LAW CENTRE (NI) RESPONSE TO GRETA’s SECOND EVALUATION ROUND AND NORTHERN IRELAND PERSPECTIVE

In this submission, we highlight a number of positive anti-trafficking developments that have taken place in Northern Ireland that GRETA might wish to note and acknowledge. We also highlight issues that might benefit from GRETA’s scrutiny and thereby suggest that GRETA may wish to:

- Ask the Home Office to clarify how it is ensuring that the Atamewan judgement is fully implemented in the context of “historic victims”;

- Renew its 2012 proposal about extending the scope of Gangmasters Licensing Authority (GLA) and also recommend that funding for the agency adequately reflects the need for enforcement activity;

- Invite the Northern Ireland Department for Employment and Learning to: review the remit and powers of enforcement agencies; expand these where necessary, and consider whether the powers can be consolidated through a more centralised approach;

- Invite the Department for Employment and Learning to co-ordinate an employment enforcement network and publish an annual report of enforcement activity;

- Recommend that the Northern Ireland Department of Justice continues to invest in training over the coming years

- Recommend that the Home Office starts publishing regional immigration data without further delay;

- Recommend that both of Northern Ireland’s support providers are designated as First Responders;

- Recommend that the Department of Justice examines the adequacy of the current First Responder arrangements and assess the need for more NGO involvement;

- Seek the following clarification from the Home Office:
  - what training the Home Office has provided to detention facility staff on THB;
  - what procedures are in place where potential victims are identified by detention staff?
  - how many potential victims of trafficking have been identified in Northern Ireland’s immigration detention facility?
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➢ Request information from DHSSPS/DOJ about what security measures are in place to protect vulnerable children in care in Northern Ireland and the effectiveness of same

➢ Monitor the progress of the multi-disciplinary panel pilots

➢ Request an update from the Home Office about the child-friendly interview room at Drumkeen House.

➢ Examine the circumstances in which a child was detained in Northern Ireland for immigration purposes and assess whether current identification procedures (to identify children and victims of trafficking) are adequate.

➢ Recommend that residence permits are not restricted to victims who are cooperating with enforcement agencies

➢ Recommend that residence permits are made available for EEA victims of trafficking

➢ Recommend that Department of Justice and Department of Employment and Learning review current arrangements to ensure that labour justice is accessible to all workers in Northern Ireland, including an examination of the ‘doctrine of illegality’ in the context of victims of THB and the accessibility to redress for victims who have left the UK.

➢ Recommend that the Department of Justice reviews the compensation eligibility criteria for victims of THB.
About Law Centre NI

Law Centre (NI) is a public interest law non-governmental organisation. The Law Centre promotes social justice and provides specialist legal services. This includes legal advice and assistance to victims of trafficking in Northern Ireland, including victims who have been subject to trafficking for labour exploitation, sexual exploitation and domestic servitude. We are also funded by Comic Relief to deliver the Anti-trafficking Young People Project, which provides a specialist service to trafficked children and young people.

The Law Centre is a member of the Department of Justice Northern Ireland NGO Engagement Group and we have engaged extensively on anti-trafficking policy issues affecting Northern Ireland and the UK. We also contribute to the EU Civic Society Platform on Trafficking in Human Beings.

On 27th October 2011, the Law Centre met with GRETA representatives in Belfast as part of GRETA’s first examination. We submitted a briefing paper to the delegation.¹

Subsequently, in December 2012, the Northern Ireland passed a motion to welcome the GRETA report and to call on the Minister of Justice, along with Executive colleagues, to implement the recommendations in the GRETA report.²

About this submission

This response is arranged in two parts. Part A provides detail of relevant Northern Ireland developments since GRETA’s first report. Part B provides evidence and makes recommendations on a number of issues directly linked to provisions within the Trafficking Convention. For ease of reference, we have arranged the topics to reflect the order of GRETA’s 2012 proposals. Our response makes reference to the 2012 proposals and also to the UK Government’s response to them. The paragraph numbers throughout this submission refer to the First Evaluation report (GRETA (2012)6).

Part A: General observations about THB in Northern Ireland

a) Main forms of trafficking / emerging trends;

- The number of potential victims of trafficking recovered in Northern Ireland continues to rise. 45 potential victims were identified in 2014; a 10% increase since 2013.³

¹ Law Centre submission to GRETA 2011 http://www.lawcentreni.org/policy/consultation-responses/848.htm
² Hansard 3rd December 2012. NI Assembly
- Our casework experience would suggest that there has been an increase in numbers of separated children being identified as potential victims of trafficking. However, it remains to be seen whether this is reflected in the official statistics published by the National Crime Agency.

- Through our casework, we have noted a marked increase in numbers of separated children being identified as suspected victims of trafficking in Northern Ireland (we have represented five such children since July 2014). These figures are not yet reflected in the official reports.

- There has also been a marked increase in the number of victims being trafficked for the purpose of labour exploitation, including male and female EEA victims working in agricultural sectors. In 2014, two thirds of potential trafficking cases involved labour exploitation.

b) Changes in laws/regulations relevant to action against THB.

Relevant to GRETA’s previous recommendations 1 and 27: legislation that gives victims a right to a recovery and reflection period.

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 received Royal Ascent on the 13 January 2015 and gives victims a statutory entitlement to support. These are enhanced rights to those in the Modern Slavery Act 2015 (UK wide legislation that received Royal Ascent in 26 March 2015), which does not enshrine victims’ rights.

➢ GRETA may wish to note this positive development in Northern Ireland.

c) Northern Ireland institutional framework for actions against THB, any changes in relation to the composition and function that bodies responsible etc.,

Relevant to GRETA’s previous recommendation 14: increased involvement with civil society.

There have been a number of positive changes to the institutional arrangements in Northern Ireland for combatting anti-trafficking since GRETA’s first report, including:

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- The UK wide Anti-Slavery Commissioner includes oversight of Northern Ireland;\(^4\)
- the Department of Justice set up an NGO Engagement Group. December 2012\(^5\) and it has proven to be a useful and productive forum.

GRETA may wish to note these positive developments.

d) **Overview of current national strategy and/or action planned combat trafficking and human beings specifically in Northern Ireland.**

On 23 May 2013 the Department of Justice published the first Northern Ireland and Human Trafficking Action Plan 2013/2014.\(^6\) The Department has since issued a second action plan for 2014/15.\(^7\) The Final Progress Report issued May 2015 shows that the majority of objectives have been delivered or have been actioned, however, some have only been partially met.\(^8\)

GRETA may wish to consider the 2014/15 progress report.

**PART B**

**Core concepts and definitions**

*Relevant to GRETA’s previous recommendation 4: urging the UK authorities to revisit the approach to “historic victims” to ensure that all victims have access to the Convention’s protections.*

In 2011, we expressed our concerns to GRETA about the UK’s approach to “historic victims”. Subsequent case law developments mean that the law is now clear: In *Atamewan*,\(^9\) the English High Court ruled that the Home Office guidance in its treatment of historic victims of trafficking was erroneous in excluding them from

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\(^9\) [2013] EWHC 2727 (Admin) [http://www.bailii.org/ew/cases/EWHC/Admin/2013/2727.html](http://www.bailii.org/ew/cases/EWHC/Admin/2013/2727.html)
assistance and support under the Convention. The Court also ruled that the level of assistance and support required should depend on the victim’s current needs.

Unfortunately, while the law is now clear, difficulties remain with the Home Office’s approach. The Law Centre is currently acting for a third country national who has been refused a Residence Permit (despite being conclusively recognised as a victim of trafficking) “because the particular circumstances of her case no longer exist”. This is a real issue of concern in terms of accessibility to the Convention’s protections.

➢ GRETA may wish to ask the Home Office to clarify how it is ensuring that the Atamewan judgement is fully implemented.

Comprehensive approach and co-ordination

Relevant to GRETA’s previous recommendation 7: extending the scope of action of GLA.

The Law Centre strongly supports GRETA’s 2012 recommendation, not least because the current demarcation of GLA powers seems arbitrary at times e.g. the GLA has no powers to regulate fishing but can regulate fish processing. Unfortunately, this recommendation was rejected by the UK government (paragraph 16), and funding for the agency was reduced.\(^\text{10}\) In Northern Ireland, there are two GLA inspectors in Northern Ireland and labour exploitation is prevalent in a number of sectors subject to GLA regulation.\(^\text{11}\)

Further, the disjointed enforcement regime presents difficulties for those seeking to challenge labour exploitation. These difficulties are comprehensively mapped in a report by Northern Ireland Strategic Migration Partnership\(^\text{12}\) and the Law Centre has made a number of recommendations:\(^\text{13}\)

➢ GRETA may wish to:
  o Renew its 2012 proposal about extending the scope of GLA and may also wish to recommend that funding for the agency reflects current levels of need for enforcement activity.

\(^{10}\) GLA Annual Report and Accounts 1 April 2013 – 31 March 2014

\(^{11}\) Neil Jarman, ‘Forced Labour in Northern Ireland: up update’ (JRF, June 2014)

\(^{12}\) NISMP, ‘Assessing the Effectiveness of Enforcement Mechanisms in Upholding the Employment Rights of Migrant Workers in NI’ (October 2013)
http://www.migrationni.org/DataEditorUploads/Upholding%20Employment%20Rights%20of%20Migrant%20Workers%20in%20Northern-Ireland.pdf

\(^{13}\) Law Centre, ‘Forms of Modern Slavery: Human Trafficking and Forced Labour’ (April 2015)
Invite the Northern Ireland Department for Employment and Learning to: review the remit and powers of enforcement agencies; expand these where necessary, and consider whether the powers can be consolidated through a more centralised approach

Invite the Northern Ireland Department for Employment and Learning to co-ordinate an employment enforcement network and publish an annual report of enforcement activity

Training of relevant professionals

Relevant to GRETA’s previous recommendation (9): training is provided periodically.

The provision of appropriate training and awareness to frontline professionals is a strategic aim in the Northern Ireland Human Trafficking and Exploitation Action Plan 2014/2015. The Department of Justice has been very proactive in making training available to potential frontline agencies including: social workers, community organisations, solicitors, etc.

GRETA may wish to welcome the Department of Justice’s efforts in providing training and may wish to recommend that it continues to invest in training over the coming years

Data collection and research

The National Crime Agency publishes annual reports on human trafficking in the UK, which includes sections on the three devolved regions. These reports contain disaggregated data concerning gender, age, type of exploitation, country of origin, etc. Northern Ireland’s Organised Crime Task Force also publishes an annual report, which includes some information about the types of enforcement action taken in Northern Ireland including in relation to human trafficking and immigration.

However, there remain ongoing problems with the availability of immigration data. Northern Ireland has never routinely published disaggregated figures in relation to asylum and immigration. Despite efforts from the Northern Ireland Strategic Migration Partnership, which has developed a migration information portal to collect

15 National Crime Agency, Trafficking Statistics
http://www.nationalcrimeagency.gov.uk/publications
17 Michael Potter, ‘Asylum seekers and refugees in NI’ (NIA Research and Information Service, 6 June 2014, NIAR 348-14)
data, the overall picture remains incomplete. For example, the Home Office does not publish the number of asylum applications it receives, number of detentions, deportations, etc. Without access to published immigration data, it is very difficult to view trafficking in the wider context (we know that 4/5 of potential victims identified across the island of Ireland are non British/Irish nationals). This impedes policy development and planning.

- GRETA may wish to recommend that the Home Office starts publishing regional immigration data without further delay.

Identification of victims of trafficking

A) First Responders

Relevant to GRETA’s previous recommendation 20: the UK should expand the list of First Responders by including more civil society organisations and others.

Since GRETA’s first report, the Department of Justice now has a contract with Women’s Aid NI as well as with Migrant Help to provide secure accommodation, assistance and support to all adult suspected victims of THB. Women’s Aid provides assistance to female victims whereas Migrant Help provides assistance to male victims. An anomaly exists, however, in that Women’s Aid is not listed as First Responder and cannot refer a woman directly into the National Referral Mechanism. This risks a referral being delayed while the designated routes are followed.

- GRETA may wish to recommend that both support providers are designated as First Responders.

As a related issue, we note that all of Northern Ireland’s potential victims in 2014 were referred into the NRM by Home Office / government agencies or by the police. None of the adult victims were referred by NGOs in 2014, nor in 2013. In contrast, nationally, a quarter of all adult victims of trafficking were referred by NGOs in Britain.

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<th>First Responder for</th>
<th>UK</th>
<th>NI</th>
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18 We note that the First and Deputy First Minister have acknowledged ‘significant gaps in the knowledge base’ of poverty and minority ethnic communities in Northern Ireland. (AQW 32105/11-15)  
NGOs have a very important role to play in identifying and referring victims of trafficking as we recognise that some victims, for a variety of reasons, may not wish to speak to a government agency or police in the first instance. Therefore, we are concerned that there is currently only one NGO First Responder in Northern Ireland.

GRETA may wish to recommend that the Department of Justice examines the adequacy of the current First Responder arrangements and assesses the need for more NGO involvement.

b) Identifying victims in places of detention

Relevant to GRETA’s previous recommendation 20

We repeat the same concern that we highlighted to GRETA in 2011 about compliance with Article 10 of the Convention: there is a real risk that potential victims of trafficking are not being identified at Larne House Short-Term-Holding Facility. This facility was opened in 2011 and can accommodate up to 19 male/female adult detainees for a period of up to 5 days (or 7 in certain circumstances). We understand that there were 2,035 ‘detainee movements’ in 2014. This is a significant number given the relatively small size of the jurisdiction.\(^\text{22}\)

We have a concern that the detainees may not be accessing specialist immigration advice. Until 1 April 2015, the Law Centre operated a daily immigration advice line, however, we received only a very small number of calls from detainees.

Earlier in 2015, the Law Centre received information through our advice line from an immigration solicitor who unintentionally encountered a victim of trafficking in Larne House. He advocated that the detainee was a victim of trafficking and should be referred into the National Referral Mechanism. A referral was made and the detainee was released from detention. Without the solicitor’s intervention, it is very likely that the detainee would continue to be detained before being deported.

\(^{22}\) Independent Monitoring Board, ‘Glasgow, Edinburgh and Larne STHF’
http://www.imb.org.uk/reports/2014-annual-reports/page/2/ pg 19
The Law Centre has recently provided training on THB on to staff at Larne House. We highlighted the need for clarity about procedures for staff who identifies indicators of trafficking.

- We recommend that GRETA seeks the following clarification from the Home Office:
  - what training the Home Office has provided to detention facility staff on THB;
  - what procedures are in place where potential victims are identified by detention staff?
  - how many potential victims of trafficking have been identified in Larne House?

**Child victims of trafficking**

*Relevant to GRETA’s previous recommendations 22 - 24*

In 2010, the Law Centre set up a Working Group on Separated Children because we were extremely concerned about (then) practices. This group acted as a catalyst for a number of developments including: better data recording; a protocol to ensure that newly identified children get prompt access to an advocate and specialist immigration advice, etc.

Since GRETA’s last report, there have been yet further developments to policy and practice in relation to separated children as outlined below.

In autumn 2014, Northern Ireland designated Aran House within Glenmona Resource Centre as the main residential care home for all separated children subject to immigration control arriving into Northern Ireland. The Centre has capacity for eight children maximum and other residential care homes have been identified in case of need to referral children elsewhere. This initiative has created an opportunity for specialist social work skills to develop and ensures that separated children are not isolated. Our experience of Glenmona, to date, is that the children accommodated in this centre are exceptionally well supported. However, we do have concerns that placing all separated children together could make them vulnerable to traffickers if the location becomes known.

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provides for the introduction of an independent legal guardian for all separated children in Northern Ireland (section 21). The guardianship provisions will come into effect by November 2015. The enabling

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regulations are currently being drafted by the Department and will provide that all separated children have the benefit of an independent legal guardian.

The UK has agreed to pilot multi-disciplinary panels for determining whether an individual child is a victim of human trafficking. These panels will give persons with a safeguarding function (i.e. the Health and Social Care Trust in Northern Ireland) a role in decision making. While the Trusts will not become Competent Authorities, we believe such panels will be an improvement on current practice whereby the Home Office acts as the Competent Authority for children subject to immigration control. Northern Ireland is not one of the pilot areas, however, we will watch the pilots with interest.

On a less positive note, despite GRETA’s specific recommendation of the need for all child interviews to be conducted in a child-friendly setting, we still have concerns about the interview room at Drumkeen House. While we acknowledge that some improvements to the interview room have been made, and we welcome the Home Office’s willingness to interview children in different premises if specifically requested and where there is a demonstrable need, we believe the room still falls considerable short of best practice as a place to interview separated children (whether trafficked or not).

Finally, we wish to draw GRETA’s attention to published Home Office statistics that show that a child aged 12 – 16 years was detained in Larne House in November 2013. This is wholly contrary to Home Office policy and guidance and is likely to be of concern to the Committee.

GRETA may wish to:

- Acknowledge the positive developments regarding the policies and procedures governing trafficked children (and the wider group of separated children)
- Specifically, welcome the provision of independent legal guardianship, introduced in section 21 of the Human Trafficking and Exploitation Act 2015 and monitor the progress of its implementation
- Request information from DHSSPS/DOJ about what security measures are in place to protect vulnerable children in care at Glenmoma and the effectiveness of same
- Monitor the progress of the multi-disciplinary panel pilots
- Request an update from the Home Office about the child-friendly interview room at Drumkeen House.

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Examine the circumstances in which a child was detained at Larne House and assess whether current identification procedures (to identify children and victims of trafficking) are adequate.

Residence Permits

The NRM process allows for residence permits to be issued to victims of human trafficking. Residence permits take the form of Discretionary Leave to Remain and allow the holder to obtain employment and to access the benefit system. Residence permits are valid for one year and are renewable.

Our casework experience identifies two problems relating to residence permits. First, it can be extremely difficult to obtain a residence permit for a victim who is not, for whatever reason, actively cooperating with enforcement agencies. This is contrary to the Convention that states that support should not be made conditional on the victim’s willingness to cooperate with authorities (Article 11.3).

Second, residence permits are not issued to EEA victims of trafficking that would otherwise give them access to social security benefits. Therefore, unless the EEA victim of trafficking meets the (increasingly restrictive) criteria for accessing benefit, there is a real risk of her becoming destitute and homeless. By contrast, a non EEA national who is recognised as a victim of trafficking has an automatic entitlement to social security (thus enabling them to seek work and to pursue remedies such as compensation). The Law Centre has acted for EEA victims who have experienced significant financial hardship after being conclusively recognised as victims of trafficking (and therefore no longer eligible for support during the Recovery and Reflection process). One victim risked street homelessness and became entirely reliant on charitable support. Other victims decided to return to their country of origin.

GRETA may wish to recommend that:
  o Residence permits are not restricted to victims who are cooperating with enforcement agencies;
  o Residence permits are made available for EEA victims of trafficking.

Compensation and legal redress

Relevant to GRETA’s previous recommendation 29: that all victims of trafficking are eligible for compensation.

In Northern Ireland, legal redress may take different forms including through the criminal justice system and through the victim pursuing a remedy through the employment / civil courts (e.g. to access unpaid wages).
The latter type of redress can be extremely difficult. Enforcement of rights is difficult for the average employee and particularly so for a victim of trafficking. A specific difficulty for victims of trafficking is the legal principle of the ‘doctrine of illegality’, which makes it very hard for a worker to enforce their normal legal rights if s/he were involved in some form of illegal conduct. Trafficked victims may have been involved in illegality in different ways e.g. not paying tax on earnings or working in breach of immigration laws.

In response to GRETA’s first report, the Government said that ‘victims of trafficking, once they have left the UK and wish to do so, are already able to submit an application for [...] compensation and, in a number of cases, pursue a claim for damages in the civil courts’ (Government response at paragraph 72). The Law Centre is currently representing a number of East European workers in respect of employment matters who were conclusively recognised as victims of trafficking in the UK but who have since left Northern Ireland (most having returned to their home country). Our experience is that, in practice, it is extremely difficult to proceed with a civil claim where the victims have left the jurisdiction – particularly where the victims do not speak English and do not have access to email. The types of problems include: extreme difficulty in taking instructions in preparation for the case; the logistical difficulties and expense required in drafting the detailed witness statements that an Industrial Tribunal requires to be used in its proceedings; and the need for victims to return to NI for the hearing of their claims.

Our experience is that not all victims are eligible for compensation through Northern Ireland’s Criminal Injuries Compensation Scheme. This is because, to be eligible, the victim must have experienced violent crime resulting in mental or physical injury. Not all victims of THB are subject to violent crime although of course all have been coerced (by various means) to work in horrendous conditions.

- GRETA may wish to recommend that:
  - Department of Justice and Department of Employment and Learning review current arrangements to ensure that labour justice is accessible to all workers in Northern Ireland (regardless of their immigration status). Specifically, this review should include an examination of the ‘doctrine of illegality’ in the context of victims of THB and the accessibility to redress for victims who have left the UK.
  - Department of Justice reviews the compensation eligibility criteria for victims of THB.

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25 See G. McKeever & B. Thompson, ‘Redressing Users’ Disadvantage: proposals for Tribunal Reform in Northern Ireland’ (2010). See also
26 While this principle is not absolute, it can be a real barrier for victims wishing to assert their rights. See discussion of Vakante v Governing Body of Addey and Stanhope School in P. Chandran (ed), ‘Human Trafficking Handbook, Recognizing Trafficking and Modern-Day Slavery’ (2011) p. 306
27 An Industrial Tribunal claim involving issues arising from trafficking could easily last for 2-3 weeks and during that time the workers will have to take leave from any work they have in their home country and fund the cost of travel and subsistence while in Northern Ireland.
Conclusion

We are grateful for this opportunity to contribute to GRETA’s second evaluation round. We would welcome an opportunity to meet with the GRETA delegation when it conducts its visit to Northern Ireland.

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