2023: The UK's compliance with ILO Convention No. 29 on Forced Labour and its Protocol

Summary

The UK Government has greatly regressed on its anti-trafficking approach since its last review by the Committee of Experts and is contravening core human rights laws.

In particular, rights and protections for non-British victims of forced labour and trafficking – the greatest proportion of victims in 2022[1] – are being eroded in the name of immigration enforcement. To stay this path in the face of strong domestic and international criticism, the Government has used inflammatory and un-evidenced claims about modern slavery survivors and has bypassed the standard parliamentary conventions that ensure pre-legislative scrutiny.

British and non-British victims and survivors alike have meanwhile been harmed by the defunding, deprioritisation and barriers to justice and support that have resulted from this policy direction. This has included a breakdown in survivor and sector consultation; the average wait times for conclusive grounds decisions on official victim status growing to 451 days;[2] victims and survivors being placed into unsafe accommodation; and a failure to appoint an Independent Anti-Slavery Commissioner for 16 months during the passage of critical legislation.

Concurrently, the UK Government is still failing to sufficiently hold corporations accountable for trafficking, modern slavery and labour exploitation in their value chains.

The upshot is a country in which victims and survivors are today much more vulnerable to further harm, hostility and exploitation than they were at the point of the UK's last review by the Committee just three years ago.

Key developments

New legislation has undermined or reversed protections: C029 and P029

Much recent law and policy change has brought the UK out of line with the obligation enshrined in ILO CO29 to suppress the use of forced or compulsory labour in all its forms within the shortest possible period, and the enhanced obligations under the Protocol –

[1] UK Home Office (2023), Official Statistics: Modern Slavery: National Referral Mechanism and Duty to Notify statistics, UK, Years Summary 2022

[2] UK Home Office (2023) Official Statistics: Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2023 – April to June

particularly Article 2 (c) (i) – along with other human rights law,[3] as well as the UK's own Modern Slavery Act (2015).[4] In 2022 the Home Office reclassified **modern slavery from a safeguarding to an immigration issue**,[5] raising serious concerns in relation to the identification and support of victims. While modern slavery was reassigned to the Safeguarding Minister, a new 'Abuse of the Modern Slavery System' responsibility was then assigned to the Minister for Migration.[6]

The most recent of the legal changes, the so-called **Illegal Migration Act,** was passed in July 2023, building on the powers given to the Home Office to remove and disqualify asylum seekers and modern slavery victims from support in the Nationality and Borders Act (NABA).[7] Despite strong criticism, this was rushed through parliament with exceptionally reduced scrutiny.[8] Along with a *de facto* ban on asylum, this Act will achieve a near-total ban on access to modern slavery support services for people who enter the UK 'irregularly', and it places a duty on the Government to swiftly detain and remove such people, often without opportunity for screening or services. Only a narrow exception is provided for that is likely to apply to a very limited number of people.[9] This not only means many victims will be left in exploitation without recourse for support and detained and deported if found, but also that these victims will be, in most cases, unable to feed into investigations and prosecutions of those committing labour abuse.

> "The Bill denies access to protection in the UK for anyone falling within its scope – including unaccompanied and separated children - regardless of whether they are at risk of persecution, may have suffered human rights violations or whether they are survivors of human trafficking or modern-day slavery and may have other well-founded claims under international human rights and humanitarian law." – UNHCR Press release [10]

> "Vulnerable people could be exposed to further harm and risks, including exploitation, trafficking including for purposes of forced labour and sexual exploitation, arbitrary detention, torture and other cruel, inhuman, or degrading treatment. The new policy is likely

---

[3] MSPEC (2023) Explainer: The Illegal Migration Bill modern slavery provisions, 12 July 2023. This notes that it directly conflicts with the principles of Council of Europe Convention on Action against Trafficking (ECAT) and Article 4 of the European Convention on Human Rights (ECHR), which are part of UK law under the Human Rights Act 1998.

[4] Such as by severely limiting the accessibility of the NRM.

[5] The Guardian (2022) Home Office Reclassifies Modern Slavery as Immigration Issue.
The Home Office has taken the modern slavery brief away from the minister responsible for safeguarding and classed it as an "illegal immigration and asylum" issue, as seen in online ministerial profiles. Modern slavery is listed at the bottom of the "illegal immigration and asylum" brief of the immigration minister.

[6] Cabinet office (July 2023), List of Ministerial Responsibilities

[7] MSPEC (2023) Explainer: The Illegal Migration Bill modern slavery provisions, 12 July 2023.

[8] Institute for Government (2023) Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted

[9] The exception outlined in Section 21(3) for some individuals whose stay in the UK is deemed necessary by the Home Secretary for investigations or criminal proceedings relating to their exploitation. YetSection 22(5) contains a presumption that it is not necessary for a person to be in the UK in order to cooperate with an investigation and/or prosecution unless there are 'compelling circumstances'

[10] OHCHR & UNHCR: (2023) UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system; see also UNICEF UK (press statement, no date), which "is deeply concerned that vulnerable children who are seeking safety in the UK will be put at greater risk by the passing of the Illegal Immigration Bill today~.

to fuel hostility, xenophobia and discrimination against migrants, asylum-seekers, and refugees."[11] – Press statement by six UN experts

Although the Illegal Migration Act builds on the powers given to the Home Office in the Nationality and Borders Act 2022 (NABA), it was published and passed well before there could be a sense of **NABA's** impact. The harms brought about by NABA included raising the National Referral Mechanism (NRM) threshold for all victims without evidence of need and against the recommendation of civil society and survivor groups, and allowing the Home Office to disqualify anyone with a criminal conviction of over 12 months from NRM access.[12] As a result, April to June 2023 saw 48% of reasonable grounds awarded,[13] a further drop from the previous quarter, which was already very low compared to recent years.[14] The average time to move from referral to reasonable grounds grew from 6 to 21 days; while the median time taken from referral to conclusive grounds decisions was 451 days.[15] In recent months, the latter two policies – raising the NRM threshold and barring victims of forced criminality from support – were successfully challenged in UK courts, and the Home Office has been forced to change the policy themselves and guidance surrounding the implementation of these policies.[16]

However cumulatively, these changes – including a **policy of forced removals to Rwanda,** still pushed for by the Government despite it being ruled unlawful by the Court of Appeal[17] – and the resulting environment creates a high risk of trafficking victims being further exploited or deported before they can be identified. There has been a tenfold increase in the number of trafficking survivors held in immigration detention centres over the last four years where they have very limited access to the NRM or other support.[18] Throughout this period the Government has wrongly claimed that it has been more closely aligning the British statute books to its ECAT obligations.

Finally, since April 2022 – for 16 months - the post of **Independent Anti-Slavery Commissioner** (IASC) has been left vacant, leaving a vacuum of independent oversight while critical legislation has been passed. The stakeholder engagement structure under the Modern Slavery Strategy and Implementation Group (MSSIG) was put on hold during the development of the new Slavery Strategy and was only restarted when the Bill was at its last stage before becoming an Act. The release of the **Modern Slavery Strategy** has meanwhile been pending for years, despite not been updated since 2014 in a vastly change landscape.

---

[11] OHCHR (2023) – UN experts urge UK to halt implementation of Illegal Immigration Bill | OHCHR

[12] Helen Bamber Foundation (2021) Nationality and Borders Bill: Briefing for House of Lords Second Reading.

[13] 3,635 reasonable grounds decisions were issued - source

[14] 58% positive decisions

[15] UK Home Office (2023) Official Statistics: Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2023 – April to June.https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2023-april-to-june

[16] By publishing new guidance on NRM decisions and ending the use of public order disqualifications without a risk assessment performed by the Salvation Army. Matrix Chambers (2023) SSHD Withdraws new evidential test for reasonable grounds decisions in modern slavery statutory guidance.

[17] Politico (2023) UK's Rwanda asylum plan unlawful, court rules

[18] After Exploitation (2020), 'The Referral 'Lottery''

; The Anti-Trafficking Monitoring Group (2021). A Review of the National Referral Mechanism Multi-Agency

Labour market enforcement is among the worst funded in Europe: P029 Article 2, (c) (iii)

The Gangmasters and Labour Abuse Authority (GLAA) is considerably underfunded, with well under the ILO recommended target of one inspector per 10,000 workers (0.4 inspectors per 10,000 workers).[19] The UK has one of the poorest resourced labour inspectorates in Europe, meaning that the GLAA only carries out 'intelligence-led' inspections and is therefore reliant on workers reporting their exploitation.[20]

The UK Government has tended to view trafficking and modern slavery as a discrete form of abuse rather than existing at the extreme end of a continuum of exploitation. As a result, there is little being done to strengthen labour market enforcement for proactive protection – the model is to attempt redress once a situation has degraded severely enough.

Meanwhile, joint operations with immigration control units play directly into the hands of exploiters. Research conducted by the Labour Exploitation Advisory Group (LEAG) has highlighted that these have undermined trust in enforcement mechanisms among migrant workers.[21] The UK government has an opportunity to improve this approach through the upcoming Employment Bill as well as the creation of the Single Enforcement Body.

The policy frameworks for temporary working visas are facilitating wide-scale exploitation: P029 Article 2, (d)

The UK is becoming increasingly reliant on temporary and fixed worker visas, which tend to be tied to a labour shortage area, often for limited periods of time and without route to more stable settlement. There is substantial evidence showing high risk of labour exploitation for workers on the UK Seasonal Worker Scheme,[22] Recent media investigations have reported poor treatment and exploitation of workers on these visas in the agricultural[23] and care sectors[24] in particular. The restrictions in the Overseas Domestic Worker visa effectively 'ties' a domestic worker to an employer due to the short amount of time they have to change employers before visa expiry, increasing their vulnerability to abuse, exploitation, and trafficking.[25] While seasonal agricultural workers can transfer employers, many have reported being refused this or charged a fee to do so. Evidence from these sectors shows that temporary fixed visas – together with other aspects highlighted such as working conditions, [26] remedy, and labour market enforcement gaps – not only

---

[19] Unchecked UK and FLEX (2021), Briefing: Labour market enforcement gap

[20] Ibid

21 Labour Exploitation Advisory Group (LEAG) (2020), Opportunity knocks: Improving responses to labour exploitation with secure reporting.

[22] REF LWA, NEF, FLEX and others (2023), Debt, migration and exploitation. The seasonal worker visa and the Degradation of Working Conditions in the UK Horticulture.

[23] The Bureau Investigates (2023) How British Farms Run on Exploitation

[24] Unison (2023) Migrant care staff in UK 'exploited and harassed' by employers, says UNISON

[25] Anti-Slavery International, Focus on Labour Exploitation (FLEX), Kalayaan, Kanlungan Filipino Consortium, and the Voice of Domestic Workers (2022), Joint Submission For The Universal Periodic Review Of The UK; Committee against Torture, Concluding Observations on the sixth periodic report of the United Kingdom, CAT/C/GBR/CO/6, 7 June 2019, para 60, 61

[26] Ibid note 26.

increase the risk of a person being exploited but also trap them in their exploitation.[27] Despite a wealth of evidence showing the damaging consequences of short term visas, the new UK Government policies continue to include them.

The government has increasingly instrumentalised hostile rhetoric again victims and survivors: P029 Article 2, (e) and (f)

During the reporting period, the Government has disseminated a harmful narrative targeted at migrants and modern slavery survivors, particularly those with previous criminal convictions. This rhetoric encourages a divide between 'deserving' and 'undeserving' victims of serious crime. It has included claims by officials and in official public documents that the NRM system is being significantly abused, with foreign criminals 'gaming the system'. This has not been supported by evidence.[28] In 2022, three UN Special Rapporteurs issued a statement condemning attacks on the credibility of victims of modern slavery by the government.[29]

For example, in April 2021 the Home Office put out a press release entitled: 'Alarming rise of abuse within modern slavery system: Major increases in child rapists, people who threaten national security and failed asylum seekers clogging up modern slavery system'.[30] The department could not provide any data to support its claims following a Freedom of Information request.[31]

Those making these statements have included current Home Secretary Suella Braverman MP, her predecessor as Home Secretary Priti Patel MP, the former Parliamentary Under-Secretary of State for Immigration Compliance and Courts, Chris Philp MP, and Home Office officials (see endnote). The current Home Secretary has also used inflammatory language about those who provide legal representation to victims and survivors of trafficking,

---

[27] Focus on Labour Exploitation (FLEX; 2022) The making of irregular migration: post-Brexit immigration policy and risk of labour exploitation

[28] For instance, NRM data produced by the Home Office themselves in 2021 shows 90% of reasonable grounds decisions and 91% of conclusive grounds decisions were positive. The Director General for Regulation in a letter dated 8th December 2022 to the Chief Scientific Adviser to the Home Office that policy officials could not point to any evidence of greater gaming of the system. Office for Statistics Regulation (2022) Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics

[29] OHCHR (2022) UK: UN experts condemn attacks on credibility of slavery and trafficking victims

[30] Home Office and The Rt Hon Priti Patel MP (2021) Alarming rise of abuse within modern slavery system: 'Major increases in child rapists, people who threaten national security and failed asylum seekers clogging up modern slavery system.' Home Office Policy Statement: The New Plan for Immigration, includes "However, over recent years we have seen an alarming increase in the number of illegal migrants, including Foreign National Offenders (FNOs) and those who pose a national security risk to our country, seeking modern slavery referrals – enabling them to avoid immigration detention and frustrate removal from our country." ; Our current Home Secretary wrote a foreword to a report issued by the Centre for Policy Studies on UK asylum reform. The UNHCR Representative to the United Kingdom has written this rebuttal, highlighting that the report contains critical factual and legal errors regarding the international legal status of refugees and asylum-seekers. While the Home Secretary has since made a caveat that she didn't agree with everything that the report recommended, it was a strongly flawed report and she has made no moves to push back against the obvious flaws. Other public statements by our home minister: on 'invasion', on serious foreign national offenders, on victims "knowingly and willingly paying to come here" and 'gaming the system'; on 'abuse of system and the generosity of the British people':

[31] The Guardian, Mark Townsend (2021), Priti Patel 'misled' MPs over plans for protest crackdown

fomenting the climate of hostility and undermining the rule of law.[32] A recent example of this, comes from the Home Office briefing against the lawyer Jacqueline McKenzie, which has been sent to some national papers.[33]

There has been a failure to address flaws in the National Referral Mechanism, while victims are receiving worsening support, protection and provision, including legal aid: P029 Article 3

There remain consistent and worsening flaws in the operation and delivery of the NRM, despite reform in 2017.[34] The Mechanism has no formal appeals process and fails to make timely decisions. The lack of a right to work for non-resident victims leaves them in a state of limbo and at risk of re-exploitation. The Home Office's Duty to Notify statistics also show a sharp increase in the number of identified potential victims not consenting to being referred to the NRM,[35] often because of legitimate fears of reprisal, arrest, or detention and/or deportation. This stands contrary to the Government's own un-evidenced claims that the NRM system is being frequently misused.

Survivors report considerable difficulties in accessing services that they are entitled to, including accommodation, medical services, counselling, adequate financial support and legal assistance.[36] Unaccompanied children in migration and child trafficking victims are commonly placed outside of child protection frameworks. Survivors are not entitled to legal aid for most immigration applications until they have been referred into the NRM and received a positive reasonable grounds decision. The complex process for accessing 'exceptional case funding' is a barrier to justice in its own right.[37]

There is currently a legal advice crisis for victims and survivors of trafficking and modern slavery, with a gulf existing between demand and available supply. A 2022 report by ATLEU found that 90% of support workers had struggled to find a legal aid immigration lawyer for a survivor in the past year, with major consequences for those affected, including homelessness, destitution, detention, risk of removal and further exploitation.[38]

This has been impacted by significant regression in the legal and policy framework governing access to identification, rights, support, child protection and safety for survivors of trafficking and modern slavery in the past year.

---

[32] In her first speech as Home Secretary, Suella Braverman said: ""Our laws are being abused. Abused by people smugglers and criminals pedalling false promises. Abused by people making multiple, meritless and last-minute claims. Abused by tactics from specialist, small boat-chasing law firms. This cannot continue. Electronic Immigration News (EIN) (2022) Home Secretary says no quick fixes to stop Channel boats but will look to bring forward legislation to make clear only way to UK is through legal routes. See also The Law Society Gazette (2020) Home Office accuses 'activist lawyers' of abusing immigration rules

[33] The Guardian (9 August 2023), Conservative HQ criticised for 'targeted campaign' against immigration lawyer

[34] Home Office (2022). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2021; Hansard (2022), Nationality & Borders Bill. Vol. 819.

[35] Home Office (2022). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2021.

[36] 17 UK sector NGOs (2022) Submission to the United Kingdom UN Universal Periodic Review, 4th Cycle, November 2022: Human Trafficking and Modern Slavery

[37] Ibid; and Public Law Project (2021) Legal Aid for immigration – bring it back.

[38] Anti Trafficking and Labour Exploitation Unit (2022), 'It has destroyed me': A legal advice system on the brink.

The criminal justice system is failing the majority of victims: P029 Article 4

As highlighted by the UK's former Independent Anti-Slavery Commissioner[39], the majority of victims never see their exploiters brought to justice. Mechanisms to provide remedy, including compensation, are in place but remain largely inaccessible in practice[40]. Despite guidance from the Crown Prosecution Service, trafficked people are often not identified as such and are consistently wrongly criminalised for offences committed as a result of their exploitation.[41]

There is also concern regarding the lack of remedy for those who have been left in dangerous positions by the Seasonal Worker Scheme. Reports of working conditions in the scheme – especially for people from Nepal and Indonesia – from the last two years have documented racist abuse and discrimination, unsafe and unsuitable accommodation and no access to basic services such as a doctor.

A major recurring issue is contracted scheme operators not providing migrant workers on their books with sufficient pay to cover their accrued debt and costs, and the threat of dismissal and return, meaning that workers face a considerable barrier in reporting concerns. This produces a significant risk of debt, destitution and danger of further exploitation and harm.[42] . This is partly due to failings by the UK Government and scheme operators to perform basic due diligence to ensure that people are not illegally paying to work in the UK, but also largely due to the fact that the UK does not enshrine the Employer Pays Principle Workers are legally responsible for paying costs including their own flights, transfer costs, , visa application fee (presently £259), and must have £1,270 in their bank account to enter the scheme. There is no system of remedy for these workers, and it is the responsibility of the Government, as well as supermarkets and scheme operators involved in the Scheme to develop one.

The absence of robust due diligence legislation is leading to exploitation in supply chains: P029 Article 2, (e)

The UK's business and human rights framework needs strengthening to adequately address human trafficking and forced labour. Section 54 on Transparency in Supply Chains (TISC) in the Modern Slavery Act places an obligation on companies of a certain size to report on the steps they are taking to address modern slavery within their operations and supply chains, but does not compel companies to undertake any action. Eight years since its introduction, TISC has not led to any tangible, positive changes in business practice to end modern slavery in supply chains. The Business & Human Rights Resource Centre has found significant failings in compliance since its implementation, with only a 40% compliance rate amongst relevant businesses.[43]

---

[39] Hestia (2019) UNDERGROUND LIVES: Police response to victims of modern slavery

[40] Anti Trafficking And Labour Exploitation Unit (2022) Legal aid funding system is failing survivors of trafficking and modern slavery says anti trafficking coalition

[41] Ibid, note 28.

[42] The Guardian (2022) Seasonal fruit pickers left thousands in debt after being sent home early from UK farms; The Guardian (2022) Rapid expansion of visa scheme leaves seasonal workers at risk of exploitation

[43] Business and Human Rights Resource Centre (2021) Modern Slavery Act: Five years of reporting, conclusions from monitoring corporate disclosure

Without stronger legislation to drive better business practice, workers worldwide will remain trapped in situations of forced labour. This is a failure on the part of the UK to keep step with global developments on supply chain due diligence laws which already exist in countries such as Germany, France, and Norway. The European Union is set to have its own due diligence law in the coming year.

Import control measures that stop the trade of goods made with forced labour (i.e. in the USA, Canada and soon, the European Union) increase the risk of forced labour goods being rerouted to the UK. Without due diligence obligations for UK businesses or laws to stop forced labour goods at port, the UK will become a dumping ground for products made with forced labour. An effective toolbox approach of measures is required to address forced labour in global supply chains and its root causes. These would include: Firstly, a UK Business, Human Rights and Environment Act to create a corporate duty to prevent negative human rights and environmental impacts, mandating companies, financial institutions, and the public sector operating in the UK to conduct human rights and environmental due diligence across their operations, subsidiaries, and value chains; and secondly, a legal framework to implement import controls for products made wholly or partially with forced labour, which allows for regional bans when there is credible evidence of state-imposed forced labour, and which mitigates for unintended consequences – such as companies cutting ties with suppliers and leaving workers in a worse situation.

Furthermore a concerning judgement was made in January regarding the responsibility of the government to investigate imports made through the proceeds of crime, including forced labour where it constitutes Crimes Against Humanity. The UK government successfully argued for a so-called 'adequate consideration exemption', applying the concept of a market price to forced labour goods.[44]

[44] World Uyghur Congress, R (On the Application Of) v Secretary of State for the Home Department & Ors [2023] EWHC 88 (Admin) (20 January 2023) (bailii.org)