

Submission of the Ombudsman for Children
National Action Plan against Trafficking in Human Beings

January 2008

Introduction

The Minister for Justice, Equality and Law Reform, Brian Lenihan T.D., announced the commencement of a period of public consultation and invited submissions on the proposed National Action Plan Against Trafficking in Human Beings on 18 October 2007, the first EU Annual Day Against Trafficking in Human Beings.

Further to that invitation and pursuant to my statutory function under section 7(1)(a) of the Ombudsman for Children Act, 2002 to advise Ministers of Government on the development and co-ordination of policy relating to children, I have made a number of recommendations below on the National Action Plan for the Minister's consideration. The comments below should be read in conjunction with my advice of 31 May 2007 on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006 which outlines in greater detail my views on the prosecutorial elements of the response to trafficking as well as the principal lacunae in law and practice relating to child victims of trafficking. My purpose in preparing these comments is to focus on some aspects of trafficking not mentioned in that advice and to reiterate some of the principal recommendations which were not reflected in the Criminal Law (Human Trafficking) Bill, published on 10 October 2007.

The elaboration of a National Action Plan Against Trafficking in Human Beings is a very welcome step. While the need for an adequate legal framework to prosecute traffickers and protect victims of trafficking is compelling, so too is the need for practical coordination between bodies (both State agencies and NGOs) that can intervene at various points of the trafficking cycle. Both must be in place if the human rights of victims are to be effectively protected. Though human rights concerns are paramount in this context, it should also be borne in mind that the success of any criminal legislation will to a large extent depend on how effective that coordination is and how supportive we are of victims.

In preparing these comments, I have broadly followed the structure suggested in the Minister's invitation for submissions and the comments are divided into the following areas:

- I. Prevention
- II. Awareness Raising
- III. Prosecution
- IV. Protection of Child Victims of Trafficking

I. Prevention

Research

The importance of undertaking research into the nature and extent of trafficking to assist the development of effective preventive strategies should not be underestimated. Attempts to deal with trafficking invariably face the challenge posed by the dearth of information available on this clandestine activity. It is therefore essential that we map as best we can the number, geographical distribution, and backgrounds of victims of trafficking, as well as the forms of exploitation they face. It would also be fruitful to examine the links between trafficking and other areas of organised crime. I am aware that a number of important pieces of research have been undertaken in this area and that others are underway and would encourage the Government to support such initiatives as much as possible.

Cooperation

Given the international dimension of the problem, another important element of prevention is the coordination between An Garda Síochána and agencies in other jurisdictions involved in combating trafficking. I know that there is already a good deal of cooperation in this area, particularly with authorities in the United Kingdom. The fruitful relationships established to date should be enhanced and deepened.

Countries of origin

In addition, consideration might be given to a stronger connection between domestic anti-trafficking initiatives and assistance given by Ireland through its overseas development aid programme to countries of origin. Irish Aid has supported anti-trafficking measures in the past, in particular through the work of the International Organisation for Migration. Linking up these two strands of policy could lead to a more holistic approach to the issue of prevention.

II. Awareness Raising

Distinction between illegal immigration and trafficking

One of the most important tasks in the area of awareness raising is to make the public sensitive to the distinction between illegal immigration and trafficking. The two are unfortunately conflated at times in the public perception and the situation is not helped by the fact that part of the legislation covering illegal immigration in Ireland uses the term trafficking when it should use the term smuggling.

Targeted information campaigns

In addition to raising awareness among the general public, targeted information campaigns should be carried out within particular communities to which victims of trafficking may belong. An Garda Síochána's links with community groups are extremely important in this regard. One of the particular challenges in this area is raising awareness to enable individuals to self-identify as victims of trafficking. This can be difficult in instances where individuals experience working conditions that are not dissimilar to those in their countries of origin or which they fully expected to encounter upon arrival in Ireland.

Media

The media carry out a great public service in bringing attention to the phenomenon of human trafficking. While the media will no doubt continue their good work by reporting on this issue, they should be made sensitive to the particular concerns around privacy that emerge in relation to victims of trafficking and the fear of reprisal at home and abroad.

Training

All professionals who may have contact with child victims of trafficking or abuse should of course be adequately trained, both in terms of dealing with victims of trafficking and also with children. This should include, inter alia, members of An Garda Síochána, labour inspectors, customs officials, the judiciary, social workers, health professionals and educational professionals.

III. Prosecution

My advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006 contains detailed comments on the prosecutorial element of the response to trafficking and I will confine my comments here to three issues raised in that advice which were not reflected in the Criminal Law (Human Trafficking) Bill 2007.

Criminalising use of services

The first relates to criminalising the act of knowingly using the services of a trafficking victim (as distinct from employing such a person). Article 19 of the Council of Europe Convention on Action Against Trafficking in Human Beings recommends that States Parties provide for such an offence in their criminal law and such a provision has been called for by many groups that work directly with victims of trafficking. Notwithstanding the difficulty in establishing that an individual was aware that the person providing the “service” was indeed trafficked, I feel that providing for such an offence could have a useful deterrent effect. I am not persuaded by arguments to the effect that this could undermine the efficacy of criminal investigations by discouraging service users from coming forward. In most cases, such an individual is likely to have knowingly been involved in some form of exploitation (even if that individual was unaware that the exploited person had been trafficked) and would therefore be unlikely to come forward in any case.

Travel Documents

The second issue relates to Article 20 of the Council of Europe Convention. Article 20 recommends that States Parties to the Convention make the theft, damage and destruction of a victim’s travel documents – a common coercive tactic employed by traffickers – an offence in and of itself, attracting appropriate penalties. It is an act that is qualitatively different from the simple theft, damage or destruction of property with grave implications for the victim and I would recommend that provision be made for such an offence in our criminal law.

Non-punishment of victims

The third issue relates to criminalising victims of trafficking. Article 26 of the Council of Europe Convention recommends that it be made explicit that victims of trafficking shall not be punished for engaging in illegal activities as a result of them being trafficked. Notwithstanding the fact that it is unlikely a child victim of trafficking would be proceeded against in such a fashion, I consider that a clear statement on this matter is necessary.

IV. Protection of Child Victims of Trafficking

Identification

There should be a clear and standardised approach to the identification of child victims of trafficking based on international best practice, including the principles set out in General Comment 6 of the United Nations Committee on the Rights of the Child and the UNHCR/Save the Children Separated Children in Europe Programme Statement of Good Practice.

Consideration should also be given to the establishment of a National Referral Mechanism such as that outlined in the OSCE Action Plan to Combat Trafficking in Human Beings of 24 July 2003. Such a mechanism would link up and establish appropriate protocols between agencies involved in the discovery, identification and provision of services for victims of trafficking.

Status

The Minister for Justice, Equality and Law Reform has confirmed that provision shall be made for a reflection period and temporary residence for victims of trafficking within the framework of the Immigration, Residence and Protection Bill. While there is a cogent argument for dealing with the issue of immigration and protection status in the context of that legislation, a number of difficulties arise.

First and foremost is the gap in protection afforded to the victims of trafficking. In the absence of an explicit legislative provision, child victims of trafficking who do not meet the criteria for either asylum status or subsidiary protection will have no defined immigration status in this country. It may be that, in practice, such children are not deported but that is no substitute for a legislative provision removing the underlying uncertainty.

Moreover, I cannot discern any insuperable barrier to including such a provision in the Criminal Law (Human Trafficking) Bill which could later be repealed and replaced when the Immigration, Residence and Protection Bill is enacted. If the Minister already has a provision for victims of trafficking in mind for inclusion in the latter, it could be enacted with the trafficking legislation before the Oireachtas at the moment. The fact that the Human Trafficking Bill is essentially a piece of criminal legislation does not preclude the possibility of including protection aspects within its scope. The legislation governing immigration and protection issues is already spread across a number of Acts and the option of later repealing and replacing the proposed provision means that including it in the Criminal Law (Human Trafficking) Bill would not frustrate the Government's efforts to provide for the different strands of immigration and protection policy in one Act.

Accommodation

Secure and suitable accommodation is vital for child victims of trafficking, especially in the initial period of seeking to escape the influence of traffickers. The accommodation currently available to such victims falls short of this requirement and additional resources should be made available to the HSE as a matter of urgency in order to rectify the situation.

Most of the separated children who have been or show indications of having been trafficked are housed in hostels that are not directly run by the HSE and which are not currently subject to inspection by the Chief Inspector of Social Services. Though the care arrangements are improving, there is still a great deal to be done to address the disparity between the level of care afforded to these children and to children in the mainstream care system.

Social Services

As recommended by the UN Committee on the Rights of the Child in its Concluding Observations on Ireland's most recent periodic report, vital social services should be available round the clock. This would prevent the situation arising in which victims of child trafficking are placed in the care of agencies other than the HSE who are not in a position to give the child in question the support and assistance he or she requires.

As part of the initial process of establishing the protection needs of a child victim of trafficking, an assessment should be made of particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence or other trauma.

Information

Many of the difficulties which victims of trafficking face when they initially escape the influence of traffickers stem from a lack of information regarding entitlements, support services, protection applications, legal options, consular services and avenues of redress. Children in particular face difficulties in accessing such information. Consideration should be given to the appointment of an independent guardian for child victims of trafficking who would keep the child informed and support him/her throughout the process until a durable solution in the best interests of the child is found.

In some jurisdictions, helplines for both victims and professionals assisting them have been set up and consideration should be given to establishing similar mechanisms in Ireland.