Coroners and Justice Act 2009 introduced a new offence ("the section 71 offence") of holding someone in slavery or servitude, or requiring them to perform forced or compulsory labour, punishable by a maximum of 14 years imprisonment. The Gangmasters (Licensing) Act 2004 established a system for registering labour providers in the agricultural, shellfish gathering and associated packing and processing sectors. The UK ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2008. In May 2011 it opted in to the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims. In July 2011, the Government launched its new anti-trafficking strategy with four key aims; international action to stop trafficking happening; a stronger border at home to stop victims being brought into the UK; tougher law enforcement action to tackle trafficking gangs; and improved identification and care for trafficked people.⁵

¹ House of Commons Home Affairs Select Committee, *The Trade in Human beings: Human Trafficking in the UK*, Home Affairs Committee, Sixth Report of Session 2008-9, Volume 1, House of Commons, London, May 2009

² The remaining victims were encountered prior to the exploitation beginning

³ The remaining victims were encountered prior to the exploitation beginning

⁴ The Anti-Trafficking Monitoring Group, *Wrong kind of victim?*, June 2010

⁵ *Human Trafficking: The Government's Strategy*, July 2011, <http://www.homeoffice.gov.uk/publications/crime/human-trafficking-strategy?view=Binary>

Failure to identify, protect and prosecute

Flawed identification system

Under the National Referral Mechanism, two designated Competent Authorities can determine a victim's trafficking identification; the UK Border Agency in non-EEA cases and the UK Human Trafficking Centre in EEA cases. There is no formal appeals process against the decision of these bodies. Between 1 April 2009 and 31 March 2011, 1481 potential trafficking victims were referred to the National Referral Mechanism. Of these, a total of 497, just 33%, received a Conclusive Positive Grounds Decision; the formal term for identification as a trafficked person. Given that the Government itself estimates that 5,000 people are trafficked to the UK at any one time, this figure is surprisingly low. There are concerns regarding differential treatment of victims depending on their immigration status.⁶ A breakdown of positive decisions by country of origin reveals a startling disparity between the chances of UK and EU nationals, and non-EU nationals, to be recognised as trafficked. Eighty six percent of UK nationals referred were positively identified and 77% of Romanian nationals. Despite non-EU nationals representing the largest proportion of victims, positive identification was extremely low, just 15% of Chinese and 19% of Nigerian nationals.

According to the Anti-Trafficking Monitoring Group, the system appears to be relying excessively on the discretion of officials, who receive minimal training, to staff a mechanism supported by flawed legal guidance relating to who should be identified as a trafficked person.⁷ In numerous cases, the authorities concluded that as the person had agreed to come to the UK, they could not have been trafficked despite the fact that under international law, deception and abuse render any consent irrelevant. The failure to identify victims has serious consequences; a trafficked person can only exercise their rights once officially identified.

Inadequate services for victims of trafficking

Failures within the identification process compounded by a lack of formal service standards have resulted in barriers to victims in accessing services they are entitled to, including accommodation, medical services, counselling and legal assistance. The level and quality of assistance varies widely depending on the type of exploitation someone has been subjected to, their location, and the capacity of support providers. Some trafficked women have been housed in unsuitable places and accommodation for male victims of trafficking is severely limited. Services such as interpreters or legal representations are routinely not available.⁸ Although there are four avenues available under UK law through which trafficked persons could seek compensation, they face numerous practical and legal barriers in accessing this right and are highly unlikely to receive compensation.

Criminalising victims of trafficking

Trafficked people continue to be treated as criminals rather than the victims of a serious crime. Despite existing guidance from the Crown Prosecution Service, victims of trafficking are often not identified as such and are routinely prosecuted for offences they committed when coerced. In the case of *R v O*, 2008,⁹ the Court of Appeal overturned the conviction of a Nigerian girl who had been trafficked into prostitution yet was successfully prosecuted and sentenced to eight months imprisonment for using an identity card belonging to another, which she had been using whilst trying to escape her trafficker. In recent years the police have discovered numerous cannabis farms, many of them located in private houses. Often the adults or children encountered during the raids had recently arrived from other countries, notably Vietnam, and there were good grounds for

⁶ The Anti-Trafficking Monitoring Group, *Wrong kind of victim?*, op.cit

⁷ *Ibid*

⁸ *Ibid*

⁹ EWCA Crim 2835, 2008, <http://www.bailii.org/ew/cases/EWCA/Crim/2008/2835.html>

considering that some had been trafficked. However, while the authorities seem to have recognised that they had been subjected to pressure, the individuals were prosecuted nonetheless.

Low levels of prosecution and convictions

In October 2009, the Home Office and Scottish government reported that, since 2004, there were 113 convictions for trafficking for sexual exploitation, seven for trafficking for forced labour, and three for conspiracy to engage in trafficking. There was one conviction in Scotland and the one trafficking conviction in Northern Ireland was overturned. There were 116 prosecutions on trafficking charges between April 2010 and March 2011¹⁰, the outcome of these is unknown. Anti-Slavery International is aware of at least three convictions in 2011; one individual was sentenced to 11 and a half years imprisonment, one to twenty years imprisonment and one awaits sentencing.¹¹

Several factors are leading to such low levels of prosecution and convictions: a failure to investigate after a presumed trafficked person provided a statement, particularly in cases of migrant workers subjected to domestic servitude; a lack of understanding of the various forms of coercion associated with trafficking, particularly debt bondage, among law enforcement officials; a lack of resources at local police level to conduct relatively expensive trafficking investigations; and a lack of information sharing among the different agencies involved. In the case of *OOO & Ors v The Commissioner of Police for the Metropolis*, 2011¹², the High Court found that the Metropolitan Police had failed to investigate the claims of four individuals who had been trafficked to the UK from Nigeria when they were children and subjected to forced labour as domestic workers. They were subsequently awarded compensation.

Proving a human trafficking crime is difficult. Between April 2009 and January 2010, 36 individuals arrested for trafficking offences in England and Wales went to court. Although all 36 were arrested under the relevant trafficking legislation, nine were convicted on charges related to the exploitation of prostitution.¹³ In effect, law enforcement officials found it easier to secure convictions on these charges rather than on more serious charges related to trafficking. The Government is reviewing whether current trafficking legislation supports the effective prosecution of traffickers, noting “there are some disparities which make the legislative framework less straightforward than it could be for prosecutors” and “the different levels of proof required mean that it is more difficult to prosecute for labour exploitation.”¹⁴

Lack of co-ordination of anti-trafficking efforts

There is no formal coordinating body on anti-trafficking action in the UK. While the UK Human Trafficking Centre is “Point of co-ordination for the development of expertise and cooperation to combat trafficking in human beings.”¹⁵, it does not have actual operational coordination authority. Numerous agencies have a role to play in protecting or assisting trafficked persons. Yet so far the government has had difficulty in establishing any meaningful form of coordination between these organisations or across the UK’s internal borders.

An immigration approach to trafficking

The government’s new anti-trafficking strategy appears to be serving the agenda of curbing migration rather than protecting victims and prosecuting traffickers. It pays very little attention to

¹⁰ *Human Trafficking: The Government’s Strategy*, op.cit

¹¹ Data supplied to Anti-Slavery International in October 2011 by the Crown Prosecution Service

¹² EWHC 1246 (QB), 20 May 2011, <http://www.bailii.org/ew/cases/EWHC/QB/2011/1246.html>

¹³ *Freedom of Information* request 20090647 answered by UKHTC on 18 January 2010, accessed on 6 April 2010 and available at www.southyorks.police.uk/foi/disclosurelog/20090647-0

¹⁴ *Human Trafficking: The Government’s Strategy*, op.cit, p23

¹⁵ Website of the UKHTC accessed August 2011

internal trafficking, focuses predominantly on international trafficking and immigration control measures as tools to combat trafficking, and offers little for the protection of trafficked people. This over-focus on international trafficking and immigration control measures is at odds with the referral statistics where UK and EU nationals represented over half of conclusively identified victims, and fails to take account of the fact that people can be trafficked through regular migration channels or may have a legal right to be in the country.

Child victims of trafficking

The UK is failing child victims of trafficking. Although a strong child protection framework exists in the UK, the National Referral Mechanism bypasses those with child protection expertise, and the decision on whether a child is identified as trafficked is made by those who have insufficient expertise on child trafficking.¹⁶ The locations in which many trafficked children may be found, such as in a brothel, cannabis factory or forced into street crimes, result in many being treated as criminals rather than victims of crime. Many separated children who are placed in local authority care go missing.¹⁷ There is evidence that some respond to pre-arranged orders to rejoin their traffickers (or others) who subsequently exploit them. While there is a pilot guardianship scheme for all separated children in Scotland, other UK authorities have so far not taken action to appoint legal guardians for trafficked children. As a result, no one individual is responsible for accompanying the child through all the legal and other administrative procedures and upholding the child's best interests.

2. Migrant domestic workers

In 2010, approximately 15,000 visas were granted to domestic workers from non-EU countries to accompany their employers to the UK.¹⁸ Migrant domestic workers, the vast majority of whom are women, are a particularly vulnerable sector of the UK workforce. Living as well as working in their employer's home, they are extremely isolated and are subjected to a variety of coercive mechanisms. Each year, hundreds face situations of abuse, exploitation and forced labour. In 2010, 56% of the migrant domestic workers registering with Kalayaan¹⁹ received a salary of £50 or less per week, 48% worked 16 hours or more a day, 67% worked seven days a week with no time off and 58% had to be available 'on call' 24 hours a day. Furthermore, 54% were subjected to psychological abuse, 18% to physical abuse and 3% to sexual abuse. The passports of 65% were withheld by the employer and 60% were not allowed out of the house unaccompanied.²⁰

The legal framework

The Overseas Domestic Worker (ODW) visa was introduced in 1998. Employers wishing to bring domestic workers to the UK are required to prove that there is a 12 month pre-existing employment relation and must provide an employment contract. Crucially, the visa is an independent immigration status for the domestic worker and is not tied to the employer (except for those working for diplomats). Migrant domestic workers are able to change employers to another domestic work position in a private house, and thus are able to escape exploitative conditions without fearing becoming irregular. The visa is also renewable.

Protections for migrant domestic workers under threat

Despite the scale and seriousness of the abuses that migrant domestic workers face and the positive outcomes the existence of the visa has had in helping them to escape exploitation, in June 2011 the

¹⁶ The Anti-Trafficking Monitoring Group, *Wrong kind of victim?*, op.cit

¹⁷ ECPAT UK, *Watch over me*, London, October 2011, pp13-14

¹⁸ UK Border Agency statistics

¹⁹ A charity that works with migrant domestic workers in the UK, www.kalayaan.org.uk

²⁰ Lalani, M, *Ending the Abuse. Policies that work to protect migrant domestic workers*, Kalayaan, London, May 2011

Government announced a three month consultation on employment related settlement. Within this are proposals to abolish the ODW Visa and replace it with a non-renewable 6 or 12 month visit visa, with no employment rights, no right to change employer and no eligibility for settlement. No decision had been announced by November 2011. However, should the proposals go through, the UK government will remove one of the single most important protections for migrant domestic workers, leaving hundreds vulnerable to abuse, exploitation and forced labour with no escape route. The ODW visa has been shown to work well and has been recognised internationally as an example of good practice.²¹ The UK Home Affairs Select Committee stated that retaining the visa “is the single most important issue in preventing the forced labour and trafficking of such workers.”²²

The specific vulnerabilities of migrant domestic workers accompanying diplomats

In 2010, 50% of migrant domestic workers in diplomatic households in the UK received a salary of less than £50 per week, 53% worked 16 hours or more a day, and 63% worked seven days a week with no time off. Furthermore, 47% reported psychological abuse, 11% were subjected to physical abuse and 6% sexual abuse. The passports of 58% were withheld and 63% were not allowed out of the house unaccompanied.²³ Domestic workers in diplomatic households are excluded from protections currently afforded to other migrant domestic workers. The UK operates a visa system that allows diplomats to bring domestic workers to the UK. This visa specifies that these domestic workers are unable to change their employer outside of the specific mission that sponsored the visa. Visas are issued to domestic workers coming to the UK to work for diplomats with almost no oversight. There is no requirement to prove a pre-existing employment relationship or to provide an employment contract. Domestic workers in diplomatic households are therefore particularly vulnerable to abuse, exploitation and forced labour. They cannot leave their employer without suffering serious sanctions such as becoming undocumented and potentially being removed from the UK.

3. Recommendations to the Government

3.1 Trafficking

- Restructure the National Referral Mechanism so that it acts as a multi-agency identification and referral mechanism, and introduce the right to appeal into the process;
- Ensure that all trafficked people in the UK are able to access the support and services that they are entitled to, including free legal aid and access to their right to compensation;
- Ensure that no victims of trafficking are prosecuted for crimes that they committed while being trafficked;
- Appoint an independent anti-trafficking watchdog, based on the model of the Dutch National Rapporteur on Trafficking in Human Beings, with statutory powers to request information from the police, the immigration authorities, social services and NGOs across the UK, and to report to parliament;
- Introduce a system of guardianship for child victims of trafficking to ensure that every child has someone with legal authority to take decisions based on their best interests.

3.2 Migrant Domestic Workers

- Ensure that migrant domestic workers are: recognised as workers under UK law; have the right to change employer, including those in diplomatic households; are able to apply to renew their visas; and have the right to apply for settlement;
- Sign and ratify ILO Convention No189 on Decent Work for Domestic Workers.

²¹ Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/14/30/Add.3, 16 March 2010

²² House of Commons Home Affairs Select Committee, *The Trade in Human Beings: Human Trafficking in the UK*, op.cit

²³ Lalani, M., *Ending the Abuse*, op.cit