



Taskforce on Victims of Trafficking in Immigration Detention

Justice Committee - Pre-legislative scrutiny of the draft Victims Bill

Inquiry Response

10 June 2022

Introduction

This submission has been coordinated by the Detention Taskforce on Victims of Human Trafficking in Immigration Detention (Detention Taskforce),¹ together with Kanlungan Filipino Consortium & the Anti-Trafficking & Labour Exploitation Unit. As a group of civil society organisations working on the rights of victims of modern slavery and trafficking offences, representing frontline organisations (including First Responders) as well as research and policy organisations, we welcome the introduction of the Draft Victims Bill but believe that the plans to improve victims' experience of the criminal justice system must go further to ensure that victims and survivors of crime with insecure immigration status are protected. We support the recommendations put forward by Latin American Women's Rights Service (LAWRS)

¹ Member Organisations: Focus on Labour Exploitation (FLEX); Helen Bamber Foundation; Bail for Immigration Detainees (BiD); Ashiana Sheffield; Anti-Slavery International; Latin American Women's Rights Service (LAWRS); Duncan Lewis Solicitors - Public Law; Medical Justice; Association of Visitors to Immigration Detainees (AVID); Jesuit Refugee Service UK; ECPAT UK; After Exploitation; Unseen UK; Detention Action. Kanlungan Filipino Consortium and the Anti-Trafficking & Labour Exploitation Unit (ATLEU) have also contributed to this submission.

and the Step Up Migrant Women Campaign (SUMW) in their submission to the Justice Committee's call for evidence.

This evidence focuses on the following concerns:

- The Bill and Victim's Code must be drafted in such a way as to ensure that *all* victims of crime, including those subject to immigration control, are included.
- If the Bill is to ensure equal access to justice and support for all victims, it must include a provision that would guarantee secure reporting pathways and prevent automatic data sharing between statutory services and Immigration Enforcement.

Questions 1 and 2: The Bill's definition of victim and the Government's proposal to put the overarching principles of the Victims' Code in primary legislation and set out key entitlements in secondary legislation

We welcome the definition of a victim as a person who has suffered harm as a direct result of being subject to, or witnessing, criminal conduct. We welcome the definition of harm as 'including physical, mental or emotional harm and economic loss. However, we are concerned that clause 2 (3) of the Bill allows for the Victims' Code to "*restrict the application of its provisions to— (a) specified descriptions of victims*", as we are concerned that this will result in migrants being excluded from provisions in the Code. It is essential that the Code applies to *all* victims, as set out in the consultation, and there is no risk of restrictions being introduced at a later stage so that specified types of victims are excluded. People subject to immigration control, including victims of trafficking, frequently experience multiple acts of victimisation – primary legislation should be drafted in such a way that ensures they are included under the definition and have access to support as victims.

These concerns are heightened in light of the amount of provision for victims that will be introduced *via* secondary legislation. More clarity is needed as to whether there will be full, open and transparent consultation, carried out in accordance with existing standards of best practice, as part of the process of drawing up secondary legislation. Concerns have repeatedly been raised about the use of delegated powers and statutory instruments (SIs) by the government to amend laws without first facing detailed parliamentary scrutiny – while SIs have the "technical approval" of parliament, scrutiny is often perfunctory, particularly for those passed under the negative resolution procedure.²

² See, for example, Public Law Project's [SIFT project findings](#), October 2020.

We urge the Government to ensure that the Code applies to all victims, and does not include any restrictions in the application of its provision as currently envisaged in clause 3. We also urge the Government to conduct a full, open and transparent consultation, carried out in accordance with existing standards of best practice, as part of the process of drawing up secondary legislation.

Question 12: Whether there should be any further measures included in the Bill.

As recognised by the Home Office, victims must be '*treated first and foremost as victims*'³ regardless of their immigration status. In order to ensure equal access to justice and support for all victims, it is essential that victims and survivors of crime with insecure immigration status feel safe to seek protection and support. This requires secure reporting policies and procedures to be established. These would involve secure reporting pathways and procedures preventing statutory services from automatically sharing victims or witnesses personal data with Immigration Enforcement when they report a crime or access services. They would allow for the separation of immigration enforcement activities from law enforcement and mean that all victims or witnesses to crime would know that reporting will not have direct immigration repercussions. Secure reporting processes are vital to ensure that individuals with insecure immigration status feel able to engage with criminal justice agencies. The Labour Exploitation Advisory Group (LEAG) has reported that migrant victims with insecure status frequently believe that they cannot report their abuse and exploitation to authorities, for fear of serious personal consequences where their information is shared with immigration enforcement, including arrest, detention and removal from the UK.⁴ In the absence of secure reporting pathways for victims, this fear results in individuals staying in abusive and exploitative conditions for long periods and is played on by exploiters as a form of control.

At present, without secure reporting, exploiters are empowered to act with impunity, knowing that their victims will often not risk seeking help from the authorities, often using threats of deportation as a means to prevent their victims from coming forward to criminal justice agencies.⁵ It is well recognised, including in

³ Home Office, (2021) 'Guidance - Review of data sharing: migrant victims and witnesses of crime,' para. 18.

⁴ Labour Exploitation Advisory Group, Opportunity Knocks: Improving responses to labour exploitation with secure reporting, April 2020. London: Focus on Labour Exploitation (FLEX), p.11.

⁵ Labour Exploitation Advisory Group, Opportunity Knocks: Improving responses to labour exploitation with secure reporting, April 2020. London: Focus on Labour Exploitation (FLEX), p.55.

statutory guidance,⁶ that survivors can be highly traumatised, afraid of disclosing their situation of exploitation due to shame and fear as well as the control methods used by exploiters and may be anyway fearful of authorities due to previous experiences and threats including around Immigration Detention and removal. Beyond modern slavery and human trafficking, such experiences are common with victims of domestic abuse with insecure status. The organisation Imkaan has previously reported that more than 90% of abused women with insecure immigration status in the UK had their abusers use the threat of their removal from the UK to dissuade them from reporting their abuse.⁷ These findings have been supported by the Step Up Migrant Women campaign, which identified fear of removal from the UK as the main factor which prevented women from reporting to the police.⁸ Whilst law enforcement does not have a legal obligation to share information about undocumented immigration status of crime victims with immigration enforcement, this does take place and while it remains a possibility it will continue to deter victims from reporting crimes against them.

In December 2021, following a super complaint against the police for the sharing of personal data with immigration enforcement,⁹ the Government laid before Parliament the Home Office and police data-sharing arrangements on migrant victims and witnesses of crime with insecure immigration status review ('the Review').¹⁰ The Review rejects the call made by sector representatives to establish a system of secure reporting to make it safer for victims with insecure immigration status to approach the police to report crimes safely. Instead it proposed an Immigration Enforcement (IE) Migrant Victims Protocol which "*will set out that no immigration enforcement action will be taken against that victim while investigation and prosecution proceedings are ongoing, and the victim is receiving support and advice to make an application to regularise their stay*". Organisations working with victims have voiced strong disagreement with this response from the Government, explaining that there remains a conflict of interest so long as Immigration Enforcement is involved in receiving reports from and supporting victims of crime, given that its priority is to enforce immigration rules rather than providing a

⁶ The Modern Slavery Act 2015 section 49 Statutory Guidance on Identification and Care recognises the impact of trauma lists the reasons why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.

⁷ Thiara, Ravi K. and Sumanta Roy (2012), 'Vital Statistics 2: Key findings report on Black, Minority Ethnic and Refugee Women's and Children's experiences of gender-based violence.' London: Imkaan

⁸ McIlwaine, Cathy, Lucila Granada and Illary Valenzuela-Oblitas. 2019. The Right to be Believed: Migrant women facing Violence against Women and Girls (VAWG) in the 'hostile environment' in London. London: King's College London and Latin American Women's Rights Service.

⁹

<https://www.libertyhumanrights.org.uk/issue/liberty-and-southall-black-sisters-super-complaint-on-data-sharing-between-the-police-and-home-office-regarding-victims-and-witnesses-to-crime/>

¹⁰ [Review of data sharing: migrant victims and witnesses of crime \(accessible version\) - GOV.UK](#)

safeguarding function.¹¹ Members of the Detention Taskforce working directly with victims and survivors have highlighted that police investigations are dropped quickly in the majority of cases with few progressing beyond an initial interview with the victim.¹² Nor would victims know when reporting whether they will be considered a victim, or whether any investigation will take place. As such, the IE Migrant Victims Protocol fails to provide victims or those who are witnesses to a crime with guarantees to meaningful and long-term protection, and risks compounding harms.

The Home Office review of data sharing of migrant victims and witnesses of crime for immigration enforcement purposes¹³ fails to address the real concerns raised by victims and survivors, front line organisations and the recent Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services 'Safe to Share?' report.¹⁴ The Home Office's failure to stop using data from victims and witnesses of crime for immigration enforcement purposes, despite the consistent evidence that this practice leaves those with insecure status too fearful to come forward, will continue to prevent victims of modern slavery and human trafficking offences from reporting crimes and empower exploiters and other perpetrators of abuse. These data sharing arrangements are significantly harming not only victims of crime but also the public interest, as crimes are not reported and therefore remain unpunished.¹⁵

The hidden nature of modern slavery and trafficking makes it difficult to gain an accurate picture of its true scale and nature. As a result, anti-trafficking responses are dependent on victims coming forward about their experiences. The continued absence of secure reporting options that enable people with insecure status to come forward as victims of crime undermines our ability to address trafficking and runs counter to the UK's stated ambition to '*lead the way in defeating modern slavery.*'¹⁶ This is particularly concerning considering that immigration status is one of the key

¹¹ Joint response to the "Home Office and Police data-sharing arrangements on migrant victims and witnesses of crime with insecure immigration status." Available at:

<https://www.labourexploitation.org/publications/joint-response-%E2%80%99Chome-office-and-police-data-sharing-arrangements-migrant-victims-and>

¹² See for example:

<https://www.theguardian.com/society/2021/may/23/fewer-than-one-in-60-cases-lead-to-charge-in-england-and-wales>; <https://www.bbc.co.uk/news/uk-politics-58910802>

¹³ Home Office, (2021) 'Guidance - Review of data sharing: migrant victims and witnesses of crime,' 15 December 2021, para. 20

¹⁴ HM Inspectorate of Constabulary and Fire & Rescue Services, College of Policing, and Independent Office for Police Conduct, (2020), 'Safe to Share? Report Safe to share? Report on Liberty and Southall Black Sisters' super-complaint on policing and immigration status.'

¹⁵ [Liberty and Southall Black Sisters' Super-Complaint on data-sharing between the police and Home Office regarding victims and witnesses to crime - Liberty \(libertyhumanrights.org.uk\)](https://www.libertyhumanrights.org.uk/news/liberty-and-southall-black-sisters-super-complaint-on-data-sharing-between-the-police-and-home-office-regarding-victims-and-witnesses-to-crime)

¹⁶ May, T., 'My Government will Lead the Way in Defeating Modern Slavery,' the Daily Telegraph, 30 July 2016, accessible at:

<https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modernslavery/>.

risk factors for becoming a victim of modern slavery. Beyond instilling a fear of approaching authorities among victims, the lack of separation between law enforcement (as well as other public bodies such as the Gangmasters and Labour Abuse Authority) and immigration enforcement dissuades the public from reporting potential cases of modern slavery out of concern that it will result in negative immigration consequences for victims.¹⁷ This will likely worsen as a result of the restrictive and criminalising provisions contained in the Nationality and Borders Bill and the decision to deport asylum seekers to Rwanda. Where secure reporting pathways do not exist for victims, the provision of support and protection will be limited by increased distrust of authorities, victims not coming forward to report crimes, reduced identification of victims and perpetrators, and ultimately, the continued empowerment of exploiters who have an additional weapon in their arsenal to coerce victims. As set out in the explanatory report to Council of Europe Convention on Action against Trafficking in Human Beings 2005 (ECAT), *'the greater victims' confidence that their rights and interests are protected, the better the information they will give.'*¹⁸

We urge the government to include a provision in the Bill that would introduce secure reporting pathways and procedures to establish a clear separation of powers and prevent automatic data sharing between statutory services and Immigration Enforcement.

For more information on the issues contained in this inquiry response, please contact: peter.wieltschnig@labourexploitation.org

¹⁷ Birks, J. & Gardner, A.. 2019. "Introducing the Slave Next Door." *Anti-trafficking Review* 13: 66-81.

¹⁸ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings – CETS 197 – Action against Trafficking in Human Beings, para. 181.