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Anti-trafficking sector joint briefing on the Illegal Migration Bill for Commons
consideration of Lords amendments, July 2023
Amendment on compliance with international obligations

avid
association of visitors to
immigration detainees

KALAYAAN
justice for migrant domestic workers

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GLASSDOOR
A route out of homelessness

The Passage
Everyone deserves a place to call home

IRMO
Indoamerican Refugee Migrant Organization

ecpat
UK
Every Child Protected
Against Trafficking

BiD
Bail for
Immigration
Detainees

Detention
Action

The Voice of
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SEEAC
SOUTHEAST AND
EAST ASIAN CENTRE

Medical Justice
seeking basic rights for detainees

Ella's
UNLOCKING FREEDOM

UK BME ANTI-
SLAVERY NETWORK

**Anti-trafficking sector joint briefing on the Illegal Migration Bill for Commons
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Amendment on compliance with international obligations**

A cruel, inhumane and unworkable Bill: The ‘Illegal Migration Bill’ is bad law. It is cruel, inhumane and entirely unworkable. It breaks numerous domestic and international laws. It undermines the universality of human rights in the UK, creating a dangerous precedent that particular groups can be stripped of their rights. It has been roundly condemned by cross-party parliamentarians, the UNHCR, the Council of Europe, numerous UN Special Rapporteurs, the governments of the devolved nations, the Children’s Commissioner for England and Wales, faith leaders, and countless civil society groups. The Chair of the Joint Committee on Human Rights, Joanna Cherry KC, said “Having carried out legislative scrutiny of the Bill it is overwhelmingly clear that it breaches a number of the UK’s international human rights obligations including the ECHR and risks breaching others.”¹

As organisations working to end trafficking and modern slavery, we unite to urge Parliamentarians to support Lords Amendment 5 on compliance with international obligations

A charter for exploitation, trafficking and modern slavery

The Illegal Migration Bill is a charter for exploitation, trafficking and modern slavery. It will effectively dismantle the UK’s systems of trafficking and modern slavery protection, denying protection to victims of crime and enabling perpetrators to act with impunity.

Thousands of survivors will be excluded from NRM protections and face removal

Thousands of victims and survivors of trafficking and modern slavery will be denied access to safety and support under the National Referral Mechanism (NRM) and face detention and removal. This is primarily because so many will fall within the Clause 2 definition. Many victims of trafficking come to the UK by irregular routes, under force, fraud or threat and the abuse of their vulnerability. More still will be disqualified due to a prison sentence served, even if this was for a minor offence or they were prosecuted despite the offence being connected to their trafficking experience. On the basis of the information available, we estimate that at least half of victims and survivors who accessed identification, support and protection under the NRM between January and March this year, would be denied this under the Bill.² Instead of the support and protection they can currently receive, they will face detention, removal, or a life in limbo.

¹<https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/195605/widespread-human-rights-failings-must-be-addressed-in-illegal-migration-bill-human-rights-committee-finds/>

²This is based on the fact that 75% of referrals into the NRM in January to March 2023 were foreign nationals. Some two thirds of foreign nationals (50% of all referrals) are likely to have entered irregularly and will be disqualified. Of the remaining foreign nationals, it is likely that half (an additional 13%) will also be disqualified either because they committed a criminal offence as part of being trafficked and spent some time in prison and/or had their claim classed as a “bad faith” application. The victims and survivors of trafficking and modern slavery who would continue to be able to access the NRM in the usual way would largely be those who have flown directly to the UK from their country of origin or a country where they have resided, including those where the trafficker has obtained their visa, or where they arrive legally but are then trafficked within the UK, and those who entered the UK before the 7 March 2023, and British nationals.

Driving survivors underground and enabling trafficking

The Bill is a gift to human traffickers. It will enshrine in law the threats traffickers so often make about illegality, detention and removal should victims seek help. Those who escape their traffickers will be forced underground, avoiding contact with authorities or institutions that might have previously been able to assist them, without any means to access support and thereby being prey to those that have already trafficked them, or by others who will do so. Other victims will feel forced to remain in exploitation due to the fear of detention and removal.

Impunity for traffickers

By drastically reducing the likelihood that victims will come forward, assist investigations and act as witnesses in criminal prosecutions, the Bill also entirely undermines a criminal justice response to this grievous crime. The UK's record on holding traffickers to account for their crimes and securing justice and remedy for survivors has been woeful to date. In 2020, just 89 defendants were prosecuted under the Modern Slavery Act on a 'principal offence' basis, with just 10 convictions that year.³ The Bill is entirely absent of measures to improve the prosecution and conviction of traffickers, or securing remedy for victims. While ignoring the need to tackle the criminals responsible for this crime, the Bill instead will drive trafficking and enable traffickers to act with impunity.

Amendment 5: Ensuring compliance with the UK's international obligations, including on trafficking and modern slavery

People who have experienced trafficking and modern slavery have experienced a truly heinous crime and a breach of their rights under Article 4 of the European Convention on Human Rights (ECHR). They have entitlements under the European Convention for Action Against Trafficking in Human Beings (ECAT). **Cross-party Lords Amendment 5 would require that nothing in the Bill requires the UK to break its international obligations, including the ECHR and ECAT. In doing so, this amendment would mitigate the worst effects of the Bill on victims and survivors of trafficking and modern slavery.**

Amendment 5 in the names of Baroness Chakrabarti, Lord Paddick, Lord Etherton, and Lord Kirkhope of Harrogate:

Leave out Clause 1 and insert the following new Clause—

"Introduction

Nothing in this Act shall require any act or omission that conflicts with the obligations of the United Kingdom under—

- a. the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;
- b. the 1951 UN Convention relating to the Status of Refugees including the Protocol to that Convention;
- c. the 1954 and 1961 UN Conventions on the Reduction of Statelessness;
- d. the 1989 UN Convention on the Rights of the Child;
- e. the 2005 Council of Europe Convention on Action against Trafficking Human Beings."

³<https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery/2021-uk-annual-report-on-modern-slavery-accessible-version#fnref:7>, para 2.1.32

Article 4 ECHR and ECAT - Fundamental protections against trafficking and modern slavery and to provide support for survivors

Article 4 ECHR and ECAT both prohibit slavery and trafficking and place positive obligations on the UK to protect victims of trafficking, to prevent their exploitation and to prosecute perpetrators. Article 4 ECHR is not a right from which the UK can derogate in times of emergency. States are obliged to set up a *'spectrum of safeguards [which] must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking'*.⁴ The positive 'protection' duty has *'two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery'*.⁵ ECAT sets out a series of minimum measures to ensure that victims and survivors have the assistance and support needed to recover from this grave crime. This includes a recovery and reflection period as well as a range of support measures, including medical assistance, accommodation, financial support, and legal advice. This assistance and protection is not conditional on a person's agreement to cooperate in any law enforcement efforts against the perpetrators or traffickers.

Compliance with international obligations is a fundamental requirement of any state seeking to uphold the rule of law. However, the UK Government has made a section 19(1)(b) HRA statement, stating that it cannot confirm if the Illegal Migration Bill is compatible with the ECHR. More recently, the Council of Europe has adopted a resolution indicating that the IMB risks "breaching the UK's international legal obligations and thus the rule of law."⁶ The Illegal Migration Bill is in clear breach of ECAT. On 29 March 2023, the Group of Experts on Action against Trafficking in Human Beings (GRETA), who are responsible for monitoring the implementation of ECAT, stressed that, 'if adopted, the Bill would run contrary to the United Kingdom's obligations under the Anti-trafficking Convention, to prevent human trafficking, and to identify and protect victims of trafficking, without discrimination.'⁷

The UK signed up to the aforementioned international conventions freely, in recognition of its role in the international rules-based system and its responsibility to protect human rights. In supporting this Amendment, Parliament would be reaffirming this important, historic position.

It is important to note that simply reinstating section 3 HRA for the purpose of the Bill is not enough to mitigate the harms of clause 1. This is because, regardless of whether clause 1(5) is removed, the overriding express statutory purpose of removal in clause 1(1) would still apply, with the potential to result in widespread and severe violations of human rights and international law. Therefore, clause 1 must be removed in its entirety.

⁴ *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1 [284].

⁵ *VCL and AN v UK* (App. Nos. 74603/12 and 77587/12) [159].

⁶ Available at <https://pace.coe.int/en/files/32988/html>

⁷ <https://www.coe.int/en/web/portal/-/uk-s-illegal-migration-bill-should-be-reviewed-to-ensure-it-complies-with-the-anti-trafficking-convention-says-greta>

This briefing is coordinated by the Anti Trafficking and Labour Exploitation Unit (ATLEU) and Focus on Labour Exploitation (FLEX).

It is endorsed by:

- Anti Trafficking and Labour Exploitation Unit (ATLEU)
- Focus on Labour Exploitation (FLEX)
- Latin American Women's Rights Service (LAWRS)
- Hope for Justice
- Freedom United
- Helen Bamber Foundation
- Anti-Slavery International
- Kanlungan Filipino Consortium
- Commonwealth Human Rights Initiative (CHRI)
- AFRUCA Safeguarding Children
- UK BME Anti Slavery Network
- Sophie Hayes Foundation
- Jesuit Refugee Service UK
- East European Resource Centre (EERC)
- Association of Visitors to Immigration Detainees (AVID)
- Survivor Collective
- La Strada International
- Kalayaan
- Snowdrop Project
- Jericho
- After Exploitation
- Caritas Bakhita House
- Adavu
- Every Child Protected Against Trafficking (ECPAT UK)
- Bail for Immigration Detainees
- Glass Door Homeless Charity
- The Passage
- Southeast & East Asian Centre
- Voice of Domestic Workers
- Detention Action
- Indoamerican Refugee and Migrant Organisation (IRMO)
- Medical Justice
- Unseen UK
- Ella's

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