

Joint Committee on Human Rights - Legislative Scrutiny: ‘Illegal Migration’ Bill
Anti-Trafficking Monitoring Group (ATMG) Written evidence submission - 6 April 2023

Introduction

1. The Anti-Trafficking Monitoring Group (ATMG) is a coalition established in 2009 to monitor the UK’s implementation of European anti-trafficking legislation, including the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). The ATMG is hosted and chaired by Anti-Slavery International and consists of seventeen leading UK-based anti-trafficking organisations: Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), the Snowdrop Project, the TARA service, Just Right Scotland, UNICEF UK, the Children’s Law Centre (CLC), Flourish Northern Ireland, the East European Resource Centre, the Scottish Refugee Council and Hope for Justice.
2. In this submission, we are going to address the questions included in the modern slavery section of the [call for evidence](#), however the ATMG is deeply concerned about the negative consequences that this Bill will have not only on victims and survivors of trafficking and modern slavery, but on the wider migrant community. We also note serious concerns from international institutions, as outlined below, in respect of the new proposed Bill.
3. The Council of Europe Commissioner for Human Rights in a letter to the Speakers of both Houses of Parliament warned that “the Bill’s provisions create clear and direct tension with well-established and fundamental human rights standards”.¹
4. The Group of Experts on Action Against Trafficking in Human Beings (GRETA)² has expressed deep concerns over the Bill’s lack of compliance with the core elements of ECAT and emphasised that *the new legislation would constitute a significant step backwards in the fight against human trafficking*.³
5. The ATMG has produced a [briefing](#) which analyses the incompatibility of the ‘Illegal Migration’ Bill with ECAT and international law. We found that the Bill is in clear breach of ECAT, HRA⁴ and

¹ Council of Europe Commissioner on Human Rights (27 March 2023) Letter: Parliamentarians should uphold the United Kingdom’s international obligations when scrutinising the “Illegal Migration Bill”. Available at: <https://www.coe.int/el/web/commissioner/-/parliamentarians-should-uphold-the-united-kingdom-s-international-obligations-when-scrutinising-the-illegal-migration-bill->

² GRETA is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. Its functions are set out in Article 36 ECAT.

³ GRETA (29 MArch 2023) “UK’s Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention”, says GRETA. Available at: [“UK’s Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention”, says GRETA - Portal \(coe.int\)](#)

⁴ Human Rights Act (1988)

ECHR⁵ as well as many other international human rights treaties. In striking contrast with domestic and international law, the Bill will fuel trafficking and organised crime by driving anyone that is liable to be detained and removed underground and trap them in exploitation. The threat of criminalisation to victims and survivors by means of disqualification from support and subsequent detention and removal will be used as leverage by traffickers to coerce and control people and prevent them from escaping or reporting their trafficking experience.

Q12. The Bill disappplies various modern slavery provisions to those who enter or arrive in the UK irregularly in accordance with the four conditions set out in clause 2:

a. Would the removal of potential victims of slavery or trafficking from the UK be compatible with the UK’s obligations under Article 4 ECHR and the Council of Europe Convention Against Trafficking (ECAT)?

6. ECAT is governed by the principles of preventing and combating trafficking, protecting victims, and ensuring effective investigation and prosecution of traffickers as set down in Art 1 ECAT. This stands in clear contrast with the Bill, which wrongly prioritises immigration control over safeguarding as the appropriate response to trafficking and modern slavery.
7. By aiming to remove everyone that falls within the four conditions set out in clause 2, the Bill will prevent the identification of possible victims as it disqualifies them from the NRM or from being referred altogether. Art 10(2) ECAT⁶ *seeks to prevent victims and survivors from being immediately removed from the country before they can be identified as victims*⁷. Once there are reasonable grounds for believing a person might be a victim, that is “*sufficient reason not to remove them until completion of the identification process establishes conclusively whether or not they are victims of trafficking*”.⁸
8. Furthermore, the Secretary of State includes a provision that will allow removing people to a supposedly “safe” third country for consideration of any asylum or humanitarian protection claim.⁹ This will create a very dangerous situation where victims and survivors could be removed to their country of origin or to a supposedly “safe” third country without a proper risk

⁵ European Convention on Human Rights (1950)

⁶ *Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.*

⁷ Explanatory Report to Convention of Europe on Action Against Trafficking in Human Beings (ECATER)(2005). Available at: <https://rm.coe.int/16800d3812> - paragraph 131

⁸ ECATER - paragraph 132

⁹ Illegal Migration Bill Explanatory Notes (2023) Available at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/en/220262en.pdf>, - Paragraph 15, p. 6

assessment taking into consideration their specific circumstances. It is deeply concerning that the Bill does not include Safeguarding provisions. This gap will put individuals at further risk of harm and re-trafficking in contrast with Art 5 ECAT.

9. In respect to this, Art 16(2) ECAT states that the return of a victim “*shall be with due regard for the rights, safety and dignity of that person*”. The return of a victim shall also take into account the status of any legal proceedings related to the fact that the person is a victim, in order not to affect the rights that the victim could exercise in the course of the proceedings as well as the proceedings themselves.¹⁰
10. Furthermore, there is no legal or evidential basis for externalised measures to identify and protect victims and survivors, ECAT demands the identification and protection of victims by the competent authority in the territory. Art 40(2) states that Parties can conclude bilateral and multilateral agreements in respect to the matters governed by ECAT. However, the wording makes clear that Parties are not allowed to conclude any agreement which derogates from the Convention.¹¹
11. The Bill also gives the Secretary of State powers to remove children, which is incompatible with the duty to create a protective environment and the best interest of the child set out in Articles 5(2) and 10(6) ECAT.
12. The threat of removal will also be used by traffickers to retain control over their victims and will prevent survivors from escaping their exploitation and seeking support from the authorities. It will also hinder victims' and survivors' ability to cooperate with justice by barring them from identification and accessing the support offered during the recovery and reflection period (in contrast with Articles 12 and 13 ECAT). This is a necessary step to allow survivors to make an informed decision as to whether to support the investigation against their traffickers and it will result in a failure to prosecute traffickers in violation of articles 18-25 ECAT.

b. Is the removal of support provisions for potential victims of slavery or trafficking currently available under the Modern Slavery Act 2015 and equivalent provisions in Scotland and Northern Ireland compatible with the UK's obligations under Article 4 ECHR and ECAT?

13. There is no provision in ECAT that allows a signatory State to disqualify potential victims from the entire identification and protection mechanism. However, in clear violation of ECAT's principle to support survivors' recovery (Articles 12 and 13), the Bill will disqualify victims and survivors of modern slavery and human trafficking from the recovery and reflection period and therefore from accessing support necessary to their recovery.

¹⁰ ECATER - Paragraph 202

¹¹ ECATER - paragraph 374

14. Furthermore, the reflection and recovery period is primarily aimed at allowing victims and survivors to recover and escape the influence of traffickers.¹² However, the disqualification from support will strengthen traffickers control and influence over survivors. The Government must offer victims and survivors a humane rhetoric and functioning support and protection system to disenfranchise the traffickers' hold on victims, which in turn will offer them a better incentive to approach authorities.
15. The obligation of the State to provide support and protection to victims and survivors as set out in Art 4 ECHR and its relationship with ECAT have been clarified by the judgment of *Rantsev v Cyprus and Russia*.¹³ This judgment entails that the safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims and potential victims, in criminal law, regulation of business and immigration rules. The extent of the positive obligations arising under article 4 had to take account of the broader context of the Palermo Protocol and ECAT, which required not only punishment but prevention and protection (para 285).

c. Is the removal of the duty to grant limited leave to victims of slavery or trafficking who have received a positive conclusive grounds decision compatible with the UK's obligations under Article 4 ECHR and ECAT?

16. For an individual that fits the removal criteria under Clause 2, Clause 21 would make it so that there is no obligation to grant potential victims leave to remain. This is clearly incompatible with Article 14 ECAT.
17. Article 14 requires states to issue a renewable residence permit to confirmed victims if the competent authority considers it necessary "owing to their personal situation", as per Article 14 (1)(a), and/or for the purpose of cooperating in investigation of criminal proceedings, as per Article 14(1)(b).
18. Article 12(2) ECAT further specifies "Each Party shall take due account of the victim's safety and protection needs". The personal situation requirement takes in a range of situations, depending on whether it is the victim's safety, state of health, family situation or some other factor which has to be taken into account.¹⁴

¹² ECATER - paragraph 173

¹³ European Court of Human Rights (2010) *Rantsev v Cyprus and Russia*. Available at: <https://hudoc.echr.coe.int/eng?i=001-96549>

¹⁴ ECATER - Paragraph 184

19. Articles 12(7) and 14(2) ECAT refer specifically to the needs of children both in relation to their protection and when leave should be granted. Leave should be granted in the best interests of the child without the need to prove circumstances or any additional requirements.¹⁵
20. The Home Office provides an exemption to removal if people are cooperating with authority in an investigation against their traffickers.¹⁶ This is incompatible with the "unconditional support" requirements in Article 12(6)ECAT¹⁷ and it is a narrower interpretation of Article 14 ECAT. This provision is impracticable if it is not preceded by effective identification.¹⁸ This is likely to benefit a very small number of individuals, especially as the Home Office's own statutory guidance recognises that many victims do not feel safe enough to cooperate with authorities until they have had the time to recover from their exploitation.¹⁹
21. Even if victims wish to cooperate with the police at an early stage and are allowed to stay in the UK for criminal proceedings, this leaves the defence open to attacking the victims' testimony on account of inducement, using the argument that they only agreed to cooperate to obtain support and leave to remain. In addition, permission to stay is likely to be swiftly terminated post-trial at a point where a victim may need greater witness protection, rendering them at risk of homelessness, destitution, trafficking and removal.

Q.13. The Government justifies the disapplication of various modern slavery provisions on the basis that persons who meet the four conditions in clause 2 are a "threat to public order" and therefore the obligations arising under Article 13 of the Council of Europe Convention Against Trafficking (ECAT) do not apply. To what extent is this extension of the public order disqualification compatible with Article 4 and ECAT?

22. The Bill, if enacted, will amend s.63 of the NABA²⁰ to include the arrival of people in the UK through an irregular route as a threat to public order.²¹ This will allow the Home Secretary to disqualify victims from the recovery and reflection period and protection from removal and from being considered for leave to remain.²²

¹⁵ ECATER - Paragraph 186

¹⁶ Illegal Migration Bill - Clause 21(3)

¹⁷ *Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.*

¹⁸ Illegal Migration Bill - Clause 21(3)(b)

¹⁹ Home Office (Updated March 2023) Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland'. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139341/Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v3.1.pdf, p. 144

²⁰ Nationality and Borders Bill Act (2022)

²¹ Illegal Migration Bill - clause 27(9)

²² Illegal Migration Bill - clause 21

23. This provision has purportedly been justified by the application of Art 13(3)²³ ECAT. However, this is a misinterpretation of Article 13 ECAT, which cannot be applied to convictions for activity the person was compelled to do as a victim of slavery or human trafficking as it would be a breach of Article 26 ECAT.²⁴
24. In addition, the stated purpose of the public order provision is *to guarantee that victims' status will not be illegitimately used*,²⁵ so to prevent improper use. However, the Bill will put a blanket exclusion on anyone that fits within Clause 2. This approach is wrongheaded as no person can improperly participate in the National Referral Mechanism (NRM), firstly because potential victims cannot refer themselves, and rather, have to be referred by an experienced First Responder Organisation. Secondly, the NRM is a two-part decision-making process by the Home Office. An individual risk assessment should also be conducted. It cannot simply be said that individuals present such an ongoing risk to public order as to come under this exemption by the mere fact that they arrived in the UK through an irregular route.
25. Furthermore, the protection from removal linked to the 'Reflection and Recovery' period, as well as the requirement to provide support all fall within the scope of Article 4 of the ECHR.²⁶ No exceptions can be made to these requirements because Article 4 is non-derogable under Article 15 of ECHR.²⁷
26. This change in legislation therefore contravenes the UK obligations under the non-punishment principle (Art 26) set by ECAT and the wider obligations to identify victims and ensure protection and support.
27. The following case study shared by Snowdrop project, shows how the lack of immediate identification can lead to victims' criminalisation and threat of removal. It also shows how crucial access to support and remedy are for survivors of modern slavery.
28. *Olive was trafficked to the UK after being forced into child marriage in her home country. Someone helped her flee this situation but brought her to the UK for the purpose of sexual exploitation. After 18 months caught in exploitation, a punter recognised what was happening and helped Olive escape. He gave her false ID to try to flee, but she was arrested at the airport. Following bad legal advice she pled guilty and was sentenced to 12 months in prison. Olive tried to inform the authorities of what had happened to her but it wasn't identified as trafficking. When she was detained for deportation following her sentence, Olive spoke to a befriender in*

²³ *The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victims status is being claimed improperly.*

²⁴ *Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.*

²⁵ ECATER - paragraph 173

²⁶ Prohibition of slavery and forced labor

²⁷ European Court of Human Rights (2023) Guide on Article 15 of the European Convention on Human Rights. Available at: https://www.echr.coe.int/documents/guide_art_15_eng.pdf

the detention centre who identified her as a potential victim of trafficking and referred her to the NRM. Olive was moved from detention to an anti-trafficking safe house, where she presented with PTSD, depression and difficulty trusting people. Following a positive Conclusive Grounds decision, she was also granted refugee status and was assisted in claiming compensation for her experiences. Olive was provided with several years' specialist support to help recover from her experiences, and on receiving £40,000 compensation she used the money to study at university to become a nurse.