



Tackling trafficking through workers' rights

TUC response to the January 2006 Home Office consultation

Summary

The TUC's response takes a rights-based approach:

- undocumented workers should have enforceable employment rights;
- the TUC calls on the British Government to sign the European Convention on Action Against Trafficking in Human Beings; and
- trafficked workers are victims and should be treated as such and should receive appropriate support.

Introduction

The TUC welcomes the opportunity to comment on the Government's proposals for a UK action plan to combat trafficking.

The TUC believes that the protection of the victim should be at the heart of any law enforcement measures aimed at preventing, detecting and prosecuting cases of human trafficking.

The TUC agrees that reducing demand for the services of trafficked women, men and children will lead to a reduction in levels of trafficking. The TUC believes that there are two fundamental factors, that contribute significantly to the ability and willingness of unscrupulous employers to aid and abet trafficking:

- the lack of enforceable employment rights for many victims of trafficking; and
- the lack of any immunity from prosecution and/or deportation for victims of trafficking including, but not limited to, those who 'blow the whistle' on traffickers.

As well as these issues being tackled, the TUC agrees that the demand side of the trade needs to be addressed and that potential victims must be made more aware of the dangers of being trafficked.

Definitions – trafficking as a subset of forced labour, not migration

The TUC is firmly committed to the full realisation of universal and fundamental rights and freedoms at work and to the eradication of human trafficking and all other forms of forced labour and contemporary slavery. The TUC has played a central role in the alliance that has promoted protection of workers employed by gangmasters in Britain. We have also been active in the ILO debate on forced labour, including both the trafficking of adults and children as well as the specific issue of prison labour. The TUC has also taken a leading role in experts' meetings. The trade union movement wishes to contribute to a national alliance against trafficking and forced labour of children and adults and believes that tripartite consultation is essential. The TUC would also welcome the inclusion of expert NGOs and other institutions committed to the aims of the relevant ILO Conventions.

We support the UN and ILO definitions of trafficking and stress that trafficking is always a subset of forced labour rather than of cross-border migration. Trafficking is always characterised by some form of coercion, whether at the outset, during the process of trafficking or after arrival. The consultation document reports that a victim may be resold several times en-route and once in the UK. The TUC agrees strongly that a trafficked worker remains trafficked even if he or she is rendered by the trafficker to a third party in conditions of coercion – commonly and precisely as the 2004 legislation foresees – for the purposes of labour exploitation (including, as provided for in the 2003 legislation, for purposes of sexual exploitation).

The TUC General Council considers that trafficking must not be conflated with other migration issues or the asylum debate. The key aim in a national plan of action must be the effective protection of victims and the punishment of traffickers. Measures in the Immigration, Asylum and Nationality Bill which would introduce a new offence of knowingly employing an illegal migrant worker, could encourage such conflation and would increase the likelihood that illegal migrants would be employed in ever more hidden forms of unprotected work. This could lead to increased levels of destitution among failed asylum seekers and their families or, increase the likelihood of the super-exploitation in the informal or illicit economy. In short, the TUC is concerned that the proposals in the Immigration, Asylum and Nationality Bill are unlikely to have a great impact on preventing trafficking, a disproportionately adverse effect on migrant workers and workers.

The Joint Council for the Welfare of Immigrants, in February 2004, made the following statement on the Morecambe Bay tragedy and the licensing of gangmasters: ‘the protection of workers’ rights should not be seen as an instrument for enforcing immigration controls, since this would undermine the confidence of workers that the legislation is capable of providing the protection they need.’ The TUC agrees with that view. However, the summary of the official Home Office evaluation of the Poppy Scheme notes, in its main findings, that ‘the IS [Immigration Service] expressed some disappointment with the project. Specifically, whilst acknowledging the victim status of the trafficked women, the IS also has a statutory duty to remove those persons present in the country illegally’ (our underlining).

The Government has repeatedly cited the figures of 1456 arrests in 2004/05 as a result of Reflex activity for offences associated with trafficking. The debate on how to proceed would be greatly helped by disaggregated statistics showing how many of these were arrests of traffickers and exploiters and how many were trafficked workers subsequently deported for immigration offences.

There may continue to be a need for coordination between agencies dealing with trafficking and people smuggling. But detection and enforcement of laws against trafficking should not be in the hands of agencies whose prime responsibility is to enforce migration law.

Fundamental rights at work

The TUC believes that extending enforceable core statutory employment rights to all workers, regardless of their immigration status, is essential to reducing the demand for trafficked workers. The knowledge that all workers, regardless of whether they are resident and/or working in the UK lawfully, are able to enforce rights to the minimum wage or working time limits, for example, would help to discourage unscrupulous employers seeking economic advantage through exploiting undocumented migrants.

The current law relating to the enforcement of employment rights is complex, particularly as some statutory rights have been interpreted as requiring a legally valid and enforceable contract. It is debatable whether any contract, whether of service or for services, can ever be said to exist between a trafficked person and the

exploiter, given that a fundamental tenet of contractual relationships is that they must be freely entered into.

Further, in those circumstances where any contract for labour between the trafficker and trafficked person could be established, that contract would undoubtedly be tainted with illegality. Such illegality would, more often than not, preclude a worker from relying on statutory employment rights before an Employment Tribunal.

For these reasons the TUC would argue that core statutory employment rights should be extended to all but genuinely self-employed workers.

Bogus self-employment must be tackled, as it frequently provides a veil to cover the gross exploitation of domestic and migrant workers. The assumption in law must be an individual is an employee unless they meet rigorous requirements to qualify as self-employed.

Law and self-organisation

Working people are protected in two principal ways:

- by the effective enforcement of good law (that is, law which complies as a minimum with internationally agreed labour standards); and
- through their own self-organisation in free and independent trade unions.

Effective labour inspection is essential for law to be enforced. It means that there should be access to all places of work including homes where people are employed as domestics. There must also be a significant likelihood of detection where wrongdoing is taking place – this means greater frequency of inspection.

The TUC starts from the premise that all workers, without distinction and regardless of their nationality or immigration status have certain inalienable rights, including the right to freedom of association and the right not to be subjected to forced labour. The rights of workers must be effectively protected and it is the traffickers and exploiters who must be criminalised and penalised. The TUC believes that the Government should ratify the Council of Europe Convention on Action against Trafficking in Human Beings and rejects the claim that the automatic granting of reflection periods and residence permits for trafficking victims might act as “pull” factors to the UK. While it is true that work deficits in some sending countries may lead people to seek to be smuggled – even for exploitative and abusive work - we find the notion that people can truly volunteer for slavery both repellent and oxymoronic. We note that three EU member states already offer protections to trafficked sex workers.

The TUC is of the view that it should be a matter of public policy that victims of trafficking should receive the protection and assistance of the State, rather than be at risk of prosecution or other penalty should they become known to the authorities.

Law cannot be enforced and prosecutions of lawbreakers effectively pursued without evidence. We believe that victims of trafficking must know that they will be guaranteed safety and, where requested, residence permits if they are to be

prepared to give evidence against traffickers and exploiters of trafficked labour. They must know that they will not be deported, against their will, back to the communities from which they were trafficked and to the gangs that trafficked them. A case-by-case decision provides no guarantee of safety for an informant. We therefore welcome the proposal to consider the advantages of adopting a policy of an automatic reflection period, as opposed to the current case by case approach.

In that context, there is a requirement for greater provision of places of safety for trafficked workers who flee their exploiters. The Poppy Scheme provides shelter for only 25 women, which is woefully inadequate given the size of the problem. We would suggest that the GMB Sex Workers' Branch be included in consultations about the Scheme. We would also suggest that publicly funded provision should be available for trafficked workers in other occupations and trafficked children. The protection of victims of crime should not depend on the funding constraints of the voluntary sector. Funding to support the Poppy Scheme should be secure and adequate to meet need.

We note the Government's concern that, were reflection periods/residence of permits for victims to become the known norm, some workers who had entered the country illegally, but had not been trafficked, might try to claim that they had been trafficked in order to seek residence. The Government is of course referring to fraudulent claims. All claims however need to be assessed on a case-by-case basis according to the normal standards of evidence. The fact that there may be those who would make fraudulent claims is not an argument to say the right should not exist. On such an argument few rights would exist.

But law alone is not enough – trafficking will not be defeated by administrative methods alone – it also requires the victims to be agents of their own liberation otherwise they will continue to be objects of criminal gangs and exploiters or of the state. While it is true that much trafficked labour appears to be employed in the formal economy (even if in irregular and exploitative employment relationships) – for example in agriculture, food processing, construction, hotels and catering and formal parts of the sex industry – and well as in informal economy work in domestic service and in the sex industry - trafficked workers work, above all, in sectors of the economy and in workplaces where there is little or no trade union presence. Indeed, the effective presence of a trade union in the workplace is the best protection against the exploitation and oppression of trafficked workers and, throughout the world, workers in conditions of bondage or in sectors where bondage is prevalent have organised themselves to demand their own freedom.

Supporting trade union organisation in the underbelly of the British economy, if need be in innovative forms, is an essential weapon in the struggle against trafficking. The TUC's cooperation in Britain with the Portuguese Workers' Association and Federation of Poles in Britain and the bilateral agreements with their respective national trade unions have demonstrated that such approaches can yield real benefits for workers, not just in promoting their organisation in British trade unions while they are working in Britain, but also warning them in their home countries of the recruitment activities of unscrupulous labour suppliers there.

Such trade union activity is resource intensive and Government support for the development of similar approaches with trade union organisations in other sending countries would be welcomed.

Child trafficking

Trafficking of children is particularly egregious and we recall ILO jurisprudence which denies the notion of free consent of a minor to an employment relationship – thus child labour itself may also be considered a subset of forced labour and trafficking of children a subset of both. A holistic approach is required in an overall programme of action to eliminate child labour, which should be coherent with any overall plan to eliminate trafficking.

Far too little is known about the trafficking of children to Britain. The TUC believes that most trafficked children are used in domestic service but that a small number are even unluckier and end up in the sex trade.

On child trafficking, we note the need for greater scrutiny of inter-family adoption. It is believed that this may be one, perhaps significant, avenue of the trafficking of children for domestic servitude and, in some cases, perhaps even for ritual abuse. We recognise the need to require people looking after a visa national minor for more than 28 days to have registered with their local authority prior to the minor being granted entry clearance. The TUC also notes with interest the proposal to endorse minors' vignettes with the name of the person accompanying them. Enforcement of these provisions will require additional resources at local authority level. Welcome as these proposals are they will not cover minors entering the country [supposedly] for shorter periods who may still be trafficked.

Awareness raising

The “That’s my Passport” campaign by the T&GWU and Kalayaan, supported by the TUC, illustrated the vulnerability to deportation of workers whose passports had been confiscated by their employers (a characteristic of forced labour according to ILO Convention 29), or who had entered the country on their employers' passports. We believe that British Embassies and High Commissions abroad should do more to ensure that all individuals applying for visas know that they should not render their passport to any third party, including their employer.

There is a need for further publicity and education among workers, including migrant workers, as to their rights at work. The TUC booklet ‘Working in the UK: Your rights’, published in Spring 2004, is available in seven languages of the A8 countries plus Portuguese and Russian – the translation of which was funded by the Home Office. The TUC has an agreement with the Home Office that, when A8 nationals register on the Worker Registration Scheme, these workers will receive a copy of the leaflet in English, with instructions as to how to obtain a copy in their own first language.

Further work is required in schools both in the UK and in sending states – cooperating with education authorities, teachers, youth, community and social workers and trade unions – to raise awareness among young people. Young people

need clear information on the rights of migrant workers. They need to be inoculated against the risk of being tricked into being trafficked through such means as spurious job adverts. Examples of current attempts to raise awareness, such as that which has been taking place in Lithuania, should be evaluated and if good practice, replicated.

Educational programmes aimed at developing awareness of migration and trafficking issues might be explored with the European Commission, the OSCE and the European section of the Global Union Federation for teachers, Education International.

Awareness raising among public authorities, including police and border authorities, is clearly necessary. They must be trained to help and support victims of trafficking.

The TUC also believes support could be provided by Government to help provide education for those workers who are at greatest risk of coming up against people trafficking, including those in the tourist and transport industries. The UK should continue to support universal ratification of ILO Conventions 29 on forced labour and Convention 182 on the worst forms of child labour. It should also be a flagship of implementation of the two Conventions and uphold the authority of the ILO supervisory bodies by accepting their jurisprudence. Clear responsibility needs to be allocated within Government and the civil service for the practical work needed to implement Convention 182 (and Convention 138 on minimum age for entry into employment, which is complementary to it).

Data collection

There are numerous agencies and institutions – governmental and non-governmental – which are collecting data that may support attempts to measure the extent of trafficking of children and adults in the UK. The question of coherent data collection and analysis has been discussed at some length in the national tripartite committee on the implementation of ILO Convention 182 on the worst forms of child labour, convened by the DWP. Coherent data is an essential basis for the development of a relevant and effective national programme of action, required by Article 6 of ILO Convention 182. It would however appear there is little co-ordination between agencies even at the basic level of sharing data. It is imperative that one agency takes the lead in collating coherent statistics from the various sources. We would recommend multistakeholder oversight of this work. The Government will need to include in such consultation, organisations and academics who may not necessarily support its migration or asylum policies but who could be valuable allies in the struggle against trafficking.

Reducing demand

Clearly, demand is driven primarily by unscrupulous exploiters who seek the lowest possible (or no) wage costs and, in rare cases, may believe that the nature of the work itself is so unpleasant that workers may only perform it if they are coerced. The underbelly of the British economy pays unlawfully low wages and often involves unlawful deductions from wages, serious occupational safety and

health violations, public health hazards, and discrimination especially on grounds of gender, race, age and migration status or nationality. Such violations of workers' rights may be enforced by various mechanisms, including actual or threatened violence to the individual or their family, debt bondage and the ever-present threat of deportation for workers without lawful migration status. Deportation itself may involve the risk of violent reprisals against the worker concerned once they have returned to their home locality and may be greatly increased if they are known or suspected to have given evidence against their traffickers.

Particular thought needs to be given to those who have been trafficked into the sex industry who if deported could face violence simply because of the activities they had been forced into.

Unfortunately, because trafficking can be highly profitable there are criminal elements who will take significant risks in pursuing these activities. Current prison sentences available – of up to fourteen years – are severe, as befits a crime which involves modern slavery. Increasing the likelihood of detection and prosecution is essential. Hence, the TUC's emphasis on the need for trafficked workers to have enforceable rights and for the protection of the victims of trafficking whose testimony can put their tormentors behind bars. Such an approach would not only hit at those who are actively involved in trafficking but also those employers who benefit from trafficking thus placing downward pressure on demand for trafficked labour.

The proper scrutiny of agencies is an essential tool in the fight of trafficking. The TUC knows from its involvement in the gangmasters legislation that many law-abiding employers also want to join in the fight against the exploitation of vulnerable workers. While registering and monitoring gangmasters may help, it need be the major food retailers must face regulation to prevent this British race to the bottom. We know from all our experience in promoting ethical trade that demands by retailers upon their suppliers for respect for labour standards will not be met if prices continue to be driven down and lead times continually shortened.

Nevertheless, subjecting all agencies to the scrutiny of those covered by the gangmasters legislation would be an important first step.

Among the direct measures to be used in reducing demand are:

- tighter, effective regulation of employment agencies and temporary labour providers;
- full enforcement of the National Minimum Wage;
- strict and enforceable instructions on public employers and institutions to ensure that they neither use forced/trafficked labour nor are complicit in forcing workers into conditions of servitude; and
- the development of lawful, managed migration channels, which recognise the essential role that migrant labour plays in the British economy, including in its lower skilled sectors.

Taken together, those measures may lead to the development of a well-functioning labour market in which the rights of all workers are protected and realised and in which trafficked labour is neither sought nor available.

Conclusions

- The TUC broadly agrees with the Government's definition of trafficking, seeing it as a sub-set of forced labour.
- We argue that workers need to be able to enforce employment rights, irrespective of their residency status, as a means of combating their exploitation.
- We believe that traffickers rather than their victims should be punished and that the victims should be provided with adequate support. We welcome the Poppy project but call for it to be both more adequately funded and for the funding to be put on a secure basis.
- We agree with the introduction of reflection periods and that in many instances granting residency permits would be appropriate to ensure cooperation to obtain successful prosecutions but also appropriate for victims who would find it difficult or dangerous to try and reintegrate into their home communities.
- Whilst all victims of trafficking will need support, those trafficked for the sex industry are both likely to need additional specialist support and may face greater difficulties in reintegrating in their home communities.
- The TUC does not believe the introduction of such a reflection period/residency permits approach is likely to result in any "pull factor". Trafficked workers by definition are not involved in a voluntary activity.
- The TUC calls on the British Government to sign the European Convention on Action Against Trafficking in Human Beings.
- We support the Governments proposals on the inter-family adoption of visa national minors to ensure such children are known to the relevant agencies who are charged with their safety.
- The TUC believes that currently information is not being properly shared by agencies and calls for a single agency to be given responsibility for drawing this data together.
- We call for all places of work to be subject to inspection including private homes when they constitute a place of work.
- We believe that tough sentences are appropriate for this trade in human misery but that this needs to be accompanied by a strong likelihood of detection and prosecution.
- We support educational programmes aimed at raising awareness of employment rights and the danger of trafficking for potential victims. The trade unions are actively involved in this area and should be supported by Government.
- We support the idea that front line services need to be trained to identify victims and provide them with help and support.
- The TUC calls for all agencies to be subject to, at least, the level of scrutiny of those covered by the gangmasters legislation.

- We call for bogus self-employment to be tackled as it provides a veil hiding the exploitation of workers including trafficked workers.
- We broadly call for stakeholders to be included in areas like education and the collection of data including unions as well as appropriate NGOs and academic institutes.

Answers to the consultation questions

General

1 The TUC broadly agrees with the definition of trafficking found within the consultation document. We regard trafficking, as a subset of forced labour. Somewhat more attention should however be given to those who have been deceived, often by agencies, to come to Britain who then find themselves in a position of servitude through debt.

2 The difference between the proposed measures and the TUC's position is in the treatment of the victims of trafficking. In particular, the TUC calls on the British Government to sign the European Convention on Action Against Trafficking in Human Beings. The TUC calls for a decoupling of the issues of residency status and employment rights so that all undocumented workers have the possibility of enforcing employment rights against their exploiters. A great deal follows from this fundamentally different approach to trafficked workers, which is reflected in the answers below.

Prevention

3 Because of the illegal nature of trafficking it will always be difficult to get an accurate estimation of the problem. The TUC however believes that greater co-ordination between different Government agencies would be beneficial with one agency being charged with the responsibility for bringing about this coordination. The TUC also believes that there should be the active involvement of stakeholders within this process including not only inputs from the trade unions but also NGOs and academic institutions who have a speciality in this area.

4 Because undocumented workers cannot enforce employment rights they seldom present themselves to trade unions in great numbers. This is certainly true of trafficked workers even when they are by some means freed from their servitude. Nevertheless within our work, trade unions come across examples of trafficked workers particularly those who are deceived into coming to the UK on the promise of substantial earnings and then find themselves in servitude through debt and sometimes-physical threats – including those in domestic service.

5 The TUC agrees that there is a need to work with Governments and agencies in those countries where historically workers are at the greatest risk to raise awareness of the dangers through education and the provision of information.

6 Creating greater awareness amongst potential victims is essential. Covert means of bring people into the UK are always going to be difficult to tackle. The Government with sending countries can at least subject agencies recruiting workers for employment in the UK to greater scrutiny. These agencies may seem a legitimate front but either subject workers to enforced labour through debt

servitude or even in extreme cases through intimidation direct them into the sex industry.

7 The TUC wishes to see a decoupling of the issues of employment rights and that of residency status so that victims of trafficking have the potential to enforce their employment rights in a court of law. The TUC believes this is essential so that those employers who are the clients of people traffickers know that there are a variety of legal measures they might face through being involved in this deplorable trade. The TUC also believes that it is essential that private homes should become subject to workplace inspection when they are places of work for people.

8 The TUC welcomes the Government's proposals that those bringing visa minors into the country must register them with the local authorities if they are to be in the UK for more than 28 days.

Investigation, law enforcement and prosecution

9 The TUC supports heavy sentences for those who make human misery their business. Equally important however must be a high likelihood of detection.

10 To a large extent such priorities are set politically for the police. The TUC welcomes the high priority given to trafficking for the new Serious Organised Crime Agency (SOCA).

11 The TUC supports the view that training should be given to the police and other frontline services to raise their awareness of trafficking and enable them to support the victims of this crime.

Victims

12 The TUC welcomes the Poppy Scheme but calls for its expansion to meet need. In addition, similar provision needs to be made for those who are victims of trafficking who have not been forced into the sex industry but nevertheless have been subject to abuse of various kinds.

13 As well as the Poppy Scheme, the TUC would point to organisations such as trade unions (especially the GMB sex workers' branch) and groups based in the communities drawn from the countries where people have been trafficked from.

14 The TUC has nothing to add here.

15 The TUC believes that the case for reflection periods is overwhelming to ensure that these often-traumatised people can obtain the care they need and give them and the authorities time to assess what is in their long-term interests. Experience from Italy also shows that the authorities are more likely to obtain support from victims in obtaining convictions where such periods of reflection are routinely used. In assessing whether awarding residency permits would be appropriate the British Government should be guided by the European Convention on Action Against Trafficking in Human Beings.

16 The likelihood of victims being re trafficked should be a factor in assessing whether such victims should be required/encouraged to resettle. The very

difficulties some victims might have in reintegrating – particularly those who were trafficked into the sex trade – leaves them vulnerable to further exploitation. The TUC supports the view that victims of trafficking should receive reparations for their suffering and such sums of money would provide them with a degree of economic independence on resettling.

17 Please see (16). It is also important that UK Agencies work with and help support their sister agencies in countries that people are to be resettled in. Its important that support should not stop once these people board a plain to fly home.

18 The degree of trauma experienced by those trafficked for sexual exploitation will generally be greater and require specialist support. In addition, those who have been trafficked for sexual exploitation will find it more difficult in many cultures to reintegrate and could face rejection or indeed violence even from their own families.

Resolutions from the TUC Women's Conference 2006

11 *TRAFFICKING OF WOMEN AND CHILDREN*

Conference is deeply concerned at the increasing evidence of trafficking of women and children to Britain where they are forced into prostitution, domestic work, and other forms of labour in conditions close to slavery.

Conference welcomes the successful prosecutions recently of members of organised networks of traffickers who exploited women ruthlessly for sexual purposes but notes that the British Government has not yet developed a comprehensive set of measures to protect the vulnerable people who have been trafficked into the UK.

Conference calls on the General Council to press the Government to sign the European Convention on Action against Trafficking in Human Beings which in addition to calling for action against traffickers requires governments to provide a basic level of support and increased protection for victims of trafficking including limited residence entitlements.

Community

12 *TRAFFICKING OF WOMEN AND CHILDREN*

Conference is very concerned over the ever increasing trafficking of human beings, particularly women and children for sexual exploitation and forced labour.

Conference is appalled by the suffering this trade inflicts on young women and children who may have already experienced anything from economic and social hardship, to extreme poverty and deprivation. Their desperate circumstances drive them to grasp at any offer of escape with most women thinking that they are going to obtain employment in factories in the UK. Many are forced to work in brothels.

Conference calls on the TUC to:

- i) form links with other countries to give migrant workers information where to seek help and support;
- ii) raise public awareness of this issue;
- iii) lobby the Government to action the following;
 - a) sign up to the European Convention on Action Against Trafficking in Human Beings;

- b) set up formal training and co-operation for front line services - police, social services, immigration - to enable victims to be identified and provided with support and help;
- c) pledge full financial and long-term support for safe housing such as the Poppy project; and
- d) make sure that the criteria does not force services to turn away victims on technicalities.

GMB