

Joint civil society report on trafficking and modern slavery in the UK to the
UN Human Rights Committee

Examination of the eighth periodic report of the United Kingdom

Submitted February 2024

This joint submission to the Human Rights Committee (hereafter “the Committee”), was coordinated by the UK-based Anti-Trafficking Monitoring Group (ATMG),¹ with Anti-Slavery International (ASI), and contributions from the Anti Trafficking Labour Exploitation Unit (ATLEU).

¹ The ATMG is comprised of seventeen leading UK-based anti-trafficking organisations: Anti-Slavery International, Ashiana Sheffield, Bawso, Children’s Law Centre (CLC), East European Resource Centre (EERC), ECPAT UK, Flourish Northern Ireland, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Hope for Justice, JustRight Scotland, Kalayaan, Law Centre (NI), Scottish Refugee Council, TARA service, The Snowdrop Project, UNICEF UK.

It provides information primarily on the treatment of victims of trafficking and modern slavery under Article 8 on the Prohibition on Slavery, but with relevance to protections under Arts. 2, 4, 7, 8, 9, 10, 13, 14, 20, 22, 24 and 26 of the International Covenant on Civil and Political Rights (hereafter “the Covenant”).

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EXECUTIVE SUMMARY

Since [our last submission](#) to the Committee in 2020 there has been a marked deterioration of the National Referral Mechanism (NRM) system and the broader environment for survivors of trafficking and modern slavery in the United Kingdom (UK), putting them at greater risk of harm and exploitation. While the UK Government alleges, without evidence, that there is significant abuse of the NRM system, front-line practitioners are finding the reverse: survivors are finding it increasingly difficult to be identified and get help. This is a stark failure of the UK Government to effectively prohibit contemporary forms of slavery, as stipulated in Article 8 of the Covenant.

As evidenced below, an increasing number of survivors are being locked out of identification and support because of changes to the NRM statutory guidance introduced by the Nationality and Border Act (NABA) 2022 – an Act criticised by various UN experts and bodies.² These changes have raised the evidential threshold for referral into the NRM, increased the decision-making timeframe, introduced a public order disqualification and bad faith provisions, weakened child safeguarding and support, and further led the legal aid and first responder systems to breaking point. Despite the introduction of some recent safeguards in relation to the public order disqualification, we remain concerned that this provision may still bar survivors of trafficking from crucial protection and provision, while the use of detention is set to increase, and evidence indicates that the median duration of detention is on the rise. This violates survivors' rights and routes to recovery, the non-punishment principle, and other provisions and principles in international law.

Meanwhile, discriminatory policies against migrant workers, including overseas domestic workers and seasonal workers, are leading to vast numbers falling into exploitation, including trafficking and conditions amounting to bonded labour, criticised by UN experts.

Political support for these changes, and a broader undermining of survivors' safety, recovery and integration, have in part been generated by the Government's promotion of anti-migrant rhetoric, also strongly criticized by UN experts.³ The Modern Slavery Act has meanwhile been shown to have produced no meaningful accountability for businesses preventing modern slavery in their supply chains.

Attempts by the Government to send asylum seekers to Rwanda to be processed meanwhile, runs contrary to the Rule of Law and poses significant harm to asylum seekers, including the many who have survived trafficking. Additionally, the new Illegal Migration Act, also heavily

² OHCHR, 'UN Rights Chief urges revisions to UK borders bill' (March 2022), <https://www.ohchr.org/en/press-releases/2022/03/un-rights-chief-urges-revisions-uk-borders-bill>; Special Rapporteur on violence against women, its causes and consequences, Special Rapporteur on the human rights of migrants, and Special Rapporteur on trafficking in persons, especially women and children, 'Nationality and Border Bill – We urge the UK to take the right decision' (February 2022), <https://www.ohchr.org/en/press-releases/2022/02/nationality-and-border-bill-we-urge-uk-take-right-decision>; Communications from UN Special Procedures [GBR 3/2022](#) (February 2022): "Concerns about the Nationality and Borders Bill and, specifically, the recently introduced Clause 9 on notice of decision to deprive a person of citizenship" and [GBR 11/2021](#): "Concerns in relation to the impact of the Nationality and Borders Bill on the human rights of victims of trafficking, and the State's obligations under international law to prevent trafficking in persons, and to assist and protect all victims of trafficking, without discrimination."

³ UK: UN experts condemn attacks on credibility of slavery and trafficking victims (December 2022) <https://www.ohchr.org/en/press-releases/2022/12/uk-un-experts-condemn-attacks-credibility-slavery-and-trafficking-victims> Anti Slavery International Press Release [Press Release](#) - As UN Experts express alarm, coalition calls on the Government to end hostility towards survivors of trafficking and modern slavery <https://www.antislavery.org/wp-content/uploads/2022/12/UN-Express-Alarm-Modern-Slavery.pdf>

criticised by UN experts and agencies, can ensure the removal and return of any person who fits four criteria, one of which is having entered the country by irregular means. This applies to many victims of trafficking. Under this legislation, the risk of the UK systematically removing or returning survivors of trafficking before they are identified will become extremely high.

None of the organisations that submitted this report were invited to be part of any national consultation in preparation for the State Party report.

Given the dramatic and sustained downturn in protections since the UK's last review by the Committee, and the weakening of the Government's approach to preventing slavery as provided for in Article 8 of the Convention, we ask the Committee to prioritise a recommendation on the treatment of modern slavery and trafficking victims for its follow up procedure.

Two priority suggested questions and recommendations for the UK Government

We ask the Committee to consider the following questions and recommendations.

Given evidence that the non-punishment principle is applied inconsistently in the UK and that survivors are being criminalised, how does the Government intend to avoid breaching this principle, particularly in the case of survivors who were forced to commit crimes as part of their exploitation? Will this include revising the offences eligible for the application of the statutory defence under the Modern Slavery Act, and will the Government commit to publishing data on the application of the statutory defence for adults and children?

To ensure the consistent application of the non-punishment principle, review the functioning of the statutory defence under the Modern Slavery Act. This should include publishing data on its application for adults and children, and reviewing the offences eligible for the application of the defence under the Modern Slavery Act.

Will the Home Office commit to process its asylum claims in the UK in line with its domestic and international obligations, to ensure access to identification and assistance for survivors of modern slavery through the National Referral Mechanism, and ensuring that its returns process is rigorously reviewed and amended so that it protects survivors from being re-trafficked on their return?

Fully abide by the UK's domestic and international obligations by processing asylum claims in the UK. This should ensure access to identification and assistance for survivors of modern slavery through the National Referral Mechanism, and the regular review of return process to 'safe countries', to measure the impact on re-trafficking.

On the elimination of slavery, servitude, and trafficking in persons

(Arts. 2, 4, 7, 8, 22, 24 and 26)

List of issues:

3. As the State party operates on a dualist legal system, please provide information on the progress in establishing policies and legislation to give full effect to the Covenant (para. 5).

17. Please provide information on the new procedure to identify potential victims of trafficking, the national referral mechanism, and provide information on the two-stage approach established to identify whether a person is a victim of trafficking, including of sexual exploitation of children and modern slavery. Please comment on information received that the two-stage approach requires a standard of proof that hinders the identification of victims. Please provide information on measures taken to prosecute and punish those responsible for trafficking and to provide effective remedies to victims.

We consider the Government's response to the List of Issues to be outdated and no longer applicable, due to major changes in legislation since its submission. This is particularly the case for survivors of trafficking and modern slavery. Provisions for the protection of such survivors have been significantly dismantled by the Government as part of its stance on irregular migration.

Barriers to identification and assistance: changes to the evidential threshold and delays

Since [our last submission](#) to the Committee in 2020, there has been a marked deterioration of the National Referral Mechanism (NRM) system and the broader environment for survivors of trafficking and modern slavery, putting them at greater risk of harm and exploitation. As a result, the UK Government is failing to sufficiently prohibit forms of slavery. The Government alleges, without evidence, significant abuse of the NRM system - however, front-line practitioners are finding the reverse: survivors are finding it increasingly difficult to be identified and get help.

In January 2023, the Statutory guidance on modern slavery was updated (as a result of the NABA being enforced), increasing the evidence required for positive Reasonable Grounds decisions.⁴ Survivors were newly required to provide 'hard' objective evidence of their exploitation at the time of referral along with their own narrative, including documents, medico-legal and other expert reports.

The previous system had recognised that a higher level of evidence would be extremely hard for most survivors to provide, since many are often deprived of their personal documents (or have

⁴ The National Referral Mechanism is a two-stage decision making process, consisting of an initial decision known as the Reasonable Ground Decision and a conclusive decision, known as Conclusive Ground Decision. The Reasonable Ground decision finds if *there are reasonable grounds to believe, based on all available general and specific evidence but falling short of conclusive proof, that a person is a victim of human trafficking.*

never owned any) and may not have a phone or other means to gather evidence while in an exploitative situation.

This change has been found to have increased negative Reasonable Ground Decisions, as confirmed by the Home Office's own statistics.⁵ For example, between the last quarter of 2022 and the first quarter of 2023, positive decisions dropped from 84% to 49% for adults and from 87% to 74% for children. These numbers decreased further in the second quarter of 2023.⁶

Following a legal challenge on human rights grounds,⁷ this new guidance was amended to allow more discretion for decision makers, yet the latest NRM statistics continue to show a much lower rate of positive Decisions compared to the same quarter last year, indicating that this later amendment has not taken effect.⁸

These changes are delaying the decision-making process and access to support for survivors. Before the second quarter of 2023, the median waiting for a Reasonable Grounds decision was never more than six days. By the second quarter of 2023 this had jumped to 21 days;⁹ by the third quarter, to 46 days.¹⁰ This delay to support is heightening survivors' risk of becoming destitute and homeless, being re-trafficked and/or further exploited.¹¹ This is especially the case in England and Wales, where survivors are not entitled to access legal aid before they receive a Reasonable Grounds decision, and where they have limited or no access to support under the Modern Slavery Victim Care Contract (MSVCC); very few other services exist for this cohort.¹² Therefore, a survivor, even when identified, may have no-one to help them access the NRM system or pursue reconsiderations of negative decisions. In Scotland, pre-NRM support is available, but support organisations are being increasingly squeezed by the extended

⁵ Human Trafficking Foundation, 'Impact of the Nationality and Borders Act: changes to the Reasonable grounds Threshold' (May 2023),

<https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/64803ded7f6d6b3544d1eb85/1686126062880/HTF+Reasonable+Grounds+Threshold+Changes+Briefing+2023.pdf>.

⁶ UK Home Office, 'National Referral Mechanism statistics' (last updated 2 November 2023),

<https://www.gov.uk/government/collections/national-referral-mechanism-statistics>.

⁷ The basis of the challenge was that the higher threshold breaches Article 4 of the European Convention on Human Rights; was irrational and procedurally unfair and undercut the statutory purpose of the Modern Slavery Act 2015. Matrix Chambers, 'SSHD withdraws new evidential test for 'Reasonable Grounds' decision in modern slavery statutory guidance' (27 June 2023),

<https://www.matrixlaw.co.uk/news/sshd-withdraws-new-evidential-test-for-reasonable-grounds-decisions-in-modern-slavery-statutory-guidance/>.

⁸ UK Home Office, 'National Referral Mechanism statistics', *op.cit.*

⁹ 18% of people referred to the NRM in the first 6 months of 2023 were still waiting for a Reasonable Grounds decision on the 13th of July 2023. IOM UK, 'UK data National Referral Mechanism: Data analysis briefing #7' (October 2023),

https://unitedkingdom.iom.int/sites/g/files/tmzbdl1381/files/documents/2023-10/iom_uk_nrm-briefing_2023_midterm.pdf.

¹⁰ UK Home Office, 'National Referral Mechanism statistics', *op.cit.*

¹¹ Kalayaan, 'Kalayaan's statement on delays in the National Referral Mechanism Decision Making Process' (4 December 2023),

<http://www.kalayaan.org.uk/wp-content/uploads/2023/12/Kalayaan-Statement-on-delays-in-the-NRM-Decision-Making-Process.pdf>.

¹² Support to potential and confirmed survivors of modern slavery is implemented through the Government-funded 'Modern Slavery Victim Care Contract', which was introduced to strengthen the support offered to adult survivors of modern slavery. Survivors are only provided access to emergency accommodation under the MSVCC (prior to a Reasonable Ground Decision) if they are not entitled to other types of support such as asylum accommodation or Local Authority housing and may not have access to outreach support until receiving a Reasonable Ground Decision. Financial support consists of an Essential Living Rate and a Recovery rate. Home Office, *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. Version 3.6* (last updated 8 January 2024),

https://assets.publishing.service.gov.uk/media/6597e0b6614fa20014f3a92c/Modern+Slavery+Statutory+Guidance+_EW_+and+Non-Statutory+Guidance+_SNL_+v3.6.pdf

wait for decisions (which affects their financial support)¹³ and the rise in reconsideration requests that followed the rise in negative decisions.

Additionally, the Government is trying to increase circumstances by which survivors can be disqualified from support, initially via a new provision in January 2023: the NABA's 'Bad Faith and Public Order Disqualification'.¹⁴ While pushback and evidence of harm has since led to an extensive safeguarding assessment being added,¹⁵ the trend (as seen further below), is towards the **criminalisation of victims and their disqualification from support**.

And finally, other positive reforms and good practices reported to the Committee in 2019 by the Government have been undone. For example, the Government reported the launch of a new Single Competent Authority (SCA) in April 2019, and the creation of an Independent Multi-Agency Assurance Panels of experts (MAAPs) to review all negative conclusive grounds decisions on cases referred directly to the SCA. The Competent Authorities have now been split into two¹⁶ and the MAAPs were discontinued in January 2023.

As such, the UK is creating barriers to identification and assistance that are exacerbating, rather than alleviating the issue of slavery.

Barriers to identification and assistance: a hostile environment

An increasingly unworkable environment and a hostile and unevidenced Government narrative are creating major barriers to protection and support.

The change in the evidential threshold has increased pressure on the very limited capacity of First Responders, legal representatives and specialist services, which help survivors to collect evidence. Many such services are at breaking point, yet no further support or capacity has been provided by the Government. In particular, non-statutory First Responders have had to close or pause referral pathways in 2023 because they could not cope with the demand, leaving survivors waiting for months without support.¹⁷

The legislative and procedural changes outlined throughout this report have meanwhile been made possible by the strategic promotion of anti-migrant rhetoric from the Government, widely picked up by supportive media. This has raised concerns among international experts on trafficking and slavery, including several UN Special Rapporteurs, including the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special

¹³ For example, organisations like TARA in Scotland offer interim support to people, but only receive an allowance from the Government once that person receives a positive decision.

¹⁴ Section 63 of the Nationality and Borders Act 2022. Available at: <https://www.legislation.gov.uk/ukpga/2022/36/section/63>

¹⁵ The UN's International Organization for Migration (IOM) found that 71% of people who were disqualified in the first half of 2023 as a 'threat to public order' had been referred into the Mechanism as potential victims of criminal exploitation. IOM UK, 'UK National Referral Mechanism. Data analysis briefing #7', *op.cit*; see also Matrix Chambers, 'High Court orders no public order disqualification of slavery victims may take place without a risk assessment pending trial' (27 July 2023), <https://www.matrixlaw.co.uk/news/high-courts-orders-no-public-order-disqualifications-of-slavery-victims-may-take-place-without-a-risk-assessment-pending-trial/>; Matrix Chambers, 'Secretary of State for Home Department withdraws public order disqualification policy' (22 January 2024), <https://www.matrixlaw.co.uk/news/secretary-of-state-for-the-home-department-withdraws-public-order-disqualification-policy>.

¹⁶ These two are the SCA and, as of November 2021, the Immigration Enforcement Competent Authority (IECA) was introduced to deal with all the cases for those affected by immigration enforcement.

¹⁷ Kalayaan, 'The National Referral Mechanism: Near Breaking Point' (February 2023), <http://www.kalayaan.org.uk/campaign-posts/report-launch-the-national-referral-mechanism-near-breaking-point/>.

Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on the human rights of migrants in 2022:

*“We are alarmed by the rise in unsubstantiated claims by public officials and Government departments regarding persons seeking protection under the Modern Slavery Act and the National Referral Mechanism in the past days and weeks”.*¹⁸

This narrative has largely hinged on claims of “abuse of the system” (see examples below), which have been used to justify the introduction of the NABA 2022 and the Illegal Migration Act (IMA) 2023. These claims are both unevidenced and dangerous. As stated by the UN experts, such rhetoric imperils protection for victims of trafficking and contemporary forms of slavery, may embolden human traffickers, and impedes efforts to identify and protect victims and hold perpetrators accountable.¹⁹ Sector analysis contradicts the Government’s claims,²⁰ and when asked for evidence to support its claim, the Government was not able to provide any.²¹

Examples of the UK’s Government’s hostile rhetoric

An April 2021 Home Office press release claimed that “major increases in child rapists, people who threaten national security and failed asylum seekers” were “clogging up modern slavery system,” but could not provide supporting data when a Freedom of Information request was filed.²²

In an August 2022 article in the Telegraph newspaper, entitled ‘End the scourge of bogus modern slavery claims’, Member of Parliament Chris Philp was quoted as saying: “Crucially, once someone’s modern slavery claim has been accepted, they cannot be removed from the UK – even if they are a dangerous foreign criminal”.²³ In the article, Philp argues that there are lax thresholds of proof, concluding that serious criminals including “sadistic rapists and brutal murderers” are abusing the “loophole” of Britain’s modern slavery laws to avoid being deported.²⁴

In 2023, the Prime Minister’s statement on ‘illegal migration’ included: “One of the reasons we struggle to remove people is because they unfairly exploit our modern slavery system. So, we will significantly raise the threshold someone has to meet to be considered a modern slave.”²⁵

¹⁸ OHCHR, ‘UK: UN experts condemn attacks on credibility of slavery and trafficking victims’ (December 2022), <https://www.ohchr.org/en/press-releases/2022/12/uk-un-experts-condemn-attacks-credibility-slavery-and-trafficking-victims>.

¹⁹ *Ibid.*

²⁰ Data from the NRM year-end summary for 2022, prior to this narrative, shows a consistent and high level of positive decisions that year, rather than a system encountering a high rate of false claims. The proportion of positive decisions has remained relatively similar in recent years, with around 9 out of every 10 referrals receiving a positive decision. Overall, the number of positive conclusive grounds decisions were detailed in the report as 88% positive reasonable grounds decisions and 89% positive conclusive grounds decisions. Home Office, ‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022’ (2 March 2023),

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>.

²¹ Office for Statistics Regulator, ‘Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics’ (2022), <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-jennifer-rubin-use-of-national-referral-mechanism-statistics/>.

²² UK Government, ‘Alarming rise of abuse within modern slavery system’ (2021), <https://www.gov.uk/government/news/alarming-rise-of-abuse-within-modern-slavery-system>.

²³ Chris Philip, ‘End the scourge of bogus modern slavery claims’, The Telegraph (2022),

<https://www.telegraph.co.uk/news/2022/08/16/end-scourge-bogus-modern-slavery-claims/>.

²⁴ *Ibid.*

²⁵ Prime Minister’s Office, 10 Downing Street, ‘PM statement on illegal migration: 13 December 2022’ (2022) <https://www.gov.uk/government/speeches/pm-statement-on-illegal-migration-13-december-2022>.

Meanwhile, despite a rise in NRM referrals year on year – which suggests that efforts to identify survivors have been working – those identified as possible survivors are increasingly declining to be referred into the NRM,²⁶ suggesting a lack of trust in the system.

In parallel, the Government has failed to establish secure reporting policies and procedures for people with insecure migration status, and uses information provided by victims and witnesses for immigration enforcement.²⁷ This is misguided, drives people in exploitation further underground, and makes it even harder to understand and tackle the true scale and nature of trafficking in the UK.²⁸

As such, the UK is creating barriers to identification and assistance that are exacerbating, rather than ensuring the prohibition of slavery.

Barriers to justice and remedy

Legal advice and representation are key to survivors accessing formal identification, safe housing, financial support, secure immigration status (for non-UK nationals), justice and remedy. Yet there is a legal advice crisis for survivors of trafficking and modern slavery in the UK, with a huge gulf between demand and supply, at a time when law and policy is becoming much harder to navigate.²⁹

This is because the Government is not adequately funding or reforming the legal aid system. The current ‘fixed fee’ payment system is not fit for the (increasing) length and complexity of trafficking and modern slavery cases and is deterring legal aid providers from taking them on. Key areas of advice on trafficking and modern slavery³⁰ are also out of the scope of legal aid in England and Wales for the vast majority of survivors,³¹ which requires amendment, while the Legal Aid Means Test continues to exclude many survivors from legal aid, even though they can’t afford to pay for it.³²

²⁶ Duty to Notify referrals reports rose 43% from 3,193 in 2021 to reach 4,580 in 2022. In the first 3 quarters of 2023, there have been 3,885 reports.

²⁷ Home Office, ‘Immigration enforcement surge since pledge to tackle illegal working’ (23 January 2023), https://www.gov.uk/government/news/immigration-enforcement-surge-since-pledge-to-tackle-illegal-working?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=c1afee0a-15fa-4444-a89a-e4a8f2ff1c38&utm_content=daily.

²⁸ UK Parliament, ‘Written evidence submitted to the Public Bill Committee by the Latin American Women’s Rights Service (LAWRS), the Anti-trafficking and Labour Exploitation Unit (ATLEU), Focus on Labour Exploitation (FLEX) and Kanlungan, on the Victims and Prisoners Bill (VPB30)’ (22 June 2023), <https://publications.parliament.uk/pa/cm5803/cmpublic/VictimsPrisoners/memo/VPB30.htm>.

²⁹ ATLEU, ‘It has destroyed me’: A legal advice system on the brink’ (October 2022), <https://atleu.org.uk/news/2022/10/17/it-has-destroyed-me-new-report>.

³⁰ This includes early NRM advice, advice on trafficking identification, advice on the Criminal Injuries Compensation Scheme.

³¹ Pre-NRM immigration advice is available for a very limited group of survivors who are already accessing advice on certain in scope immigration matters or about judicial review under the Nationality and Borders Act.

³² A Legal Aid Means Test consists in assessing a person’s financial circumstances to determine if they qualify for legal aid support. However, it is wholly unsuited to the diverse, complex and often fluctuating financial reality for survivors. The evidence requirements are rigid and often impossible for people who have been trafficked to fulfil. ATLEU, ‘Coalition calls for an end to the legal aid means testing for survivors of trafficking and modern slavery’ (9 June 2022), <https://atleu.org.uk/news/2022/6/9/coalition-calls-for-an-end-to-legal-aid-means-testing-for-survivors>.

A 2022 report by ATLEU found that a staggering 90% of support workers had struggled to find a legal aid immigration lawyer for a survivor of trafficking or modern slavery in the past year.³³ 76% reported delays of three months or longer in finding an immigration legal aid lawyer for a potential or confirmed survivor; 43% reported serious delays of up to six months or longer.³⁴ Queries to ATLEU's advice service suggests that this problem has continued to worsen in 2023.³⁵

ATLEU's 2022 report shows the devastating consequences for those who are unable to access legally aided advice: 55% of support workers said it had left survivors they supported destitute or homeless; 97% said it had caused poor mental health including suicidal thoughts; 64% reported missed case deadlines; 29% said it had left survivors in a situation of exploitation.³⁶ In addition, it leads to risks of detention and removal.

Meanwhile, the very low number of survivors who are able to obtain compensation in the UK, either from their trafficker or the state, shows that this system is not working and needs review and reform.³⁷

Examples of current failings include a lack of civil remedy for trafficking and modern slavery in UK law, the reliance on prosecutions – which remain extremely low in number³⁸ – and a disconnect between the criminal injuries compensation scheme and the Modern Slavery Act 2015. Trafficking and modern slavery are crimes of violence under Section 6 of the Act but are not defined as crimes of violence under the Criminal Injuries Compensation Scheme rules; there is also a two-year time limit for applications, which is inappropriate given the nature of this crime. Compensation is the most challenging, complex and underfunded area in this sector, deterring providers from undertaking this work.

As such, the Government is creating barriers to justice and remedy, which are exacerbating, rather than ensuring the prohibition of slavery.

The criminalisation of survivors

Since our last submission to the Committee, the introduction of the NABA and IMA – particularly public order disqualification provisions – has favoured the criminalisation of victims and their disqualification from support. Despite the introduction of some recent safeguards³⁹ in relation to the public order disqualification, we remain concerned that this provision may still bar survivors of trafficking from crucial protection and support provisions. This violates survivors' rights, the non-punishment principle as well as other European Convention on Action Against Trafficking in

³³ ATLEU, 'It has destroyed me', *op.cit.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Independent Anti-Slavery Commissioner, 'IASC policy paper: Access to compensation and reparation for survivors of trafficking' (2022), https://www.antislaverycommissioner.co.uk/media/1771/iasc-policy-paper_access-to-compensation-and-reparation-for-survivors-of-trafficking_april-2022-final.pdf.

³⁸ University of Hull, 'Prosecutions under the Modern Slavery Act' (1 June 2023), <https://www.hull.ac.uk/research/institutes/wilberforce/prosecutions-under-the-modern-slavery-act>.

³⁹ Following a legal challenge, the Government has settled to withdraw the old public order disqualification policy and introduced a risk of re-trafficking assessment before disqualifying someone from the NRM. Matrix Chambers, 'Secretary of State for the Home Department withdraws public order disqualification policy' (22 January 2024), <https://www.matrixlaw.co.uk/news/secretary-of-state-for-the-home-department-withdraws-public-order-disqualification-policy/>.

Human Beings (ECAT) provisions⁴⁰ as outlined in international law.⁴¹ These new laws will exacerbate trafficking by reinforcing the legitimate fear that victims have of the authorities, which is utilised by exploiters.

It is an established international legal principle that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.⁴² The UK had previously responded in a way that balanced the need to address this principle while preventing illegitimate use of the system.⁴³

However, the recent public order disqualification, first introduced by the NABA, directs that any survivor who has received a prison sentence of 12 months or more will not be entitled to a completed identification process, among other provisions.⁴⁴ The Illegal Migration Act 2023 (Section 29) has widened the scope of the provision to include those who have “a present or historic offense with any sentence requiring imprisonment”. This is phrased so that imprisonment could include various forms of detention – including immigration detention, and detention in a healthcare facility (e.g. due to mental capacity) or a young offenders’ institution.⁴⁵ In this context, detaining a survivor of trafficking will bar them from all protection and provision.

These laws breach multiple ECAT provisions and a slew of other international standards, among them the prohibition of slavery and the principle of access to justice. They prevent victims from cooperating with authorities to bring their perpetrators to justice, and dangerously imply that

⁴⁰ Articles 10, 13 and 26 of ECAT.

⁴¹ See UNHCR, ‘Statement on UK Asylum Bill’ (7 March 2023), <https://www.unhcr.org/uk/news/statement-uk-asylum-bill>; Council of Europe Commissioner on Human Rights, ‘Letter: Parliamentarians should uphold the United Kingdom’s international obligations when scrutinising the “Illegal Migration Bill”’ (27 March 2023), <https://www.coe.int/en/web/commissioner/-/parliamentarians-should-uphold-the-united-kingdom-s-international-obligations-when-scrutinising-the-illegal-migration-bill>; GRETA, ‘UK’s Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention’, says GRETA’ (29 March 2023), <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>.

⁴² The Inter-Agency Coordination Group against Trafficking in Persons, ‘Issue Brief 8/2020: Non-Punishment of Victims of Trafficking’ (2020), https://www.unodc.org/documents/human-trafficking/ICAT/19-10800_ICAT_Issue_Brief_8_Ebook.pdf.

⁴³ Statutory and non-statutory specialist organisations act as First Responders – survivors cannot refer themselves into the NRM – and a two-stage decision making process sees either a negative reasonable grounds decision or conclusive grounds decision served on the basis of available information.

⁴⁴ This includes the recovery and reflection process: a period of 30 days beginning with the day on which a Competent Authority makes a positive Reasonable Ground Decision. This period should provide a survivor the possibility of beginning to recover from their trafficking experiences and of making an informed decision about whether to assist and cooperate in criminal proceedings. It also ensures that survivors access appropriate assistance and support, such as secure housing, psychological counselling, medical and social services and legal consultation.

The Explanatory Notes for NABA indicate what we consider to be a profoundly incorrect interpretation of The Council of Europe Convention on Action against Trafficking in Human Beings as its justification. Home Office, ‘Explanatory Notes, Nationality and Borders Act 2022’ (28 April 2022), https://www.legislation.gov.uk/ukpga/2022/36/pdfs/ukpgaen_20220036_en.pdf. If Article 13(3) is read on its ordinary meaning, its intention was never to be applied to a victim of human trafficking: *parties are not bound to observe the recovery and reflection period if grounds of public order prevent it*; i.e., circumstances where a Government cannot provide a recovery and reflection period to a victim due to a particular public order situation e.g. mass rioting or a situation of war like in Ukraine. The alternative, when read with the explanatory report, is that Article 13(3) is to guarantee that the victim’s status will not be illegitimately used. It is a non-sensical argument to state that a victim of human trafficking is entering a system and illegitimately using a system designed to identify, safeguarding and protect victims of human trafficking.

⁴⁵ UK Illegal Migration Act 2023, ‘Section 29 (5) (5A) (b)(ii) - The reference to a person who has been sentenced to a period of imprisonment includes a reference to a ‘person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders)’, <https://www.legislation.gov.uk/ukpga/2023/37/section/1/enacted>.

because a person has been convicted of one crime they cannot be identified as a victim of another; this is a precedent with wide reaching implications for human rights and the rule of law.

Our sector is concerned that this new definition of serious criminality will increasingly see exploiters target particularly vulnerable people who will more easily fall outside of identification by the system. In our day-to-day work, we already see the active targeting by exploiters of people with pre-existing vulnerabilities, including children, and those with previous and often minor offending behaviour.⁴⁶ It is a serious failure to protect.

The impact on children's rights

A 2021 report from the UK's former Independent Anti-Slavery Commissioner and child rights charity ECPAT on child trafficking in the UK raises concerns about the criminalisation of children. The report flags that even those who are identified are not provided with effective safeguarding responses to protect them from further exploitation.⁴⁷

As mentioned above, children are being targeted for criminal exploitation due to specific vulnerabilities that effectively place them outside of the protection of the current system.⁴⁸ This is exacerbated by the inconsistent application of the section 45 defence provision included in the Modern Slavery Act 2015, that affords a person a defence to certain offences if they were committed as a result of trafficking.⁴⁹

Since June 2021, the Home Office has been responsible for multiple child protection failures as result of poor safeguarding measures, particularly the practice of placing unaccompanied children in hotels. Although this was eventually ruled as unlawful,⁵⁰ a recorded 442 children went missing and 166 remain so, of which 17% had been referred to the NRM.⁵¹ The children who were found were often recovered from exploitative situations in different parts of the UK.⁵² Despite this, the Illegal Migration Act grants powers on the Home Secretary to directly accommodate unaccompanied children without certainty of how they will access their duties and entitlements under child welfare law by Local Authorities.

⁴⁶ This was illustrated in Operation Fort, Europe's largest known case of trafficking for the purposes of forced labour, whose victims were targeted outside prisons.

⁴⁷ Independent Anti-Slavery Commissioner and ECPAT UK, 'Child Trafficking in the UK 2021: a snapshot' (2021), https://www.antislaverycommissioner.co.uk/media/1724/ecp05-a4-report-snapshot-21_aw7.pdf.

⁴⁸ This includes children with high rates of missing episodes, being in the care system, exclusion from mainstream education and experiences of being victimised and/or having perpetrated serious youth violence. University of Nottingham Rights Lab, 'Covid-19 and child criminal exploitation in the UK: implications of the pandemic for country lines' (26 November 2021), <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/academic-publications/2021/covid-19-and-child-criminal-exploitation-in-the-uk-implications-of-the-pandemic-for-county-lines.pdf>.

⁴⁹ Independent Anti-Slavery Commissioner, 'The Modern Slavery Act 2015: Statutory Defence: A call for evidence' (October 2020), <https://www.antislaverycommissioner.co.uk/media/1478/the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf>.

⁵⁰ Following a Court Challenge brought by ECPAT UK against the Home Office and Kent County Council, 'ECPAT UK, R (on the application of) v Kent County Council & Anor' (2023), <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2023/1953>.

⁵¹ Children's Commissioner, 'Unaccompanied children in need of care' (November 2023),

<https://assets.childrenscommissioner.gov.uk/wpuploads/2023/11/Unaccompanied-children-in-need-of-care-PDF.pdf>.

⁵² The Guardian, 'Revealed: UK's missing child refugees put to work for Manchester gangs' (18th February 2023),

Since our last submission, the UK has been examined by the UN Committee on the Rights of the Child. In its Concluding Observations published in June 2023, the Committee was critical of the NABA and IMA, describing them as being in violation of UK's international obligations and calling on the Government to amend a number of provisions.⁵³

As such, the Government is creating barriers to justice and remedy, which are exacerbating, rather than ensuring the prohibition of slavery in the UK.

Case study

Sam is a Vietnamese survivor of trafficking who arrived in the UK aged 16 under the control of his traffickers, having been exploited in various countries first, and then brought to the UK under the promise of a 'better life' for him and his family. Sam was detained on arrival and claimed asylum the next day but was put into an immigration detention centre. He remained in detention for two weeks before being released without any support and, almost immediately after his release he was recaptured by his original traffickers. He was re-trafficked into cannabis production and forced to live in a locked warehouse, where he remained for two years under constant control, enduring violence from his traffickers. Sam was then arrested, tried and convicted for cannabis production and sentenced to 20 months imprisonment. Trafficking indicators had not been acted upon by the immigration authorities nor the criminal justice system before his case went to court.*

Having served his criminal sentence, Sam was transferred, once again, to immigration detention where his mental health deteriorated, he attempted suicide and was placed on 'suicide watch'. The Home Office was informed that there were indicators to suggest he was a victim of trafficking. However, directions for his removal from the UK remained set and were only prevented by an emergency judicial review challenge made by his lawyer.

*Eventually, after being prompted by his legal representatives, the Home Office referred Sam into the NRM, where he received a positive Reasonable Grounds (preliminary identification) decision and was released the following day. He was granted a 'recovery and reflection' period before finally receiving a positive Conclusive Grounds (final identification) decision and was eventually granted refugee status. Sam was recently awarded substantial damages following a claim for false imprisonment, which included medico-legal evidence on the impact the detention had had on Sam. **Sam's initial experience of detention is a prime example of why vulnerable victims of trafficking have difficulties trusting authorities. Being released without support and falling prey to his traffickers again reinforced his belief that his choices were between the traffickers and immigration detention. Four years of deep suffering and exploitation may have been avoided if the right system had been in place to identify and support him.***

**This case study was provided by Helen Bamber Foundation. The name of the survivor has been changed.*

⁵³ Committee on the Rights of the Child, 'Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland', UN Doc CRC/C/GBR/CO/6-7 (22 June 2023), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en, paras 49-50.

Poor accountability for modern slavery in supply chains

Section 54 of the Modern Slavery Act (the provision in UK law to apply some level of accountability on businesses for addressing modern slavery in their supply chains) has, nearly a decade later, been shown to be ineffective. The Modern Slavery Act has been poorly enforced and has not led to any meaningful change in business practice to eradicate modern slavery⁵⁴; there have been no meaningful developments by the UK Government to account for this.

While multiple countries and jurisdictions around the world have developed more ambitious legislation that moves beyond disclosure to action, to meaningfully prohibit slavery, the UK has become a laggard.⁵⁵ Victims of modern slavery in the UK struggle to access justice for the harm they have experienced because companies, financial institutions and the public sector are not being obliged to actively identify, address and remediate forced labour. Without remediation for this harm, the cycle of exploitation continues.

The UK Government must stop relying on the inconsistent and voluntary efforts of a few businesses and instead move towards binding obligations and legislation that requires meaningful company action. This involves committing to, and implementing, a fit-for-purpose Business, Human Rights and Environment Act that, among other aspects, creates a duty for businesses operating in the UK and the public sector to prevent negative human rights and environmental impacts via proactive due diligence across their operations, subsidiaries and value chains.

The UK Government should create primary legislation that stops the importation of goods made with forced labour, with a rebuttable presumption of forced labour for products coming from regions with credible evidence of state-imposed forced labour and a pre-condition of remediation for lifting any such ban.

In failing to review or strengthen the Modern Slavery Act provisions on supply chain accountability, the Government is failing in its obligation to prohibit slavery.

Suggested questions for the UK Government

To fulfil its obligations for the treatment of modern slavery survivors under the Covenant (arts. 2, 4, 7, 8, 22, 24 and 26), we ask the Committee to consider the following questions, with the view of formulating recommendations as follows:)

- Given evidence that the **non-punishment principle** is applied inconsistently in the UK and that survivors are being criminalised, how does the Government intend to avoid breaching this principle, particularly in the case of survivors who were forced to commit crimes as part of their exploitation? Will this include revising the offences eligible for the application of the statutory defence under the Modern Slavery Act, and will the Government commit to

⁵⁴ Business & Human Rights Resource Centre, 'Modern Slavery Act: Five years of reporting' (February 2021), https://media.business-humanrights.org/media/documents/MSR_Embargoed.pdf.

⁵⁵ Countries such as Norway, France, Germany and the EU have agreed legislation requiring companies to conduct human rights and environmental due diligence; Japan and South Korea have made quasi-legislative moves towards adoption of similar laws, and the US, Canada and Mexico, and soon the EU, have bans on products made with forced labour circulating on their markets.

publish data on the application of the statutory defence for adults and children?

- Given evidence indicating that new legislation – in particular the Nationality and Borders Act and the Illegal Migration Act - is adversely impacting survivor’s access to the National Referral Mechanism, how will the Government ensure that survivors of modern slavery are not **excluded from identification and assistance** because of these laws? Will this include introducing clearer guidance around the evidential threshold and significantly increasing support to First Responders, including funding, recruitment and training?
- Given evidence indicating the extreme difficulties of survivors to access legal aid, resulting in **barriers to justice**, how will the Government ensure the availability and sustainability of specialist legal advice for them? Will this include amending the amount and scope of funding so that it covers the range and complexity of these cases, including appropriate revisions to compensation schemes?
- Given evidence of **poor safeguarding practices for children at risk of trafficking** in the care of the State, what measures will the Home Office implement to ensure that the new legislation protects children and their best interests, in line with its international and domestic obligations, and Section 55 of the Borders, Citizenship and Immigration Act 2009? Will this include measures to ensure that children at risk of or subject to trafficking and exploitation are not criminalised and have access to necessary support?
- Given evidence that the UK’s Modern Slavery Act has been poorly enforced, **resulting in no meaningful change in business practice to eradicate modern slavery**, will the government now move towards binding obligations and legislation the requires meaningful company action? Will this include committing to and implementing a fit-for-purpose Business, Human Rights and Environment Act, and creating primary legislation that stops the importation of goods made with forced labour?

2. On the treatment of aliens, including migrants, refugees and asylum seekers (arts. arts. 2, 7, 9, 10, 13, 14, 20 and 26):

List of issues

18. In light of the Committee's previous concluding observations (para. 19), please comment on information received indicating the difficulties encountered in the system of deportations with assurances, including that the procedure is lengthy, costly and has had mixed results. In this regard, please provide information on: (a) how the State party ensures appropriate, effective and independent post-transfer monitoring of individuals who are transferred pursuant to assurance agreements; (b) measures taken when the State party is not in a position to monitor the treatment of the individual after extradition, expulsion or return to other countries; and (c) actions taken when assurances are not satisfied in practice. Please also provide information on what plans are in place to ensure guarantees for those seeking international protection, including what measures

will be adopted to replace the Dublin transfer scheme after Brexit.

21. With reference to the Committee's previous concluding observations (para. 21), please provide information on the maximum time limit on immigration detention, on the average period immigrants stay in detention facilities and on available procedural guarantees to challenge immigration detention. Please also comment on information received by the Committee about the practice of detaining parents of young children without making proper arrangements for the children. Please comment on the implementation of the Adults at Risk in Immigration Detention Policy and provide information on the impact of the policy. Please also provide information on the use of alternatives to detention with regard to migrants at risk of detention and comment on the pilot project "Action Access", established in 2018 for two years for the purpose of supporting women.

We consider the government's response to the List of Issues to be outdated and non-applicable following recent legislative and policy changes brought by the Nationality and Borders Act 2022 and the Illegal Migration Act.

The detention of survivors of trafficking

Since our last submission to the Committee in 2020, there have been rising concerns around the poor identification of survivors of trafficking and modern slavery in detention facilities, along with the increased risk of their detention and the length of detention for survivors..

Under domestic⁵⁶ and international law⁵⁷, survivors of trafficking should not be detained, but rather supported with secure accommodation in the community and provided with psychological assistance and legal information and support.⁵⁸ This is because the detention environment is inconsistent with survivors' recovery needs. 'Abuse by the System', a research study conducted in 2022 by four sector organisations (and signatories to this submission), found that fewer survivors are identified when detention is overused.⁵⁹ Detention settings are traumatic and stand in conflict with the trust required for a person to disclose their experiences.⁶⁰

In 2023, a public inquiry into Brook House Immigration Removal Centre meanwhile found detention safeguards to be dysfunctional. The inquiry was commissioned after allegations that people held in this immigration detention centre were being subjected to torture, inhuman and degrading treatment.⁶¹ The findings exposed a dehumanising system in which vulnerable people were at risk of or subject to harm. For example, 19 incidents of torture, inhuman and degrading treatment were found to have taken place there over a five- month period.⁶²

⁵⁶ UK Modern Slavery Act 2015.

⁵⁷ European Convention on Action Against Trafficking in Human Beings (ECAT), European Convention on Human Rights (ECHR), United Nations Convention against Transnational Organized Crime (UNTOC) & others.

⁵⁸ Helen Bamber Foundation, ATLEU, FLEX, Medical Justice, 'Abuse by the system: Survivors of trafficking in immigration detention' (October 2022), https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF_MJ_Final_.pdf.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ The Brook house Inquiry, 'The Brook House Inquiry report' (19 September 2023), <https://brookhouseinquiry.org.uk/>.

⁶² Medical Justice, 'Brook House Public Inquiry report published' (19 September 2023), <https://medicaljustice.org.uk/brook-house-public-inquiry-report-published/>.

The 'Abuse by the System' report also found multiple failures in the support provided in detention centres, particularly when survivors have been identified, including a lack of specialist support. Survivors of trafficking in a community setting are allocated an independent support worker, while those in detention settings must rely on staff for support and information, who they are likely to distrust and possibly fear. The report also found serious failings around the implementation of a system meant to be used to determine survivors' recovery needs.⁶³

Meanwhile the length of detention is problematic. In its last submission to the Committee, the Government stated that in the year ending March 2021, 95% of people were detained for less than 4 months. Yet the 2022 Annual Report from the Independent Monitoring Boards⁶⁴ presents concerns at the increase in the length of detention in some immigration removal centres and the existence of cases of detention lasting more than a year.⁶⁵

This situation is set to become much worse with the implementation of the Illegal Migration Act 2023, which will disqualify most foreign national survivors from support and identification, followed by their detention and removal because of the way they have entered the UK (see more below). This will breach the UK's international obligations by failing to safeguard individuals from refoulement and derogation of responsibilities.

One likely long-term impact of the Illegal Migration Act 2023 is on accurate modern slavery data and funding. First Responder Organisations rely on data to justify the allocation of resources, yet the legislation will drive many survivors underground. If fewer survivors come forward, organisations will be able to channel less funding into identification, and even fewer survivors will be identified, creating a perpetual cycle of harm. Invariably, this will also impact on intelligence provided to the police and the ability of survivors to engage with criminal justice processes, leading to even fewer prosecutions.

As such, the Government is creating barriers to justice, support and remedy, which are exacerbating, rather than ensuring the prohibition of slavery in the UK.

Trafficking, removal and the Rwanda plan

Attempts by the Government to send asylum seekers to Rwanda to be processed runs contrary to the rule of law and poses significant harm to asylum seekers, including the many who have survived trafficking. The new Illegal Migration Act meanwhile ensures the removal and return of

⁶³ The Recovery Needs Assessment is a system established by the Home Office in 2019 to ensure survivors who received a positive Conclusive Ground Decision could continue to access vital services (e.g. support from a key worker, access to safe house accommodation and financial support) beyond the 30-day recovery period. This support is offered through the MSVCC contract.

⁶⁴ The Prison Act 1952 and the Immigration and Asylum Act 1999 require the Secretary of State for Justice and the Home Secretary to appoint independent Boards to monitor prisons and places of immigration detention, from members of the local community. Further information available at Independent Monitoring Boards, 'Statutory role of the IMB', <https://imb.org.uk/national-imb-priorities/>.

⁶⁵ At Heathrow, the average length of detention over the year was 44 days. However, five men were held in Heathrow IRC for over 180 days each in 2022, with the longest stayer having spent 1,177 days in detention. The Board monitoring at Brook House IRC reported that the average length of stay of those detained at the centre for more than ten weeks steadily increased over the reporting period, to about 23 weeks. The Dungavel IMB reported the average length of stay was under 30 days, but the longest period was 324 days. Independent Monitoring Boards, 'Immigration Detention Estate. National Annual Report 2022' (December 2023),

<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/13/2023/12/IMB-Immigration-Detention-National-Annual-Report-on-2022-FINAL.pdf>

any person who fits four criteria, one of which is having entered the country by irregular means. Under this legislation, the risk of the UK systematically removing or returning survivors of trafficking before they are identified will become extremely high.

Since our last submission to the Committee, the UK Government signed a Migration Partnership with the Government of Rwanda to allow them to resettle newly arrived asylum seekers in Rwanda, where their asylum claim will be processed.⁶⁶ This aimed to apply to anyone entering the UK irregularly, with no formal limit on the numbers of people it applied to. This was ruled unlawful in November 2023 by the UK Supreme Court, in part because it does not consider Rwanda a safe country to remove refugees to and breaches of the non-refoulement principle.⁶⁷ In response however, in December 2023, the UK Government introduced the Safety of Rwanda (Asylum and Immigration) Bill, which is currently being scrutinised in the House of Lords,⁶⁸ and signed a new treaty with Rwanda to strengthen its asylum process.

A briefing on the Safety of Rwanda (Asylum and Immigration) Bill, supported by more than 90 organisations in the UK, highlights how this Bill runs contrary to the rule of law and the significant harm it will bring to those seeking asylum, including survivors of trafficking.⁶⁹ The briefing highlights ways in which this Bill breaches international legal obligations,⁷⁰ including the UK's obligations under the ECAT, given that victims of modern slavery and trafficking are among those who face forced removal to Rwanda.⁷¹ This includes insufficient accountability structures to ensure that the rights of the asylum seekers and trafficking survivors are monitored and protected. The 2023 Trafficking in Person ("TiP") report ranked Rwanda as a Tier 2 country, meaning that it fails to meet minimum standards for the elimination of trafficking, including around the protection of survivors.⁷²

Meanwhile, the new IMA poses a duty on the Home Secretary to remove anyone who fits four criteria, including anyone who has entered the country by irregular means; there are just a few narrow exceptions. This return process is recognised as an enabler of re-trafficking due to flaws in the process, particularly around identifying survivors of trafficking and assessing levels of risk to individuals being returned.⁷³ This is particularly the case for those in immigration detention.

Prior to the Act, a Freedom of Information request for UK Home Office data by the charity After Exploitation found that while a relatively small proportion of survivors were deported in recent

⁶⁶ Prime Minister's Office, 10 Downing Street, 'PM speech on Action to tackle illegal migration: 14 April 2022' (14 April 2022), <https://www.gov.uk/government/speeches/pm-speech-on-action-to-tackle-illegal-migration-14-april-2022>.

⁶⁷ 'R (on the application of ASM (Iraq)) v Secretary of State for the Home Department [2023] UKSC 42' (2023), <https://caselaw.nationalarchives.gov.uk/uksc/2023/42>.

⁶⁸ UK Parliament, 'Safety of Rwanda (Asylum and Immigration) Bill' (7 December 2023), <https://bills.parliament.uk/bills/3540>.

⁶⁹ ILPA, Freedom from Torture and Justice, 'Joint Briefing for Second Reading in the House of Commons' (8 December 2023), <https://ilpa.org.uk/safety-of-rwanda-asylum-and-immigration-bill/>.

⁷⁰ Including, but not limited to the European Convention on Human Rights ('ECHR'); the 1951 Refugee Convention, and its 1967 Protocol; the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('UNCAT'); the 1966 UN International Covenant on Civil and Political Rights ('ICCPR'), the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; the UN Convention on the Rights of the Child.

⁷¹ See, for example, Rwanda Treaty, Article 13(2) and Illegal Migration Act 2023, s 5(1)(c).

⁷² US Department of State, 'Trafficking in Person Report June 2023' (2023), https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023_Introduction-V3e.pdf.

⁷³ Human Trafficking Foundation and IOM, 'Findings and Recommendations for Assisted Voluntary Return and Reintegration for Survivors of Modern Slavery' (2019), https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5d4987acd16dbf0001e0a7c8/1565099948816/AVRR+Briefing+Paper_IPWG_final_v1.pdf, p. 3.

years and most were categorised as 'voluntary returns', most of those who chose voluntary return were initially held in immigration detention.⁷⁴ The lack of sufficient safeguards makes it unclear whether this option was taken by potential survivors of trafficking with informed consent.⁷⁵

This concern was echoed in a 2021 report by the UK's former Independent Anti-Slavery commissioner.⁷⁶ This found that people who were subject to removal were put at risk of rights violations due to the absence of reintegration programmes, a lack of ongoing support, fear of reprisals, a lack of employment opportunities and the risk of re-trafficking. The risks identified were highest when returns are not on a voluntary basis and when support is not offered.

The provisions of the IMA Act will bar the vast majority of trafficking survivors from formal identification, and therefore protection from removal,⁷⁷ because many foreign national victims of exploitation in the UK have been trafficked across borders, entering irregularly or via some form of deception; this is the modus operandi of human traffickers. Under this legislation, the UK will be systematically removing or returning survivors of trafficking before they are identified.

While there is an exception for 'survivors who cooperate with police', they could still be removed if it is later not deemed necessary for them to stay in the UK to support the investigation.

By penalising survivors for how they enter the UK, the IMA breaches the non-refoulement principle set out in Article 33⁷⁸ of the Refugee Convention;⁷⁹ it is not compatible with non-discrimination and non-punishment principles, nor obligations to prohibit slavery, including the identification and support of survivors. The Act also breaches various regional and international laws by derogating the UK's duty to identify, support and protect victims and survivors of modern slavery and human trafficking, via agreements with third countries.

Enabling the exploitation of migrant workers

Discrimination against migrant workers in immigration and labour policy means that they face widespread abuse, exploitation, and a high risk of trafficking and modern slavery. Despite a wealth of evidence showing the damaging consequences of short-term visas in particular, the new UK Government policies continue to include them.⁸⁰ The Government must review these policies in relation to its obligations to prohibit contemporary forms of slavery.

⁷⁴ After Exploitation, 'Voluntary return + deportation' (2020), https://afterexploitation.com/returns%20enforced-voluntary/#_ftn6.

⁷⁵ *Ibid.*

⁷⁶ Independent Anti-Slavery Commissioner and University of Nottingham Rights Lab, 'Re trafficking: the current state of play' (November 2021), <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/november/re-trafficking-the-current-state-of-play.pdf>.

⁷⁷ Those identified at level 2 of the Adult at risk policy informs the decision to release a vulnerable adult from detention in conjunction with immigration consideration and public order.

⁷⁸ UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (1951), <https://www.unhcr.org/uk/3b66c2aa10>.

⁷⁹ The note on non-refoulement submitted by the High Commissioner explains that the principle of non-refoulement applies not only in respect of the country of origin but to any country where a person has reason to fear persecution. UNHCR, 'Note on non-refoulement (Submitted by the High Commissioner) EC/SCP/2' (23 August 1977),

<https://www.unhcr.org/uk/excom/scip/3ae68ccd10/note-non-refoulement-submitted-highcommissioner.html>.

⁸⁰ Focus on Labour Exploitation (FLEX) 'Preventing exploitation in the shadow of Brexit: the risk of temporary migration programmes' (September 2018), https://labourexploitation.org/app/uploads/2018/09/FLEX-Briefing-temporary-migration_FINAL.pdf; FLEX, 'The Risks of Exploitation in Temporary Migration Programmes: A FLEX Response to the 2018 Immigration White Paper' (2019), https://labourexploitation.org/app/uploads/2019/05/Report_Risks-of-Exploitation-in-TMPs_May-2019_Final.pdf.

Discriminatory policy and practice are evident in visa restrictions,⁸¹ inordinately high visa costs,⁸² and various barriers for migrants to access their rights. For example, reports of the exploitation of overseas domestic workers increased dramatically after 2012 when a policy was enacted that prevented workers from changing employers or renewing their visas once in-country, causing the power balance between migrant employee and employer to become even more pronounced.⁸³ This has been raised by several UN Special Rapporteurs in two communications to the government (the first in 2021,⁸⁴ and a follow up in 2022⁸⁵); the latter remains unaddressed, and we have received no indication of the Government's intention to review or reform this policy.

“As United Nations human rights experts, we firmly believe that the rights of migrant workers to change their employer as a means of preventing instances of trafficking in persons and/or contemporary forms of slavery should be made effective in practice. We urge your Government to undertake relevant legislative and policy changes in this regard.”⁸⁶

Meanwhile there is substantial evidence showing high risk of labour exploitation for workers on the UK's substantial Seasonal Worker Scheme, and a lack of willingness by the government to pay these issues attention.⁸⁷ Evidence indicates that temporary fixed work visas, together with other aspects,⁸⁸ not only increase the risk of a person being exploited but trap them in their exploitation.⁸⁹

Similarly, there have been increasing reports of severe forms of labour exploitation in the UK care sector that constitute discrimination and place people in positions of extreme vulnerability to modern forms of slavery. Issues include illegal fees, exorbitant repayment clauses, non-payment of wages, debt bondage – a form of contemporary slavery – and excessive overtime.⁹⁰

⁸¹ Some of the conditions attached to people's visas, for example a time limit on the length of stay and a No Recourse to Public Funds (NRPF) condition, mean that the individual won't be able to access State support such as claiming most benefits, tax credits or housing assistance.

⁸² A combination of these can result in workers being more dependent on their jobs to pay off debts and therefore being less able to oppose poor treatment.

⁸³ The Overseas Domestic Worker Visa allows changing to another full-time job as a domestic worker in a private household, however, the restrictions on the visa. This includes the lack of a provision which allows to apply to extend the visa beyond its initial six month duration (without a positive Conclusive Grounds NRM decision) despite ongoing employment. For more information, see Anti-Slavery International, FLEX, Kalayaan, Kanlungan Filipino Consortium, and the Voice of Domestic Workers, 'Joint Submission for The Universal Periodic Review of The UK' (2022), <https://www.antislavery.org/wp-content/uploads/2022/04/Joint-Submission-on-migrant-domestic-workers-for-the-UPR-of-the-UK-032022-FINAL-2.pdf>; UN Committee against Torture, 'Concluding Observations on the sixth periodic report of the United Kingdom', UN Doc CAT/C/GBR/CO/6 (7 June 2019), para 60, 61.

⁸⁴ UN Special Procedures, UN Doc GBR 11/2021 (5 November 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26788>.

⁸⁵ UN Special Procedures, UN Doc GBR 6/2022 (1 June 2022), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27215>.

⁸⁶ *Ibid.*

⁸⁷ See FLEX, 'Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot' (March 2021), <https://labourexploitation.org/publications/assessment-of-the-risks-of-human-trafficking-for-forced-labour-on-the-uk-seasonal-workers-pilot/#:~:text=Drawing%20on%20primary%20data%20collected,deception%20about%20the%20nature%20of>; The Independent, 'Migrant fruit picker may have been modern slavery victim under Home Office scheme, government finds' (20 January 2024), <https://www.independent.co.uk/news/uk/home-news/migrant-worker-modern-slavery-victim-b2481239.html>; The Guardian, 'Modern slavery in social care surging since visa rules eased' (2024), <https://www.theguardian.com/society/2024/jan/21/modern-slavery-in-social-care-surging-since-visa-rules-eased>.

⁸⁸ For example, working conditions, remedy, and labour market enforcement gaps.

⁸⁹ FLEX, 'The making of irregular migration: post-Brexit immigration policy and risk of labour exploitation' (2022), <https://labourexploitation.org/publications/the-making-of-irregular-migration-post-brexit-immigration-policy-and-risk-of-labour-exploitation/>.

⁹⁰ FLEX et al., 'Joint Position Paper on Preventing Exploitation in the Adult Social Care Sector' (December 2023), <https://labourexploitation.org/publications/joint-position-paper-on-preventing-exploitation-in-the-adult-social-care-sector/>.

For example, using data collected through the Modern Slavery & Exploitation Helpline, the charity Unseen has reported a 606% increase in the number of modern slavery cases in the care sector from 2021 and 2022.⁹¹ This power disparity creates a barrier to workers reporting concerns about labour exploitation or other bad practice.⁹²

As such the government is failing to tackle discrimination against migrant workers in immigration and labour policy, which is more greatly exposing them to abuse, exploitation, trafficking and modern slavery.

Suggested questions for the UK Government

To fulfil its obligations for the treatment of aliens, including migrants, refugees and asylum seekers under the convention (arts. 2, 7, 9, 10, 13, 14, 20 and 26) we ask the Committee to consider the following questions, with the view of formulating recommendations as follows:

- What measures will the Home Office take to ensure better and more effective identification and support of **survivors of modern slavery in detention**? Will this include enforcing compulsory training for all relevant statutory agencies, ensuring consistent and timely access to legal advice for survivors in detention, and carrying out a review of the process for detaining survivors of trafficking, with meaningful input from relevant stakeholders and those with lived experience?
- Will the Home Office commit to abide by its domestic and international obligations by **processing asylum claims in the UK**, ensuring access to identification and assistance for survivors of modern slavery through the NRM, and ensuring that its returns process is rigorously reviewed and amended so that it protects survivors from being re-trafficked on their return?
- Given evidence that UK policy is enabling the **severe exploitation of migrant workers**, at times amounting to bonded labour, how will it now change policy and practice to prevent this, particularly in the case of overseas domestic workers and seasonal workers? Will this include reforms to the Seasonal Workers scheme and the use of 'tied' visas?

⁹¹ Unseen, 'Who Cares? A review of reports of exploitation in the care sector' (2023), <https://www.unseenuk.org/reports/care-sector-report/>, p. 4.

⁹² FLEX et al, (2023), Joint Position Paper on Preventing Exploitation in the Adult Social Care', *op.cit.*