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Совет по правам человека

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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Информация, представленная Комиссией по равенству и правам человека Великобритании*

Записка секретариата

Секретариат Совета по правам человека настоящим препровождает сообщение, представленное Комиссией по равенству и правам человека Великобритании** и воспроизводимое ниже в соответствии с правилом 7 b) правил процедуры, содержащихся в приложении к резолюции 5/1 Совета, согласно которому участие национальных правозащитных учреждений основывается на процедурах и практике, согласованных Комиссией по правам человека, включая резолюцию 2005/74 от 20 апреля 2005 года.

* Национальное правозащитное учреждение с аккредитационным статусом категории "А", присвоенным Международным координационным комитетом национальных учреждений, занимающихся поощрением и защитой прав человека.

** Воспроизводится в приложении в полученном виде только на том языке, на котором оно было представлено.

Annex

Written statement submitted by the Equality and Human Rights Commission (A Status NHRI of Great Britain)

Response to the report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo

The Equality and Human Rights Commission (hereafter the Commission) welcomes the report by the Special Rapporteur. The Commission has statutory responsibilities in the Equality Act 2006¹ to promote and protect human rights², to promote equality and diversity³, and to enforce equality legislation⁴, as well as being accredited by the United Nations (the UN) as a National Human Rights Institution mandating to report to the UN on human rights in Britain, including on exploitation⁵ of which human trafficking is one particularly serious form.

This statement has two objectives. The first is to outline the Commission's fundamental position on preventing and combating human trafficking which informs its work in Great Britain, especially through its Inquiry into human trafficking in Scotland. The Commission may conduct an Inquiry under s.16 of the Equality Act 2006 into any matter relating to any of its duties. In February 2010 the Commission launched an Inquiry, led by Baroness Helena Kennedy QC as its Investigating Commissioner, with a focus on trafficking for commercial sexual exploitation⁶. The second is to offer some thoughts on the position of the Commission on developments in Great Britain in light of some of the matters raised by the Special Rapporteur.

The Commission's position has three parts. It starts with the *recognition* that human trafficking is a *violation of human rights*⁷ and that this exploitation is often reliant on and perpetuated by *inequality* at the global, regional, State, and country levels. It particularly dis-

¹ Equality Act 2006 available at:

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_1, and for the Explanatory Notes to this Act see: http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060003_en_1.

² s.9 of the Equality Act 2006 at

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_2#pt1-pb2-11g9.

³ The Commission's particular duties in respect of equality and diversity are set out at s.8(1) of the Equality Act 2006, and the two terms are defined to a limited extent at s.8(2) of this Act.

⁴ This refers to the 'equality enactments' as defined in at s.33 of the Equality Act 2006.

Please note though that these enactments are to be replaced by the Equality Act 2010 that received Royal Assent in April 2010, with the relevant replacement provisions in the latter Act to take effect in October 2010.

⁵ The Commission regards exploitation as the core of the lived experience of being a victim of trafficking. The Commission welcomes in particular the recognition by the UN at the global level and by the CoE at the regional level that the intention to exploit a person is the core of trafficking.

⁶ Further details are available at: <http://www.equalityhumanrights.com/media-centre/2010/february/formal-inquiry-opened-into-human-trafficking-in-scotland/>

⁷ The Commission welcomes the leadership of the UN and the CoE in terms of the importance of understanding human trafficking as a violation of human rights as reflected in its Trafficking Protocol, (ii) in its 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (2002); and (iii) regionally by the CoE Convention

advantages those already blighted by poverty, gender discrimination, dismissal of children's rights, and racial inequities.

Further the Commission will use the Inquiry to consider and develop a clear understanding on the extent of the complexities in human trafficking in Scotland with learning for Great Britain and beyond. The Inquiry will consider the following:

Purposes including sexual, labour and other exploitation; these are not, in the experience of some victims, mutually exclusive⁸;

Scope in that human trafficking is simultaneously local, national and transnational, with a constant flow of victims across and within borders, countries, cities and towns;

Acts with trafficking encompassing (i) encouraging, (ii) recruiting, (iii) arranging, (iv) transporting, (v) transferring, (vi) harbouring, (vii) receiving, (viii) exploiting, and (ix) facilitating any of the above;

Agents and practices of exploitation with exploiters including family and friends through to organised criminals, and the means and techniques of control from the subtle to the violent⁹;

Invisibility with trafficking thriving in the hidden communities of (i) underground economies of sweatshop factories and sex flats, (ii) organised crime, and (iii) victims with no choice but to remain in the shadows due to fear, dependency, and the need to survive.

Causes of trafficking including (i) abuse of the social vulnerability¹⁰ and poverty of victims; (ii) demand for sexual exploitation and cheap labour¹¹; (iii) profitability of trafficking¹² for organised crime¹³ (iv) gender inequality¹⁴, and (v) migration¹⁵

⁸ Article 3(a) of the Trafficking Protocol and Article 4(a) of the CoE Convention both define exploitation as but don't limit it to the named purposes.

⁹ The Commission recommends 'Indicators of Trafficking for Exploitation', published in 2009 jointly by the European Commission and the International Labour Organisation, which sets out a range of control techniques employed in trafficking cross referencing them to the main means of exploitation, namely coercion, deception and abuse of vulnerability.

¹⁰ This importance of the concept of vulnerability is reflected, amongst other things, by its centrality of as a means of exploitation as reflected in the Trafficking Protocol, the CoE Convention, the UN Principles, and in the European Commission's proposals in 2009 and 2010 for a new European Union Framework Decision

¹¹ Demand for the services, products and goods that foster all forms of exploitation leading to, amongst other things, people trafficking, is cited in the main current and proposed international legal instruments as perhaps the main cause of human trafficking itself.

¹² The relatively high profits involved in human trafficking is increasingly being recognised itself as a significant cause of the phenomenon as reflected in the European Commission in their proposals of March 2009 and March 2010 for a new European Union Framework Decision against human trafficking.

¹³ This relationship is recognised (i) at the global level in that the Trafficking Protocol is to the UN's Convention against Transnational Organised Crime, and through the International Labour Organisation's estimate published in 2008 that annual profits from trafficking in human beings may be as high as \$32 billion; (ii) at the regional level in being reflected in the European Union's Framework Decision on combating trafficking in human beings and in the CoE Convention, and (iii) in Great Britain in the significant presence of organised crime in trafficking, evidenced in part by the finding that at least ten organised crime groups were in human trafficking in Scotland from the Scottish Serious Organised Crime Group's mapping project in 2009.

¹⁴ Human trafficking is largely a gendered phenomenon in that women tend to be both especially vulnerable to traffickers and then actually account for the bulk of victims particularly in respect of trafficking for sexual exploitation;

The Commission's perspective includes also the firm view that effectiveness requires a *strategic*¹⁶ *human rights*¹⁷, and *international*¹⁸ approach as the way to harness those with responsibilities for and expertise in addressing human trafficking. This approach is both founded on the core international obligations to prevent and prohibit human trafficking, prosecute traffickers, and to protect its victims, and revolves on a *best interest of the victim principle* that requires victim centred rights¹⁹ and practice. The Commission welcomes the emphasis on a human rights approach from the Special Rapporteur and is supporter of this in Great Britain and beyond.

The Special Rapporteur outlines a range of achievements and challenges for global, regional and State actors responsible for preventing and combating human trafficking. The Commission thinks all are relevant and will learn from the good practices and challenges identified in the report. It may be helpful, however, if the Commission offers thoughts that relate to some of these in terms of Great Britain:

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- ¹⁵ It is well established that human trafficking involves movement of exploited persons not only within borders but across borders. Migration policies and their implementation at both the regional and at the national level can have an impact, good and bad, on levels and forms of human trafficking. The Commission has a continuing interest that human rights are increasingly built into to asylum and in immigration policy, not least to protect the best interests of the victims of human trafficking.
- ¹⁶ A strategic approach is for the Commission essential to preventing and addressing human trafficking in light of the many policy issues that shape it at the global, national, State, and country levels. Policies on international development, domestic poverty, labour markets, prostitution, violence against women, tackling organised crime, migration, children's rights, social work and many others all impact on human trafficking. Recognising this and considering and embedding them into strategy obviates the weakness for States of overly focusing on action plans only that, because they lack underlying strategy and narrative, tend to comprise disparate rather than complementary actions.
- ¹⁷ For the Commission a human rights approach to human trafficking has two basic elements. First is to base policy in the framework established by the human rights obligations deriving from international instruments namely the obligations to prevent and to prohibit trafficking, to investigate, prosecute and punish traffickers, and to protect and support the recovery of its victims. Second is that practice accord with a *best interest of the victim principle*, analogous to the 'best interests of the child' principle at Article 3(1) of the United Nations' Convention on the Rights of the Child (1989). This principle entails that agencies with responsibilities for victims of trafficking must have their best interests as the primary consideration. The Commission thinks fulfilling this principle may challenge to some practice in areas including asylum, immigration, policing, prosecution, as well as elsewhere, but the Commission is confident meeting it will, ultimately, deliver good outcomes; such as when settling rather than deporting a victim prevents re-trafficking, or when getting police get the trust of victims to leading the evidence that enables prosecutors and courts to convict traffickers for trafficking offences.
- ¹⁸ Given the transnational character of much of the exploitation in human trafficking it is essential that those responsible for preventing and tackling human trafficking cooperate. Excellent anti-trafficking work in one State or areas, for instance, may perversely create markets for exploitation in neighbouring States or areas. The fact of re-trafficking highlights the imperative for strong international cooperation in efforts against human trafficking. The Commission welcome the UN's longstanding recognition and advocacy of this imperative.
- ¹⁹ The Commission regards Chapter III of the CoE Convention as close to this principle with its emphasis on protecting victims and, in particular, it providing a legal framework with individual rights for and State obligations to protect victims. These rights and obligations range from the identification onto assistance towards recovery, through to granting reflection periods and potentially residence permits, as well as provisions relating to compensation, and to safe and appropriate returns.

- The UK Government's ratification in December 2008 of the Council of Europe Convention on Action against Trafficking in Human Being is welcome, especially as the Commission regards it as a leading international instrument;
- The Commission welcomes the joint UK and Scottish Government action plans against human trafficking, and will through the Inquiry and other activity consider whether the current approach and plans may be enhanced further through wider strategic approaches to trafficking;
- The Commission welcomes the progress, especially through the UK Human Trafficking Centre (UKHTC), to promote cooperation between various actors, and the Commission will consider in the coming year through the Inquiry and in other ways, whether this positive start on cooperation can be further improved;
- The Commission in general thinks that significant work has been done throughout Great Britain to prohibit the acts and purposes of trafficking, and it will look in course of the Inquiry and through other work at the extent and quality of the enforcement of trafficking offences;
- The Commission welcomes the effort to better understand the extent of human trafficking, recognises this will be difficult in such a covert environ, and will explore in the Inquiry the proposition that whilst numbers are important they shouldn't take precedence over the human impact of trafficking in terms of attention and measuring success;
- The Commission welcomes the progress in recent years to create dedicated bodies – such as UKHTC – to instil specialist expertise, guidance, teams, and services into State and country level agencies, and it will in the Inquiry and through other activity look into the nature of this progress and how it may be improved.

May 2010
