



Focus On Labour Exploitation (FLEX)

Written Submission: Modern Slavery Bill Evidence Review

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About us:

Focus on Labour Exploitation (FLEX) supports government and civil society to take effective, evidence-based action on trafficking for labour exploitation in the UK and internationally. FLEX promotes effective responses to trafficking that prioritise the needs and voice of victims and their human rights. In doing so, FLEX links previously disengaged migrant and labour rights organisations with the anti-trafficking framework so that victims are assisted and supported and governments are held accountable for their commitments on human trafficking. The organisation's activities include victim-centred research, awareness raising and advocacy for clear policy guidance to tackle trafficking for labour exploitation. In the UK, FLEX advocates for more effective and victim-centred anti-trafficking policy and implementation frameworks.

About forced labour and trafficking for labour exploitation:

Despite the International Labour Organisation estimating that of the 880,000 victims of trafficking in Europe, 70% are in forced labour and 30% in forms of sexual exploitation, trafficking for labour exploitation has not been given the same level of attention as trafficking for sexual exploitation. The bias in responses in favour of sexual exploitation has meant that victims of trafficking for labour exploitation are not receiving the support, assistance and remedies they require. Some key gaps in the UK anti-trafficking framework include:

- Lack of awareness and understanding of trafficking for labour exploitation among organisations offering support to vulnerable and at risk individuals;
- Lack of awareness and understanding among law enforcement and official agencies, inhibiting identification, prosecutions and protections;
- Lack of research on trafficking for labour exploitation, particularly in high-risk and under-regulated industries like construction, hospitality and commercial cleaning;
- Lack of understanding among decision-makers about the vulnerabilities that give rise to trafficking for labour exploitation, and the way in which law and policy contribute to such vulnerability;
- Lack of accountability in trafficking responses, which have not engaged key migrant, worker and community organisations.

MODERN SLAVERY BILL QUESTIONS

1. How best should modern slavery be defined?

- 1.1. *The UK should adhere to the international legal definitions of forced labour, slavery, institutions and practices similar to slavery, and trafficking in persons*

It is critical that terms used in the Modern Slavery Bill adhere as closely as possible to international legal definitions, in particular the definitions of slavery,¹ institutions and practices similar to slavery (including servitude),² and forced labour,³ in United Nations and ILO legal instruments; and the shared definitions of trafficking in the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons* ('the UN Human Trafficking Protocol'), the Council of Europe *Convention on Action Against Human Trafficking* ('the European Trafficking Convention') and EU Directive 2011/36/EU.⁴

The majority of countries worldwide have ratified the UN Human Trafficking Protocol and there has been unprecedented transposition of the Convention into national law, with widespread adoption of the definition in domestic legislation. The international definition of trafficking in persons is broad and covers situations in which victims are brought into (transported, transferred etc.) or held in (harboured) situations of exploitation, which includes both situations of sexual exploitation and labour exploitation. Unlike the current UK trafficking offence in s.4 of the Asylum and Immigration (Treatment of Claimants) Act 2004, there is no requirement under the international definition for the victim to have crossed an international border or for the trafficker to have arranged or facilitated the victim's travel.

The offences of slavery, servitude and forced labour were introduced into UK law in 2009 to overcome the limitation in s. 4, and to address situations of severe exploitation in which there was no arrangement or facilitation of travel. Like trafficking, these forms of exploitation have long-standing international definitions and are widely criminalised in domestic legislation around the

¹ Article 1 of the Slavery Convention 1926 states that: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." In the case of *The Queen v Tang* [2008] HCA 39, the Australian High Court explained that "Powers of control, in the context of an issue of slavery, are powers of the kind and degree that would attach to a right of ownership if such a right were legally possible...".

² See the 1956 *Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery*, which requires states to abolish institutions and practices labelled "similar to slavery", including debt bondage, serfdom, certain forms of forced marriage, and exploitation of children. Serfdom, now known as "servitude", refers to: "in addition to the obligation to perform certain services for others ... the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition" (see *Siliadin v France no 73316/01* (ECHR, 26 July 2005).

³ Article 2 of the ILO Forced Labour Convention 1930 defines states that "**forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

⁴ Article 2 of the EU Trafficking Directive most recently defines trafficking in persons as:

1. *The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*
2. *A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.*
3. *Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.*

world, as well as being prohibited under Article 4 of the European Convention on Human Rights.

- *Internationally accepted definitions are required to ensure mutual legal assistance*

The use of definitions that closely resemble internationally accepted definitions is important in facilitating international cooperation in the investigation and prosecution of crime. In cases of transnational crime where mutual legal assistance or extradition may be sought, the principle of dual criminality requires that the relevant criminal conduct is an offence in both the Requesting and the Requested State. This requirement provides “a compelling reason for States to criminalise trafficking as it has been defined in international law”.⁵

- *Modern Slavery is not defined in international law*

There is no definition of ‘modern slavery’ in international law. FLEX recognises that some organisations find this a useful term to describe a range of crimes, including human trafficking, forced labour and slavery. Each of these crimes are defined under international law, and FLEX is of the view that any definitions of these terms in the Modern Slavery Bill should be consistent with international law, for the reasons set out above. FLEX does not see any benefit in creating a legal definition of a crime of ‘modern slavery’.

2. What action do you think is most needed to improve the support and protection for adult victims of modern slavery?

- 2.1. *The provision of assistance to potential and identified victims of trafficking should be detailed in the Modern Slavery Bill*

There is currently no statutory provision for the support and protection of victims of trafficking in the UK. Victim assistance is provided for predominantly in policy through the Government’s Human Trafficking Strategy and the implementation plans for the Council of Europe Convention on Trafficking that detail the terms of the National Referral Mechanism.

In order to ensure that victims receive the assistance to which they are entitled, and which the UK is obliged to provide,⁶ the provision of assistance to potential and identified victims of trafficking should be provided for in the Modern Slavery Bill.

In particular, the Bill should provide that:

- Assistance is to be provided as soon as a First Responder has reason to believe that a person is a victim of trafficking.
- Assistance is not conditional on the person’s willingness to act as a witness
- Assistance is provided on an informed and consensual basis.
- Assistance is individualised, gender-sensitive, and takes due account of the victim’s safety and protection needs.

- 2.2. *A choice of good quality, independent legal advice should be included as a measurable minimum standard and provided from the point of identification*

⁵ Office of the High Commissioner for Human Rights, 2010, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, p.205. See also Anne Gallagher, Pauline David & Fiona David, 2010, *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, p.44.

⁶ See European Trafficking Convention, Art. 12; EU Trafficking Directive, Article 11.

FLEX is concerned that the NRM currently offers patchy legal assistance where not all potential victims are provided with a choice of expert legal advice on their rights as a victim, their immigration status, or possibilities for compensation. In its engagement with victims and victim support organisations, FLEX has been told the provision of expert legal advice is dependent on which service provider the victims is allocated, and what legal contacts the relevant support provider has.

The UK is obliged to provide victims with legal assistance “without delay” under Article 12 of the EU Trafficking Directive, including for the purpose of claiming compensation. Given the potential legal consequences of a referral to the NRM, particularly regarding the victim’s immigration status and options for compensation, legal assistance should be provided *before* a victim is referred. Only in this way can the victim give his or her fully informed consent to the referral.

FLEX considers that the provision of a choice of good quality, independent legal advice should be included from the point of identification as a measurable minimum standard (see further below).

2.3. Legal aid restrictions must not adversely impact upon victims of trafficking, particularly with respect to judicial review.

FLEX is concerned that restrictions on the funding of judicial review could severely restrict victims’ ability to challenge incorrect decisions under the NRM. Analysis of decisions by the Anti-Trafficking Monitoring Group in 2010 and 2013 have shown that poor NRM decisions are made as a result of lack of understanding of the definition of trafficking or the trafficking experience. This appears to be particularly problematic in cases of domestic servitude and some other forms of labour exploitation, where the provision of food and accommodation is understood to mean there is no exploitation.

It is essential that victims are able to challenge NRM decisions, preferably through the establishment of a formal appeal mechanism, but at the very least through judicial review.

2.4. Monitoring and evaluation that integrates the views of victims themselves and that is conducted by an independent Commissioner is essential to ensure effective anti-trafficking responses

The UK currently has no system for monitoring and evaluating anti-trafficking actions in the UK. While some NGOs, in particular the Anti-Trafficking Monitoring Group, partially serve this function FLEX emphasises that monitoring and evaluation is additionally and primarily the responsibility of government.⁷ The UK government has established the Inter-Departmental Ministerial Group on Human Trafficking for the stated purpose of overseeing and assessing the UK’s anti-trafficking activities, in compliance with Article 19 of the EU Trafficking Directive. However the Group’s annual reports provide little more than a summary of government action, and lack any rigorous or independent evaluation of the success of these responses. Critically, the reports do not take in to account the views and experiences of victims themselves, or make an assessment of the effectiveness or appropriateness of trafficking responses from the victims’ perspective.

Effective monitoring and evaluation is best undertaken by an independent Commissioner with similar powers and responsibilities to the Dutch National Rapporteur on Trafficking in Human Beings (see further below). Such monitoring and evaluation should closely and regularly review and

⁷ See *EU Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims*, Article 19.

assess the operation of the government's anti-trafficking activities, including the identification of victims, the investigation and prosecution of cases, victim protection and assistance, victims' access to legal remedies, and victim reintegration and return. Monitoring and evaluation should also seek and consider the views of victims and of victim support organisations, as those who are the subject of and obviously most directly affected by anti-trafficking activities.

Monitoring and evaluation is essential to ensure that anti-trafficking laws, policies and practices fulfil their objectives, operate properly and without discrimination, and do no harm.

2.5. The reflection and recovery period should be included in the Modern Slavery Bill and extended to 90 days.

The EU Experts Group on Human Trafficking has consistently recommended the provision of a 90 day reflection and recovery period to allow the trafficked person to recover and to make an *informed decision* about whether to participate in criminal proceedings and/or to claim compensation.⁸ The UN Special Rapporteur on Trafficking in Persons supports this recommendation:

“Given the high degree of trauma experienced by trafficked persons, empirical evidence suggests that a minimum period of 90 days is required in order to ensure that the cognitive functioning of trafficked persons improves to a level at which they are able to make informed and thoughtful decisions about their safety and well-being, and provide more reliable information about trafficking-related events”.⁹

The provision of a minimum 30-day reflection and recovery period is a requirement under Article 13 of the European Trafficking Convention, and is intended to allow victims time to recover and escape the influence of traffickers *prior* to making a decision whether they will cooperate with law enforcement authorities. Currently the period of “reflection and recovery” provided in the UK is 45 days. This period can be extended, however service providers state that the pressure to “move on” begins at 45 days if not earlier. Service providers have expressed concerns that 45 days is an insufficient period during which to address the needs of victims and provide for their recovery and reintegration.¹⁰

FLEX recommends that the reflection and recovery period to be granted to potential victims of trafficking should be included in the Modern Slavery Bill, and should be extended to 90 days.

2.6. A compensation provision should be included in the Modern Slavery Bill

There is no specific data on the number of victims who receive compensation payments, however reports indicate that this number is likely to be very low. Victims of trafficking in the UK have accessed compensation through a range of avenues, including criminal compensation orders, the Criminal Injuries Compensation Authority, employment tribunals and civil claims. Their ability to access compensation relies heavily on the awareness and positive actions of police and prosecutors, and on their ability to access legal assistance.

In addition, for those seeking compensation through employment tribunals, the Department for Business Innovation and Skills 2013 Study ‘Payment of Tribunal Awards’ notes that just 49% of

⁸ EU Experts Group on Human Trafficking, 2004, *Opinion on reflection period and residence permit for victims of trafficking in human beings*.

⁹ Joy Ngozi Ezeilo, 2011, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, A/HRC/17/35, p8, 18.

¹⁰ Anti-Trafficking Monitoring Group, 2013, *Hidden in Plain Sight*, p35.

claimants had been paid their awards in full¹¹ - FLEX is aware of many trafficked persons who are awarded compensation through employment tribunals, but to whom awards are not paid. Under Article 15 of the European Trafficking Convention, States must provide in their internal law for the right of victims to compensation from the perpetrators, and must take measures necessary to guarantee compensation for victims. FLEX recommends that the Modern Slavery Bill contain a provision requiring the Secretary of State or similar to set out:¹²

- a) The procedures to be adopted by which a victim shall be able to apply for compensation; and
- b) The arrangements to be made to provide assistance and support to a person—
 - i. applying for compensation;
 - ii. seeking leave to remain in order to claim compensation.

FLEX recommends that a compensation provision be included in the Modern Slavery Bill, requiring the specification of procedures and assistance for victims seeking compensation.

2.7. A higher proportion of NRM service provider sub-contractors should hold expertise in the support of male victims. The government services tender should include targets for addressing the needs and priorities of trafficked men.

While 40% of potential victims of trafficking in 2012 were male, only two of the Salvation Army subcontracted service providers specifically address men, nine service providers only address women and five providers work with both sexes (though it is unlikely that the same level of services are provided for each).¹³ Male victims of human trafficking have particular priorities and complex needs, which require specialist care.¹⁴ As the Salvation Army reports, men are more likely to be suffering from homelessness and destitution, malnutrition, and language difficulties.¹⁵ Men are also less likely to ask for or take up counselling early on, making it essential that these services continue to be offered during and after the reflection and recovery period.

The government should ensure that there are sufficient service providers contracted to support victims under the NRM with expertise in the support of male victims. In particular, the tender document and contract for service provision from July 2014 should include specific targets for addressing the needs and priorities of trafficked men.

3. What key measures do you think are needed to better protect child victims of modern slavery.

3.1. FLEX supports calls by ECPAT UK and the Anti-Trafficking Monitoring Group for the establishment of a system of legal guardians with responsibility for representing child victims' best interests.

¹¹ Department of Business Innovation and Skills, 2013, Payment of Employment Tribunal Awards. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf (accessed 14 November 2013)

¹² See for example s.11 of the *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill* currently before the Northern Ireland Assembly at <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill/>

¹³ Salvation Army, 2012, *Anti-Human Trafficking Report: One year on*, p12.

¹⁴ See Rebecca Surtees, 2008, *Trafficking of men – at trend less considered*, IOM Global Database Thematic Research Series.

¹⁵ Gayle Munro & Chloe Pritchard (Salvation Army) 2013, *Support Needs of Male Victims of Human Trafficking: Research Findings*.

FLEX emphasises that both the EU Directive and the European Trafficking Convention require that where there are reasons to believe that a person is a child, that person should be *presumed to be a child* in order to receive immediate access to assistance, support and protection.

FLEX supports the recommendations of ECPAT and the Anti-Trafficking Monitoring Group that a system of legal guardians be established and that guidance be developed on age disputes in the case of potential child trafficking victims.¹⁶

4. How can we best ensure victims are not prosecuted for crimes they are forced to commit?

4.1. A non-punishment provision should be included in the Modern Slavery Bill.

The non-punishment of victims who are compelled to commit crimes is a fundamental component of the trafficking response, and is an obligation on the UK under the EU Trafficking Directive and the European Trafficking Convention. FLEX supports the introduction into the Modern Slavery Bill of a legislative provision that follows the judgment of the Court of Appeal in *L, HVN, THN, T v R*. This provision should ensure that where the victim has committed a criminal act as a direct consequence of being trafficked, no prosecution or imposition of penalties shall occur. A provision to this effect has been included in the *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill* currently before the Northern Ireland Assembly.¹⁷

FLEX supports the introduction into the Modern Slavery Bill of a non-punishment provision to prevent criminalisation of trafficking victims.

4.2. Law enforcement officials should seek advice from the UKHTC in any case in which they believe the accused may have been compelled to commit a criminal act

If there is any reason to believe an alleged offender may have committed the offence as a consequence of being trafficked, then the person should be treated as a potential victim and provided with information on referral to the National Referral Mechanism.

Law enforcement officials should be advised that in any case in which it appears that an alleged offender may have been compelled to commit the criminal act, expert advice should be sought as to whether the elements of trafficking are present.

4.3. There should be an obligation on the Competent Authorities to notify police and prosecutors when a person arrested or charged with a crime is or has been referred to the NRM or is determined to be a victim of trafficking.

In the case of *L, HVN, THN, T v R*, the failure of the UKBA to notify the police or the Crown Prosecution Service (CPS) that a positive conclusive decision had been made in the case of HVN, resulted in his conviction and sentencing for the cultivation of cannabis. When the CPS “became aware” of the UKBA’s decision an appeal was lodged by HVN’s solicitor and his conviction was ultimately overturned by the Court of Appeal, but only after HVN had already spent months in detention. The re-victimisation of a vulnerable 17 year-old victim in this case could have been avoided if the UKBA had in place a system for notifying law enforcement authorities and service providers of decisions under the NRM.

¹⁶ Anti-Trafficking Monitoring Group, 2013, *Hidden in Plain Sight*, p63.

¹⁷ See <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill/>

The Modern Slavery Bill should oblige Competent Authorities to notify police and prosecutors when a person arrested or charged with a crime is or has been referred to the NRM or is determined to be a victim of trafficking.

4.4. *A specific training programme is required for all criminal justice actors to ensure that potential victims are identified and not punished.*

A non-punishment provision will only be effective if police, prosecutors, magistrates and judges are comprehensively trained in the identification and referral of suspected victims of trafficking. Training for UK police is currently limited to a brief and voluntary e-learning package. The CPS provides prosecutors with guidance on the prosecution of potential victims of trafficking, but FLEX is not aware whether specific training is conducted on this point, nor is it aware whether training is conducted for magistrates and judges.

A specific training programme should be developed and implemented for all criminal justice actors to ensure that potential victims are identified and not punished.

4.5. *FLEX supports the aim of the Modern Slavery Bill to bring together disparate provisions criminalising human trafficking, forced labour, slavery and servitude, into a single piece of legislation*

FLEX believes that this will greatly assist in improving the awareness of criminal justice professionals of the existence of trafficking offences, thereby increasing the likelihood that a victim of trafficking offences will be identified as such.

A single piece of human trafficking legislation could serve to reduce confusion amongst all implementing agencies, particularly with regard to trafficking offences.

5. Should there be a statutory duty to refer victims to the NRM and what should a 'successful' referral facilitate?

5.1. *All adult referrals to the NRM must be voluntary and the decision made on the basis of clear and comprehensive information provided in the appropriate language.*

All adult referrals to the NRM must be voluntary. For this reason FLEX does not recommend that there be a statutory duty to refer victims to the NRM. Article 11 of the EU Directive requires that assistance and support measures be provided on “a consensual and informed basis”. The EU Directive also requires that all assistance be provided to potential victims irrespective of their willingness to act as a witness.

In order to ensure potential victims are fully informed, First Responders should be trained in –

- The structure and operation of the NRM
- The range of alternatives available to victims who do not wish to enter the NRM
- How to interview potential victims
- How to fully and accurately complete NRM referral forms
- The procedure for seeking review of NRM decisions.

FLEX believes that a statutory duty to refer victims to the NRM risks overriding victim agency and instead recommends a statutory duty to provide clear information in the potential victim’s language, including information on the NRM process, possible outcomes, and the victims’ options outside the NRM.

- 5.2. *Potential victims should be provided with emergency accommodation and social support until they have had an opportunity to receive clear and comprehensive information and legal advice on their options.*

For victims the decision to be formally referred to the Competent Authorities is important, with significant implications for the victim's short term and long-term future. This is not a decision that victims should be required to make 'on the spot', often immediately after their exit from severe exploitation, with the threat of homelessness and destitution if they refuse to comply. Instead, potential victims should have the option of referral to specialist service providers for emergency care without having their cases referred to the competent authorities for determination.

A period of assistance should be provided to victims to ensure time to understand the NRM, to receive comprehensive legal advice on their options, and to recover sufficiently to make an informed decision on referral.

- 5.3. *There should be a statutory duty to provide expert legal assistance*

Without the provision of good quality, independent legal advice, victims cannot make an informed decision whether or not it is in their best interests to be referred into the NRM.

A potential victim of trafficking who has been referred into the National Referral Mechanism should receive, as a minimum, expert legal advice on –

- Referral to the NRM – the process, possible outcomes, and options for challenging a negative decision.
- Immigration status, including claims for asylum and human rights claims, and options for seeking leave to remain.
- Entitlement to compensation, including through the CICB, criminal compensation, civil claims and employment tribunals.
- Entitlements to housing and social assistance.
- Rights to work.

Victims should be provided with a choice of good quality, independent legal advice both before and after their referral.

- 5.4. *A successful referral should facilitate the provision of individualised, victim-driven support and reintegration assistance.*

Assistance should include, at a minimum:

- appropriate and safe accommodation;
- material assistance
- medical treatment, including psychological assistance;
- counselling, including specialist trauma counselling;
- information, including on the operation of the NRM, the reflection and recovery period, the possibility of granting international protection and refugee status;
- translation and interpretation services;
- access to education for child victims and for children of victims;
- legal counselling, either through legal aid or other means; and
- legal representation, either through legal aid or other means, including for the purpose of claiming compensation.

- reintegration assistance, including assistance in securing safe long-term accommodation, work, education or training.

Criminals

6. What legislative changes must be enacted in order for prosecutions and convictions to be increased? Should the length of sentence for those found guilty be increased?

6.1. Clearly define trafficking, forced labour, servitude and slavery in a single piece of legislation.

The Modern Slavery Bill should provide clear definitions of trafficking, forced labour, slavery and servitude, in a manner consistent with international law. This will assist in improving both the awareness and understanding of these offences among law enforcement agencies, and encourage the charging and prosecution of such offences.

6.2. Include ancillary offences (aiding and abetting, procuring, etc.) in trafficking legislation.

The Modern Slavery Bill should also include ancillary offences of aiding and abetting and procuring the commission of the primary offences of trafficking, forced labour, servitude and slavery. This will ensure that those who knowingly assist or are involved in the commission of such offences are not able to escape punishment.

6.3. Include a provision ensuring the liability of legal persons for offences of trafficking, forced labour, slavery or servitude.

The imposition of liability is an obligation upon States under Article 5 of the EU Trafficking Directive, to ensure that companies are not permitted to benefit from the exploitation of their workers, and to encourage steps to eliminate exploitation from the workforce. Liability should be established where the offences are committed for the benefit of the legal person by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person. Liability should also be imposed where the lack of supervision or control by a person in a leading position has made possible the commission of these offences for the benefit of the legal person.

The Modern Slavery Bill should include a provision ensuring the liability of legal persons (e.g. companies) for offences of trafficking, forced labour, slavery or servitude.

6.4. Make the proactive investigation and prosecution of cases of trafficking for labour exploitation a policing priority.

FLEX is concerned that the number of prosecutions and convictions for trafficking for labour exploitation is very low. Between 2007 and 2011 only 106 cases of trafficking for labour exploitation were prosecuted, resulting in just 13 convictions, compared with 512 prosecutions and 80 convictions for trafficking for sexual exploitation.¹⁸ The investigation and prosecution of

¹⁸ Anti-Trafficking Monitoring Group, June 2013, *In the Dock*, p 39

trafficking cases, particularly cases of trafficking for labour exploitation involving multiple victims and accused, can be time-consuming and resource-intensive. Unless the investigation and prosecution of trafficking for labour exploitation is made a policing priority, such cases will continue to be neglected.

Police must be directed to *proactively* investigate cases of trafficking in *all* sectors, not just those sectors where trafficking has previously been identified and prosecuted.

6.5. *The scope of the Gangmasters' Licensing Authority should be broadened to cover the full range of high-risk sectors.*

Labour inspections are a key tool for identifying trafficking for labour exploitation. The experience of the Gangmasters' Licensing Authority demonstrates the effectiveness of oversight, inspections and proactive investigations to uncover trafficking for labour exploitation. In 2012, other than the block paving/tarmacking industry, the industries in which the most exploitation was uncovered were those in which the GLA operates – agriculture and food processing.¹⁹

FLEX recommends that the scope of the GLA be increased, or an equivalent labour regulator be established, to cover all other sectors in which exploitation is known to occur, including construction, hospitality, and cleaning.

7. How far do you think the issuing of a 'trafficking prevention order' – enforcing restrictions on those who commit modern slavery offences – would act as a deterrent?

7.1. *Trafficking prevention orders should restrict the ability of offenders to own or manage a company or business; to employ workers or being involved in the employment of workers; or to work with children or vulnerable individuals*

Little information has been provided on the scope of the proposed 'trafficking prevention order'. From media articles we understand that this would take a similar shape to the 'sexual offence prevention orders' and may 'impose restrictions on the ability of offenders to own a company, visit certain areas'²⁰, foreign travel or finances. FLEX supports these restrictions and understands the Home Secretary's concerns regarding re-offending rates amongst those convicted for trafficking.

7.2. *Trafficking prevention orders should be implemented as part of a broader package of prevention measures.*

However, we emphasise the much greater importance of addressing the contributing factors to trafficking for labour exploitation that go far beyond individual acts of criminality. In her recent report to the Human Rights Council, the Special Rapporteur on Trafficking in Persons, noted that in order to address 'demand', Governments should ensure that "all business enterprises within their jurisdiction will respect human rights throughout their operations, both at home and abroad"²¹. Deterring demand for human trafficking means taking measures to address structural, global, political, economic and social issues that go far beyond the criminality of one person.

¹⁹ Serious Organised Crimed Agency, 2013, *UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012*, p13.

²⁰ Guardian, 25 August 2013, 'Modern Slavery bill to tighten laws on human trafficking'. Available at <http://www.theguardian.com/law/2013/aug/25/modern-slavery-bill-human-trafficking> (Accessed 13 November 2013)

²¹ Office of the High Commissioner for Human Rights, 2013, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/122/82/PDF/G1312282.pdf?OpenElement> (accessed 13 November 2013)

FLEX recommends that prevention orders include restricting the ability of offenders to own or manage a company or business; to employ workers or being involved in the employment of workers; or to work with children or vulnerable individuals and are part of a broader package of prevention measures.

8. What action do you think is needed to better enable authorities to confiscate the assets of traffickers?

8.1. Clear definitions consistent with international law facilitate mutual legal assistance

Trafficking is often a transnational crime, and locating and confiscating the assets of traffickers can require international legal cooperation. FLEX repeats point (1.1) above, that ensuring the definitions included in the Modern Slavery Bill are consistent with international law is important to facilitate mutual legal assistance in the identification, freezing and seizure of traffickers' assets.

Anti-Slavery Commissioner

9. What 3 core powers do you think a new Independent Anti-Slavery Commissioner should possess? What should be the main focus of the role?

9.1. The UK should adopt an independent Commissioner that has comparative powers to the Dutch National Rapporteur on Trafficking.

This could be achieved by ensuring provisions in the Modern Slavery Bill similar to those found in the Children's Act 2004 which established the Children's Commissioner, including powers to:

- Act in an advisory capacity to the Justice Minister and Home Secretary and reporting to Government on human trafficking in the UK;
- Visit and monitor work sites for the purpose of engaging in analysis of the scale of the problem, prevention and combating efforts;
- Request information from government agencies and public servants regarding their anti-trafficking functions and activities, including with respect to the consideration of cases within the National Referral Mechanism;
- Demand a response from government agencies and public servants to reports and recommendations;
- Initiate inquiries in to specific cases of trafficking in the UK that raise issues of public policy and to make recommendations to the Secretary of State.

In order to ensure accountability, reports from the Modern Slavery Commissioner should be laid before Parliament and the Government's response considered and discussed.

It is important that the proposed Modern Slavery Commissioner is both an expert in human trafficking and is independent from Government, to ensure unbiased and authoritative reports and assessments. The importance of independent monitoring was recognised in the OSCE Brussels Ministerial Decision No.14/06, which recommends that States "consider appointing National Rapporteurs or similar *independent* monitoring mechanisms" (emphasis added).²² It was also

²² OSCE Ministerial Council, *Decision No. 14/06 Enhancing efforts to combat trafficking in human beings, including for labour exploitation, through a comprehensive and proactive approach*, MC.DEC/14/06, 5 December 2006.

emphasised by the OSCE Alliance Against Trafficking in Persons, which recommended in 2007 that “States should ensure independency of National Rapporteurs and equivalent mechanisms” and that National Rapporteurs should be “responsible for the gathering and analysis of data (qualitative and quantitative information) on the broader issues” of human trafficking.²³

The proposed Modern Slavery Commissioner should be independent, have strong expertise in human trafficking and play a strong monitoring and evaluation function.

Supply Chain

10. How should British multi-nationals ensure that their supply chains are free from slavery?

10.1. British multi-nationals should adopt a range of measures to eliminate exploitation modelled on the response to the Bangladesh Rana Plaza tragedy of April 2013

In order to ensure that British multi-nationals’ supply chains are free from slavery a mixture of measures is required. FLEX welcomes the UK government’s recent adoption of its action plan on human rights and business and specifically its attention to Government expectations of business with reference to human rights law and the measures set out to promote the ‘business and human rights agenda’.²⁴ FLEX notes the progress made in the wake of the Rana Plaza tragedy in Bangladesh, where labour rights activists brokered the *Bangladesh Accord on Fire and Building Safety* which now has more than 100 global brands as signatories, including John Lewis, Marks and Spencer, Arcadia Group, Tesco and other British multi-nationals. In addition Primark has agreed to pay workers and their families long-term compensation and the ILO chairs a ‘Rana Plaza Workers Compensation Coordination Committee’ in which a small number of companies, including Primark, are engaged (yet more UK brands have failed to sign up, including Matalan, Premier Clothing and Store 21). The Business Social Compliance Initiative (BSCI) has also increased its inspections of Bangladesh factories.

The measures taken in Bangladesh following the tragic events in April 2013 serve as a guide for multi-national operations in other countries. Rather than a simple replication of the Bangladesh Accord and related measures in other geographical situations, it is more important that lessons and themes are drawn from the Rana Plaza response to ensure such a tragedy could be avoided for workers elsewhere. Such lessons include:

- Recognising and reforming the business model pursued by major retailers which is heavily reliant on outsourcing, making accountability extremely difficult and allowing labour practices to get murkier at the distant end of the supply chain.
- Applying structured and standard inspection regimes to sub-contractors in order to guarantee that workers are provided clear information about their labour rights.
- Strengthening commitments to collectivisation and to ensuring workers are empowered – paying particular attention to the use of gendered social roles to exploit workers and the need to address this by creating mechanisms for women’s participation and leadership in unions and collective associations.
- Guaranteeing a living wage and formal work contract to all workers in order to ensure

²³ See *Alliance Statement on National Rapporteur or Equivalent Mechanism*, presented by the OSCE Special Representative for Combating Trafficking in Human Beings (SR) on behalf of the Alliance Expert Coordination Team (AECT), 16 October 2008, available at <http://www.osce.org/cthb/34440>

²⁴ Foreign and Commonwealth Office, 2013, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf (accessed 14 November 2013)

sustainable employment conditions.

British multi-nationals should, at a minimum: address transparency in supply chains; ensure standard inspection regimes are applied by all sub-contractors; strengthen commitments to collectivisation; and guarantee a living wage to all workers.

10.2. *Voluntary and mandatory measures are required to ensure that business complies with international labour standards.*

Since the entry into force of California's Transparency in Supply Chains (TISC) Act in January 2012, those who believe that the Act has the potential to reduce the incidences of exploitation in supply chains have advocated similar legislation elsewhere.²⁵ In the UK, Michael Connarty MP proposed a Transparency in UK Company Supply Chains (Eradication of Slavery) Private Members Bill, based on the California model in June 2012. FLEX supports such legislation as a first step towards the eradication of labour exploitation in supply chains. It is important, for example, that major companies report on measures taken to eradicate forced labour and trafficking from their supply chains, and that relevant company officers are trained in the necessary skills to detect cases and abuse and remediate them. However, whilst the Californian TISC model is positive in its encouragement of businesses to increase transparency and address exploitation where identified, there is no requirement to disclose steps taken towards eradicating slavery in supply chains nor to impose penalties for non-compliance. FLEX believes that the measures proposed in the TISC Act will only be successful if coupled with a binding agreement on the part of companies to adhere to internationally agreed labour standards and the threat of penalties upon failure to do so.

Therefore, whilst the Government's recent attention to business and human rights is laudable, FLEX believes that voluntary *and* mandatory measures are required to ensure that business complies with international labour standards. A further lesson from the Rana Plaza tragedy of April 2013 is found in Primark's sales profits increase in the same year to September 2013 of 22 per cent. The implication that workers producing garments for Primark were killed in the Rana Plaza collapse and the extremely poor working conditions uncovered in Bangladesh appears to have had little impact on Primark's 'brand' image and resultant sales products. Whilst TISC legislation relies on the relationship between companies and consumers and the impact of slavery in supply chains on 'brand' image, when there is no recognised standard to which all companies must adhere it is difficult for consumers to begin to make a choice between one company and the next.

The Special Rapporteur on Trafficking provides a helpful summary of the State obligation to protect against human rights abuses, including by third parties:

'States have a responsibility to protect against human rights abuses, including trafficking in persons and exploitation of persons by third parties, including business enterprises and criminal associations, through appropriate policies, regulation and adjudication'.²⁶

The UK government has an obligation to protect and uphold universal human rights that should not exclude its oversight of multi-national corporations.

Non-legislative actions

11. What areas of non-legislative activity do you see as a priority to run alongside

²⁵ See for example, Centre for Social Justice, 2013, 'It Happens Here'

²⁶ *ibid*

the passage of the Bill?

FLEX highlights the importance of the following non-legislative action to improve the current response to trafficking, and in particular trafficking for labour exploitation:

- **Training of frontline agencies**, including police, immigration officials, and local authorities, on the identification, referral and assistance of victims.
- Development, monitoring and assessment of **minimum standards for support** providers under the NRM.
- **Engagement of a much broader range of stakeholders** in the operation of the anti-trafficking framework: including those working with migrants, workers, vulnerable individuals in the NRM as First Responders
- **Extending the Joint-Strategic Group** to include those representing individuals in all forms of exploitation.
- **Increased resources to the GLA and HSE** to proactively investigate cases of trafficking for labour exploitation.
- Government support for the proposed ILO Forced Labour Protocol and **ratification of the Domestic Workers Convention**.
- Reducing the vulnerability of workers to trafficking, by **more strongly enforcing minimum wage and self-employment**.

12. If you are familiar with the It Happens Here report, what do you believe are the 5 most important recommendations that it put forward?

- The UK Border Agency should be removed as a Competent Authority for the NRM. The single Competent Authority under the UK Human Trafficking Centre should approach all agencies to gather information and make a decision on whether or not an individual has been trafficked.
- Responsibility in government for human trafficking and modern slavery should be transferred from the Immigration Minister to the Policing and Criminal Justice Minister in the Home Office.
- The obligation to proactively investigate indicators of modern slavery should be outlined in statute, under the new Modern Slavery Act.
- The remit of the Gangmasters Licensing Authority should be extended to include additional sectors where high volume cheap labour is employed, such as non-food manufacturing, the hospitality industry and construction work.
- Given the risks of exploitation of overseas domestic workers, the Government should restore the ability for domestic workers to change employers.

13. In view of the need to a short, focussed, Bill are there any additional key areas that you believe should be included?

13.1. Victims should be granted working rights during the reflection and recovery period, to be continued upon a positive conclusive decision.

Through its engagement with migrant and worker organisations, FLEX is aware that one of the key concerns of exploited migrant workers is their inability to work during the period that they are awaiting a conclusive grounds decision. This reflects the reality that many migrant workers who come to the UK do so in order to send remittances back to their families who rely on their income. When migrant workers suffer exploitation, including non-payment of wages over long periods of time, one of their priorities on exiting the exploitation situation is to find safe, paid employment.

Without the right to work during the often long period between referral and a conclusive grounds decision, trafficked persons feel “paralysed” by their powerlessness and dependence on service providers. In some cases, potentially trafficked persons choose not to enter the NRM and to instead seek work as undocumented workers. In this situation, the trafficked person is highly vulnerable to further exploitation and re-trafficking, as traffickers take advantage of their precarious situation.

Providing potentially trafficked and trafficked persons with the right to work ensures that they are provided with the assistance that they need to recover without discouraging their engagement with the NRM by making them wholly dependent on service providers.

13.2. The UK government should enable victims of trafficking for labour exploitation to seek remedies against abusive employer practice under employment law

Taking actions to recover unpaid wages and overtime, or to claim compensation for other employment law breaches, can be both an effective and empowering way for victims’ to achieve their legal right to a remedy and to assist their rehabilitation. Some victims, particularly with the assistance of pro bono lawyers, have succeeded in receiving significant awards through employment tribunals. However victims of trafficking for labour exploitation who were without the right to work at the time of their exploitation (i.e. without a visa or EEA citizenship) face significant barriers to making a successful employment claim. This is due to the principle of illegality, which prevents the enforcement of any employment relationship that is not legal. In the case of *Huonga v Allen* (currently on appeal to the Supreme Court) this meant that a child who had been severely exploited as a domestic worker in the UK was denied compensation, as to allow her case to succeed would be “condoning her illegality”.²⁷

The government should ensure that exploitative employers are not able to escape the payment of wages by relying on the illegality of the employment relationship through which they exploited their victim. The government should clarify that victims of trafficking are entitled to make claims under employment law, regardless of their current or prior immigration status. The government should also ensure that victims of trafficking are specifically exempt from the requirement to pay employment tribunal fees, introduced in July 2013. Successful claims under employment law ensure that the victim is compensated for the exploitation they have suffered, and is often an easier, more successful and more empowering process for victims than seeking compensation through the criminal justice system.²⁸

13.3. An automatic residence permit should be provided, modelled on Italy’s Article 18, legislative decree no. 286/1998

Where there is a social protection scheme in place that is not linked to law enforcement cooperation, victims are more likely to be rehabilitated, reintegrated and to avoid re-trafficking situations. Italy’s Article 18 provides a residence permit for humanitarian reasons for six months for the purpose of education or work to victims of trafficking including a programme of social assistance and integration. The permit may be renewed for a period of one year and can also be converted for education or work. Two separate channels to obtain this permit exist: firstly the ‘judicial path’ where the victim agrees to cooperate with the police and prosecutor; and secondly the ‘social path’ whereby an approved social assistance agency can provide a statement on behalf of the trafficked person in lieu of their cooperation with law enforcement.

²⁷ *Huonga v Allen* [2012] EWCA Civ 609

²⁸ See further Janice Lam and Klara Skrivankova (2009) *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*.

This permit is available regardless of whether the trafficked person agrees to cooperate in legal proceedings against his or her trafficker. This provision was designed, to offer the opportunity for a trafficked person to fully rehabilitate and start a new life away from the control of their traffickers. The evidence from Italy shows that once residency is granted and trafficked persons have time to fully reflect and to re-build relationships of trust then they tend to file a complaint against their traffickers. Under this system there is also no time limit on the reflection period to which a trafficked person must submit, enabling a statement or complaint to be made at a time appropriate to the victim.

The UK should ensure that it has a victim-centred non-conditional assistance system that facilitates the social and labour inclusion of trafficked persons.

13.4. A programme for the post-identification support and reintegration of victims of trafficking and minimum standards to ensure the safe and voluntary return of victims to their countries of origin is required

It is widely accepted that the UK government response to human trafficking is heavily focussed on the identification of victims, with limited provision for the rehabilitation, reintegration or safe return of victims post-identification. Under current arrangements victims who receive a positive decision receive only two weeks of government funded resettlement assistance. The UK has an obligation under Article 9 of the UN Trafficking Protocol to protect victims of trafficking from re-victimisation. Without reintegration assistance that supports victims in finding safe accommodation and work, victims are also vulnerable to further exploitation and re-trafficking.

Article 16 of the European Trafficking Convention requires that States establish repatriation programmes aimed at avoiding re-victimisation. In the UK there is no formal or specialised programme for the return of victims of trafficking, and no minimum standards to ensure that victims returned by government agencies, service providers are safe from re-victimisation.

The UK government should implement a programme for the post-identification support and reintegration of victims of trafficking and develop minimum standards to ensure the safe and voluntary return of victims to their countries of origin.

Key Recommendations:

1. How should Modern Slavery be defined?

- 1.1. The UK should adhere to the international legal definitions of forced labour, slavery and slavery-like practices, and trafficking in persons

2. What action do you think is most needed to improve the support and protection for adult victims of modern slavery?

- 2.1. The provision of assistance to potential and identified victims of trafficking should be detailed in the Modern Slavery Bill.
- 2.2. A choice of good quality, independent legal advice should be included as a measurable minimum standard and provided from the point of identification.
- 2.3. Legal aid restrictions must not adversely impact upon victims of trafficking, particularly with respect to judicial review.
- 2.4. Monitoring and evaluation that integrates the views of victims themselves and that is conducted by an independent Commissioner is essential to ensure effective anti-trafficking responses.
- 2.5. The reflection and recovery period should be included in the Modern Slavery Bill and extended to 90 days.
- 2.6. A compensation provision should be included in the Modern Slavery Bill, requiring the specification of procedures and assistance for victims to claim compensation.
- 2.7. A higher proportion of NRM service provider sub-contractors should hold expertise in the support of male victims. The forthcoming government services tender should include specific targets for addressing the needs and priorities of trafficked men.

3. What key measures do you think are needed to better protect child victims of modern slavery.

- 3.1. FLEX supports calls by ECPAT UK and the Anti-Trafficking Monitoring Group for the establishment of a system of legal guardians with responsibility for representing child victims' best interests.

4. How can we best ensure victims are not prosecuted for crimes they are forced to commit?

- 4.1. A non-punishment provision should be included in the Modern Slavery Bill.
- 4.2. Law enforcement officials should seek advice from the UKHTC in any case in which they believe the accused may have been compelled to commit a criminal act.
- 4.3. The Modern Slavery Bill should oblige Competent Authorities to notify police and prosecutors when a person arrested or charged with a crime is or has been referred to the NRM or is determined to be a victim of trafficking.
- 4.4. A specific training programme should be developed and implemented for all criminal justice actors to ensure that potential victims are identified and not punished.

4.5. Provisions criminalising human trafficking, forced labour, slavery and servitude should be contained in a single piece of legislation

5. Should there be a statutory duty to refer victims to the NRM and what should a 'successful' referral facilitate

5.1. All adult referrals to the NRM must be voluntary and the decision made on the basis of clear and comprehensive information provided in the appropriate language.

5.2. Potential victims should be provided with emergency accommodation and social support until they have had an opportunity to receive clear and comprehensive information and legal advice on their options.

5.3. There should be a statutory duty to provide expert legal assistance.

5.4. A successful referral should facilitate the provision of individualised, victim-driven support and reintegration assistance.

6. What legislative changes must be enacted in order for prosecutions and convictions to be increased? Should the length of sentence for those found guilty be increased?

6.1. Clearly define trafficking, forced labour, servitude and slavery in a single piece of legislation.

6.2. Include ancillary offences (aiding and abetting, procuring, etc.) in trafficking legislation.

6.3. Include a provision ensuring the liability of legal persons for offences of trafficking, forced labour, slavery or servitude.

6.4. Make the proactive investigation and prosecution of cases of trafficking for labour exploitation a policing priority.

6.5. The scope of the Gangmasters' Licensing Authority should be broadened, or an equivalent labour regulator established, to cover the full range of high-risk sectors.

7. How far do you think the issuing of a 'trafficking prevention order' – enforcing restrictions on those who commit modern slavery offences – would act as a deterrent?

7.1. Trafficking prevention orders should restrict the ability of offenders to own or manage a company or business; to employ workers or being involved in the employment of workers; or to work with children or vulnerable individuals

7.2. Trafficking prevention orders should be implemented as part of a broader package of prevention measures.

8. What action do you think is needed to better enable authorities to confiscate the assets of traffickers?

8.1. Clear definitions consistent with international law facilitate mutual legal assistance

9. What 3 core powers do you think a new Independent Anti-Slavery Commissioner should

possess? What should be the main focus of the role?

- 9.1. The Modern Slavery Commissioner should be independent, have strong expertise in human trafficking and play a strong monitoring and evaluation function, with comparative powers to the Dutch National Rapporteur on Trafficking.

10. How should British multi-nationals ensure that their supply chains are free from slavery?

- 10.1. British multi-nationals should, at a minimum: address transparency in supply chains; ensure standard inspection regimes are applied by all sub-contractors; strengthen commitments to collectivisation; and guarantee a living wage to all workers.
- 10.2. Both voluntary and mandatory measures are required to ensure that business complies with international labour standards.

11. What areas of non-legislative activity do you see as a priority to run alongside the passage of the Bill?

- 11.1. Training of frontline agencies; Minimum standards for support providers; Engagement of a much broader range of stakeholders; Extending the Joint-Strategic Group; Increased resources to the GLA and HSE; Ratification of the Domestic Workers Convention; More strongly enforcing minimum wage and self-employment.

12. If you are familiar with the It Happens Here report, what do you believe are the 5 most important recommendations that it put forward?

(see above)

13. In view of the need to a short, focussed, Bill are there any additional key areas that you believe should be included?

- 13.1. Victims should be granted working rights during the reflection and recovery period, to be continued upon a positive conclusive decision.
- 13.2. The UK government should enable victims of trafficking for labour exploitation to seek remedies against abusive employer practice under employment law
- 13.3. An automatic residence permit should be provided, modelled on Italy's Article 18, legislative decree no. 286/1998
- 13.4. The UK government should implement a programme for the post-identification support and reintegration of victims of trafficking and develop minimum standards to ensure the safe and voluntary return of victims to their countries of origin.