



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## United Nations High Commissioner for Refugees

### Draft Modern Slavery Bill

#### Written evidence submission to the Parliamentary Joint Committee

February 2014

#### Introduction

1. The Office of the United Nations High Commissioner for Refugee (**UNHCR**) is entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees. As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, "*[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto*".
2. UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees (**1951 Convention**) according to which State parties undertake to "*co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention*". The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees.
3. The UN General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness. UNHCR's Executive Committee has further requested UNHCR to undertake targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons. UNHCR thus has a direct interest in national legislation that regulates the protection of stateless persons, including implementation of the 1954 Convention relating to the Status of Stateless Persons (**1954 Convention**).
4. The following comments are made in the context of UNHCR's supervisory responsibility, set out under its statute, Article 35 of the 1951 Convention and Article II of the 1967 Protocol.

#### UNHCR's involvement with the issue of trafficking

5. UNHCR becomes involved with the issue of human trafficking where human trafficking impacts on persons of its concern. In particular, UNHCR has a responsibility to ensure refugees, asylum-seekers, internally displaced persons, stateless persons and other persons of concern do not fall victim to human trafficking. UNHCR also works to ensure that individuals, who have been trafficked or are at risk of being trafficked and who have a well-founded fear of persecution or are otherwise in need of international protection, are protected against *refoulement* and the competent authorities examine their claims to international protection.<sup>1</sup> In the context of its mandate to prevent statelessness and to come to the aid of stateless persons, UNHCR further assists States in ensuring trafficking victims who are without identity documents are able to establish their identity and nationality status in order to prevent them from being rendered stateless, and to protect stateless victims of trafficking.

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<sup>1</sup> UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, at: <http://www.refworld.org/docid/443679fa4.html>, para. 5.



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## Draft Modern Slavery Bill

6. UNHCR values the efforts and shares the legitimate interest of the UK Government in combating trafficking in human beings. UNHCR welcomes the proposal of the draft Modern Slavery Bill (**draft Bill**), with its stated purpose to consolidate and simplify trafficking offences, increase lengths of sentences, create a new Anti-Slavery Commissioner (**Commissioner**) and establish a legal duty to report potential victims of trafficking to the National Crime Agency. UNHCR recognises that the draft Bill will serve only part of the response required to address human trafficking and welcomes the UK government's plan to introduce a "wider package" which will include, inter alia, matters pertaining to the protection and support of victims of trafficking.
7. UNHCR welcomes the opportunity to provide comments on both matters within the scope of the draft Bill as it is currently proposed, as well as those that are related to the "wider package". In doing so, UNHCR's comments will address the following questions raised by the Joint Committee (**Committee**):
- Are there other provisions which should be included in the draft Bill?
  - Does the draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?

## A. Are there other provisions which should be included in the draft Bill?

### Non-penalisation of Victims of Trafficking

8. UNHCR sees the draft Bill, with its focus on offences relating to trafficking, as an opportunity to legislate on the non-penalisation of victims of trafficking. This would highlight the importance of not prosecuting victims of trafficking who may have been forced to act contrary to law and help reinforce the UK's obligations under Article 8 of the European Union Directive on preventing and combating trafficking in human beings and protecting its victims (**Trafficking Directive**).<sup>2</sup> UNHCR fully supports the recommendation made by the Modern Slavery Evidence Review Panel (**ERP**) that provision for the non-prosecution of victims, as addressed by current Crown Prosecution Service guidance, be put in the draft Bill.<sup>3</sup> A legislative approach to ensuring the non-penalisation of victims is viewed as important in light of concerns raised by the ERP with respect to the effectiveness of guidance previously issued by the Director of Public Prosecutions regarding this matter.<sup>4</sup>

UNHCR recommends that:

The draft Bill provides for the non-prosecution or non-application of penalties to victims of trafficking.

<sup>2</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, 2011/36/EU, at: <http://www.refworld.org/docid/50ec1e172.html>.

<sup>3</sup> Baroness Butler-Sloss, Frank Field MP (Chair) and Sir John Randall MP, *Establishing Britain as a world leader in the fight against modern slavery, Report of the Modern Slavery Bill Evidence Review (draft Bill Evidence Review)*, 37-39, at: <http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/Establishing-Britain-as-a-world-leader-in-the-fight-against-modern-slavery.pdf>.

<sup>4</sup> Draft Bill Evidence Review, *op. cit.*, p.39.



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## Offences (Part 1)

### *Exploitation of criminal activities*

9. UNHCR welcomes the wide range of offences brought within the meaning of “exploitation” in clause 3 of the draft Bill, including the safeguard provision of “*Securing services etc. by force, threats or deception*” (*Securing services*) under clauses 3(5) and 3(6). Based on the Explanatory Notes, UNHCR appreciates the intention of the government to use this provision to cover a range of types of exploitation including exploitation of criminal activities, despite the latter not being specifically mentioned in the draft Bill.

UNHCR recommends that:

The draft Bill refers explicitly to exploitation of criminal activities to ensure clarity and consistency with Article 2(3) of the Trafficking Directive.

### *Means of exploitation*

10. Article 2(1) of the Trafficking Directive outlines the variety of ways in which individuals can be exploited for trafficking purposes. In UNHCR’s view, however, these are not sufficiently reflected in the draft Bill. At present, only clause 3(5) of the draft Bill addresses means of trafficking, referring to the use of “*force, threats or deception,*” in relation to *Securing services*. Significantly, no reference is made to the abuse of power or a position of vulnerability. The concept of vulnerability and its abuse is central to an understanding of trafficking<sup>5</sup> and it is important that this be clearly reflected in legislation.

UNHCR recommends that:

At a minimum, the means provided in the Trafficking Directive is reflected in clause 3, not only in relation to *Securing services*, but also the other offences listed to ensure clarity and compliance with Article 2(1) of the Trafficking Directive.

### *Vulnerable persons*

11. UNHCR notes that the definition provided of “vulnerable persons” under clause 3(6) of the draft Bill could adopt a more gender-sensitive approach. Given the high proportion of female victims of human trafficking and that their gender is considered to constitute a significant factor in their vulnerability, UNHCR recommends that the definition of “vulnerable persons” include vulnerability on grounds of gender. Further, due to the complexities surrounding the notion of vulnerability, UNHCR recommends that the definition of “vulnerable person” be non-exhaustive and include scope for vulnerability based on broader social, economic, ethnic and/or cultural circumstances.

UNHCR recommends that the definition of “vulnerable persons”:

Includes vulnerability on grounds of gender; and

Is non-exhaustive and includes scope for vulnerability due to broader social, economic, ethnic and/or cultural circumstances.

<sup>5</sup> UN Office on Drugs and Crime, Issue Paper, *Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons*, 2013, at: [http://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf).



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### *Consent*

12. The draft Bill correctly provides that for the purposes of human trafficking the victim’s consent to their transportation is irrelevant.<sup>6</sup> UNHCR would recommend that this approach be extended to a victim’s involvement in exploitation for the offences listed under clause 3 once the means of trafficking are established in accordance with the Trafficking Directive.<sup>7</sup> It is also noted that clause 3(6)(b) of the draft Bill requires that a child or vulnerable person “*would likely refuse to be used*” to *Securing services* in order to establish exploitation. This appears to be at odds with consent being considered irrelevant and UNHCR recommends that it be removed.

UNHCR recommends that:

The draft Bill provides that for the purpose of a victim’s involvement in exploitation for clause 3 offences, consent is irrelevant once the means of trafficking are established.

### *Young*

13. UNHCR notes that “young” under clause 5(6) is not defined in the draft Bill. UNHCR notes, however, that the Trafficking Directive provides that a “child” shall mean any person below 18 years of age.<sup>8</sup>

UNHCR recommends that:

A definition of “young” is provided in the draft Bill to ensure compliance with international standards and to help ensure a child-sensitive approach.

### **Extending the powers and mandate of the Anti-Slavery Commissioner (Part 3)**

14. UNHCR welcomes the proposal to establish the office of the Commissioner in the draft Bill. The planned role of the Commissioner is currently focused on strengthening law enforcement efforts. However, a key focus in the UK response to trafficking issues must also be to provide protection to the victims of trafficking. Given the trafficking-related responsibilities and the expertise she or he will accrue, UNHCR sees value in investing the Commissioner with this additional role. A statutory remit incorporating victim support and protection-related functions would represent a significant strengthening of the Commissioner’s mandate from that stipulated in the draft Bill and would be an important step in the fight against trafficking in the UK. UNHCR also supports the ERP’s call to extend the powers of the Commissioner to include inquiry, entry and information gathering. This would help ensure the effectiveness of the office.<sup>9</sup>

UNHCR recommends that:

The role of the Commissioner be expanded to include victim protection-related functions; and

The powers of the Commissioner include those relating to inquiry, entry and information gathering.

<sup>6</sup> Draft Bill, clause 2(2).

<sup>7</sup> Trafficking Directive, Article 2(4).

<sup>8</sup> Trafficking Directive, Article 2(6).

<sup>9</sup> Draft Bill Evidence Review, *op. cit.*, p. 43.



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## **B. Does the draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?**

15. UNHCR would like to make preliminary observations on matters that do not appear to fall within the current scope of the draft Bill, but concern elements of the non-legislative “wider package” and important safeguards for survivors of trafficking. Despite addressing the government’s response to human trafficking in this way, UNHCR would not object to the government taking legislative action to address the safeguards discussed, including through an expansion of the draft Bill, in order to strengthen the protection response for survivors of trafficking.

### **Victim protection: ensuring a victim-centered and human rights based approach**

16. A holistic approach to combating human trafficking is one underpinned by prevention, protection and prosecution and places the rights of victims at the centre. Such a response supports measures to combat trafficking through the trust and confidence of victims that it fosters. If protected and assisted, victims are less likely to abscond with the risk of being re-victimised and re-trafficked, and they are likely to be open to participating voluntarily in criminal proceedings by giving evidence against traffickers as trust has been built with the authorities.

UNHCR recommends that:

Protection considerations are fully developed in the “wider package” and that these ensure a policy response built on respect and promotion of human rights.<sup>10</sup>

Support and protection measures for victims of trafficking are developed that are not short-term, are not restricted to or dependent on the involvement in criminal proceedings, and are tailored to the individual case<sup>11</sup> in accordance with Article 11 of the Trafficking Directive.

### **The National Referral Mechanism**

17. UNHCR welcomes the planned review of the National Referral Mechanism (NRM) to consider its effectiveness at identifying and protecting victims of trafficking. UNHCR would like to make the following observations for consideration by the government as it reviews the NRM.

#### **a) Ensuring complementarity between the NRM and the asylum process**

18. As part of its review of the NRM, UNHCR strongly encourages the government to consider the interaction between the NRM and the asylum process for victims of trafficking in need of international protection so as to ensure complementarity. This is of critical importance given its significance in ensuring full compliance with the principle of *non-refoulement*, under the terms of the 1951 Convention, international human rights law and the European Charter of Fundamental Rights.<sup>12</sup>

<sup>10</sup> The European Commission’s Experts Group on Trafficking in Human Beings has provided: “*that in order to effectively address trafficking, a holistic and integrated approach is needed which builds on the respect and promotion of human rights as its fundament.*” European Commission, DG Justice, Freedom and Security, *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 22 December 2004, p. 63 at: <http://legislationline.org/download/action/download/id/1562/file/b19d37999f379c5c741029fcb086.pdf>. Also see Recitals 1 and 7 and Article 1 of the EU Trafficking Directive.

<sup>11</sup> For example, any protection response will need to take into consideration the circumstances in the victim’s country of origin. While voluntary repatriation may be one solution, it should not be seen as the only one.

<sup>12</sup> *Charter of Fundamental Rights of the European Union (2007/C 303/01)*, 14 December 2007, C 303/1, available at: <http://www.refworld.org/docid/50ed4f582.html>.

19. Some victims of trafficking fall within the scope of the refugee definition contained in Article 1A (2) of the 1951 Convention or within the wider definition of persons eligible for subsidiary protection, as per human rights standards<sup>13</sup> and Article 15 of the EU Qualification Directive.<sup>14</sup> They may, therefore, be entitled to international protection. The obligation of the UK to consider the international protection needs of trafficking victims under the 1951 Convention has been emphasized in numerous treaties, including in Article 40(4) of the Council of Europe Convention on Action Against Trafficking in Human Beings, to which the UK is a party.<sup>15</sup> However, in a study commissioned by UNHCR in 2009, a number of gaps in State practice were highlighted in relation to ensuring complementarity between international protection systems and procedures for the protection of victims of trafficking.<sup>16</sup>
20. UNHCR strongly encourages the government to strengthen the wider package to include safeguarding measures that recognise the interplay between trafficking procedures and the asylum process. This would involve, but not be limited to, ensuring that appropriate and effective referral mechanisms are in place between the authorities involved in anti-trafficking activities and those responsible for granting international protection and that the authorities involved receive appropriate training and support to undertake their duties.<sup>17</sup> Such measures must highlight and ensure full compliance with the principle of *non-refoulement*.

#### **b) Ensuring complementarity between the NRM and the statelessness procedure**

21. The lack of legal bond to nationality or citizenship can expose stateless individuals to a heightened risk of being trafficked. There may, therefore, be cases where stateless individuals, who satisfy the definition found in Article 1 of the 1954 Convention, are trafficked out of their country of habitual residence. Further, victims of trafficking may have had identification documents confiscated by traffickers as a means of establishing control over them. This can have significant implications in terms of establishing citizenship and securing the assistance of the authorities of the victim's country of origin.
22. In order to address problems of statelessness among trafficked populations, UNHCR strongly encourages the government to consider the interaction between the NRM and the statelessness determination procedure. This is in order to ensure the government's full compliance with its international obligations, including the 1954 Convention.

#### **c) Disparities in identification rates and appeal process**

23. UNHCR is aware of reports of disparities in the rates of identification between victims who have had their trafficking decisions made by a competent authority in the UK Visa and Immigration (UKVI) and those decided by the UK Human Trafficking Centre (UKHTC). Identification rates by a competent authority in the UKVI have been noted to be significantly lower at reasonable or conclusive grounds stages of the

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<sup>13</sup> UK Human Rights Act, at: <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

<sup>14</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection and the content of the protection granted.

<sup>15</sup> Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, at: <http://www.refworld.org/docid/43fded544.html>. Also see Council of Europe, *Convention on Action Against Trafficking in Human Beings, Explanatory Report*, at: <http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm>.

<sup>16</sup> UNHCR, *The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs*, October 2009, PPLAS/2009/03, at: <http://www.refworld.org/docid/4ad317bc2.html>.

<sup>17</sup> *Ibid.*



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NRM than victims whose cases are assessed by the UKHTC.<sup>18</sup> The latter considers cases coming from the EU and European Economic Area, while the UKVI is responsible for victims originating from other locations.

24. UNHCR would encourage the government to carefully examine this issue not only to ensure appropriate identification and protection for trafficking victims, but also given its potential impact on a victim's asylum claim. The identification of an individual as a victim of trafficking can have significant implications for the assessment of an asylum claim, including the assessment of credibility and establishing a link to a 1951 Convention ground or a need for subsidiary protection.<sup>19</sup> It is therefore essential that any potential shortcomings in the identification of trafficking victims be addressed.
25. For similar reasons, UNHCR strongly supports the recommendation by the ERP that the right to an appeal be included in the NRM.<sup>20</sup> This would help both strengthen the process of identifying victims of trafficking and ensure that victims are given the support and protection they need, including through the asylum procedure.

UNHCR recommends that in reviewing the NRM:

The interaction between the NRM and the asylum and statelessness processes is considered and efforts are made to ensure complementarity;

Reports of disparities between trafficking identification rates by the UKVI and UKHTC are examined and any shortcomings identified are addressed; and

The right to an appeal is introduced into the NRM procedure.

### **Protection of child victims of trafficking**

26. While it is not flagged in the “wider package”, UNHCR welcomes reports of the Secretary of State for the Home Department's plan to trial an advocate scheme for child trafficking victims.<sup>21</sup> This can be considered a positive step towards ensuring protection for child victims of trafficking. Nonetheless, in order to ensure compliance with the EU Trafficking Directive<sup>22</sup> and an appropriate level of protection for children who, as victims of trafficking, are highly vulnerable, UNHCR would recommend that the Committee consider the introduction of a legal guardianship scheme.

UNHCR recommends that:

A legal guardianship scheme is introduced to provide protection for child trafficking victims.

UNHCR London  
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<sup>18</sup> Anti-Trafficking Monitoring Group, 'Wrong Kind of Victim' One year on: an analysis UK measures to protect trafficked persons', (June 2010), p. 9.

<sup>19</sup> UNHCR, *Guidelines on International Protection No. 7*, above footnote 1.

<sup>20</sup> Draft Bill Evidence Review, *op. cit.*, p. 37.

<sup>21</sup> Guardian, *Child trafficking victims to be given personal advocates in Home Office trial*, 26 January 2014, at: <http://www.theguardian.com/society/2014/jan/26/child-trafficking-victims-personal-advocates-home-office-trial>.

<sup>22</sup> Trafficking Directive, Article 14(2).