

The Government's response to COVID-19: human rights implications related to modern slavery

Submission by the Rights Lab, University of Nottingham

The Rights Lab delivers research to help end modern slavery. We are the world's largest group of modern slavery researchers, and home to many leading modern slavery experts. Through our five research programmes, we deliver new and cutting-edge research that provides rigorous data, evidence and discoveries for the global antislavery effort. Our Modern Slavery Evidence Unit is the interface between the Rights Lab research programmes and civil society, business and government: it works closely with stakeholders to address their evidence gaps. More information about the Rights Lab is available at: www.nottingham.ac.uk/rights-lab.

The COVID-19 pandemic and the measures being undertaken to slow its pace and effect have short, medium and long term impacts on the problem of modern slavery. We have developed an early-stage research agenda for anti-slavery responses to COVID-19, and a call for a coordinated, systematic and inter-disciplinary research effort. Our research agenda for COVID-19 is available at: www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/covid-19/index.aspx.

Overview

Victims of modern slavery are amongst the most vulnerable people in society. They face additional risks due to the COVID-19 outbreak, as a result of isolation, economic instability, and reduced access to support services. To ensure compliance with its human rights obligations, the Government should ensure that victims of modern slavery continue to be identified and supported during the outbreak, and take steps to mitigate the risks to vulnerable people that will inevitably increase due to this crisis. This will require ongoing adaptation as the crisis evolves and new evidence emerges.

This submission covers the following key issues:

1. Steps the Government must take to ensure measures to address COVID-19 are compliant with human rights related to modern slavery
 - Human rights obligations related to modern slavery
 - Derogation in times of emergency
2. Impacts of Government measures to address COVID-19 on modern slavery in the UK?
 - Changing patterns of abuse and exploitation
 - Identification of victims
 - Access to assistance and support
3. Groups disproportionately affected by Government measures to address COVID-19
4. Recommendations

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What steps will need to be taken to ensure that Government measures to address COVID-19 are human rights compliant?

1. The human rights implications of the Government's response to COVID-19 are myriad, and vary significantly with regard to different rights. To ensure measures taken by the Government to address COVID-19 are human rights compliant, they must be consistent both with domestic human rights law, and with regional and international human rights instruments to which the UK is party. This submission will focus specifically on the implications of COVID-19 response measures on human rights associated with modern slavery—that is, slavery, servitude, forced labour, and human trafficking—and the steps the Government must take to respect, protect, and fulfil these rights. Recommendations at paragraph 21 (page 6).

Human rights obligations related to modern slavery

2. The right to be free from slavery, servitude, and forced labour is articulated in article 4 of the ECHR, integrated into UK domestic law through the HRA, as well as article 8 of the ICCPR. Although human trafficking is not explicitly identified in these instruments, The ECtHR has declared that article 4 extends to trafficking as a distinct practice.¹ The specific rights of women and children to be protected from trafficking are also enshrined under article 6 of the CEDAW and article 35 of the CRC respectively, and the sale of children is prohibited under the CRC-OPSC. The UK also has international obligations with regard to slavery, the slave trade, institutions and practices similar to slavery, forced labour, and human trafficking under a range of additional treaties. The 'basic right of the human person' to be protected from slavery has also been recognised by the ICJ as a *jus cogens* norm of customary international law entailing obligations *erga omnes*.²

3. In addition to the obligation not to subject people to modern slavery, the UK government has positive obligations under human rights law to:³

- protect people from modern slavery and prevent violations from occurring;
- investigate, prosecute, and punish violations through criminal law; and
- ensure access to justice and effective remedy for victims.

The ECtHR has affirmed that these positive obligations require the State to take 'reasonable' and 'adequate' measures that are 'practical and effective',⁴ without imposing an 'impossible or disproportionate burden' on the State.⁵

Derogation in times of emergency

4. Article 15 of the ECHR permits derogation from the human rights obligations enshrined in that convention in times of public emergency threatening the life of the nation, to the extent 'strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law'. However, the CEDAW, CRC, CVAW, PTIP, SC, and SCAS do not provide for derogation in times of emergency, and ought therefore to be considered as 'other obligations under international law' when assessing potential derogation. Further, even in times of emergency, **no derogation from the obligations related to the right to be free from slavery and servitude (article 4(1))** is permitted. The *jus cogens* status of the prohibition against slavery also entails non-derogable status.

¹ *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 07 January 2010).

² *Case Concerning the Barcelona Traction, Light and Power Company Ltd (Belgium v Spain)* (Judgment) [1970] ICJ Rep 3, [34].

³ See *Rantsev*, above n 1; *Siliadin v France* App no 73316/01 (ECtHR, 26 October 2005); *L E v Greece* App no 71545/12 (21 January 2016).

⁴ *Opuz v Turkey* App No 33401/02 (ECtHR, 9 June 2009), [136] and [153].

⁵ *Osman v UK* App No 87/1997/871/1083, (ECtHR, 28 October 1998), [116].

What will the impact of specific Government measures to address the COVID-19 pandemic be on human rights in the UK?

5. Government response measures will impact people's vulnerability to, experience of, and ability to exit modern slavery, as well as affecting efforts to address the practice and support victims. Emerging evidence highlights practical difficulties faced by victims and service providers as a result of existing measures, as well as cases of denial of service and support for potential victims. Identification of victims and measures to address situations of exploitation are made more difficult as a result of social distancing, isolation, and lockdown. Further, the profile of modern slavery within the UK is already shifting, as new vulnerabilities and risks emerge, patterns of abuse shift, and exploiters find new ways around restrictions.

Changing patterns of abuse and exploitation

6. Significant increases in unemployment and the number of people relying on universal credit have been recorded in the UK.⁶ This is expected to continue in the context of the projected global economic impact of COVID-19.⁷ Worsening socio-economic positions for large portions of the population increase vulnerability to modern slavery, and may result in higher levels of exploitation and a rise in instances of modern slavery in the UK.

7. As various sectors and workplaces close down in response to Government restrictions, modern slavery is shifting. Although many existing sites of exploitation are closing, victims remain under the control of their exploiters and thus are likely to be subjected to continued abuse and exploitation. Although many of the adaptations resulting from Government measures are yet to be seen, some trends and risks are already identifiable.

8. Victims of sexual exploitation are a significant proportion of modern slavery victims in the UK, representing 33.4% of adult victims and 20.3% of minor victims referred into the NRM in 2018.⁸ NGOs report that sexual exploitation has continued into the lockdown period.⁹ In some cases direct interactions continue to take place, with 'clients' breaching Government restrictions and risking spread of COVID-19. In many cases, exploitation (as well as non-coerced commercial sexual activity) is moving online. Although this may reduce the possibility of physical violence by 'clients', abuse, exploitation, and harassment continues to take place. Victims of modern slavery in this context remain under the control of their exploiters, and thus vulnerable to abuse. As the number of people experiencing economic instability rises, there is also a risk that new victims will be forced into sexual exploitation for financial reasons by members of their household.

9. On lockdown, many victims of forms of modern slavery taking place within the home (e.g. domestic work, forced and servile marriages) are confined with their abusers. Combined with increasing stress on perpetrators as a result of isolation and economic precarity, and in line with already rising reports of domestic violence,¹⁰ these modern slavery victims are likely to experience escalations in violence and abuse. Demands on domestic workers are also likely to increase as a result of family members being restricted to the home.

⁶ See Laura Kuenssberg, 'Coronavirus: Nearly a million universal credit claims in past two weeks' (*BBC News*, 01 April 2020) <<https://www.bbc.co.uk/news/uk-politics-52129128>>.

⁷ See International Labour Organisation, 'ILO Monitor 2nd Edition: COVID-19 and the World of Work' (ILO, 7 April 2020) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf>.

⁸ National Crime Agency, 'National Referral Mechanism Statistics – End of Year Summary 2018' (20 March 2019).

⁹ See Alexandra Topping, 'UK Sex Workers in "Dire and Desperate" Need Amid Coronavirus Lockdown' (*The Guardian*, 13 April 2020).

¹⁰ See June Kelly and Tomos Morgan, 'Coronavirus: Domestic abuse calls up 25% since lockdown' (*BBC News*, 6 April 2020), <<https://www.bbc.co.uk/news/uk-52157620>>.

10. COVID-19 and Government response measures have significantly altered consumer demand and behaviour, and retailers have been forced to adapt and alter supply sources due to restrictions on movement of goods, and depleted and changing workforces. This potentially gives rise to increased risk of modern slavery at multiple levels of the supply chain, with rapid changes in supply chains making managing due diligence more difficult.

Identification of victims

11. Fewer opportunities for transparency and inspections of worksites that continue to operate throughout the pandemic, rapidly changing workforces, and increased pressure on key sectors decrease likelihood of detection of modern slavery, and may make it more difficult for victims to report or escape. Agriculture, fisheries, domestic work, and adult social care in particular are sectors already at high risk of modern slavery that continue to function.

12. Victims and potential victims of modern slavery occurring within the home, face increased barriers to escape, reporting, and identification as a result of Government restrictions. Victims have less privacy to report from home as their exploiters are confined to their homes. These victims may also have less access to means of communication through which to report, as they are less likely to be able to access a public phone box, use a computer at the local library, or visit friends who might lend a mobile, laptop or landline. Local networks that might usually look out for signs and report modern slavery have also been cut away by social distancing measures. The most obvious signs of abuse will be harder to spot as people being confined to the home becomes normal, and third parties are no longer able to visit and potentially spot signs of abuse within the home.

Access to assistance and support

13. Cases of potential victims of modern slavery reporting to responders, but turned away from services as a result of fears around COVID-19 have already begun to surface. Increased pressure on frontline responders, including police, local authorities, and service providers already operating on stretched resources increase risk that victims will not be recognised, referred into services, or accepted into those services. This represents a potential breach of the positive obligations to investigate allegations and implement measures to prevent and protect people from modern slavery.¹¹

14. As support providers close, or shift resources towards responding to COVID-19, survivors' access to advice, mental health support, healthcare, legal advice, and other specialist services will continue to decrease. 80% of people supported within the National Referral Mechanism receive outreach support, rather than being housed in NRM safe-houses. It is currently unclear how service provision will be adapted in response to Government measures, and in particular whether the necessary additional resource to continue fulfilling the obligation to provide needs-based support for victims.¹²

Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?

15. Victims of modern slavery are amongst the most vulnerable members of society, and are already experiencing disproportionate impacts of Government measures which are likely to continue absent thoughtful intervention.¹³

16. The demographics of modern slavery victims vary by exploitation type, with people subjected to different forms of exploitation also likely to experience the impacts of Government measures differently.

¹¹ See ECtHR, above n 3.

¹² See article 12, CAHB and *NN and LP v Secretary of State for the Home Department* [2019] EWHC 1003.

¹³ On the intersections between disease outbreak and modern slavery in the context of past health crises, see Catherine Worsnop, 'The Disease Outbreak-Human Trafficking Connection: A Missed Opportunity' (2019) 17(3) *Health Security* 181.

Victims of domestic servitude, sexual exploitation, and forced marriage—forms of exploitation that continue through restrictions on movement—are overwhelmingly female (representing 71%, 90%, and 75% of cases respectively),¹⁴ creating disproportionate impacts on women and girls.

17. Migrant workers are already disproportionately vulnerable to modern slavery.¹⁵ In the UK in 2018, 77% of potential victims referred into the NRM were non-UK nationals,¹⁶ despite representing only 9.3% of the overall population of the country.¹⁷ Instability of employment resulting from shutdowns will increase the precarity of these already vulnerable workers. Lack of entitlements and access to Government support, combined with existing restrictions on their right to remain in the country not designed for the current context, expose this population to a variety of risks, including modern slavery.

18. Victims supported within the NRM generally live on a limited subsistence allowance, paid weekly in cash by their support worker. This in itself makes it difficult for victims to abide by Government guidance, purchase items in advance, and reduce trips to the stores as they are not provided with sufficient resource to stock up. Restrictions on movement for both support workers and survivors interfere with their ability to collect the subsistence allowance, and it is unclear how they will collect if they become sick. Support workers having to adapt to address this, and other challenges of continuing provision under current restrictions, strains the already under-resourced support system.

19. Many survivors of modern slavery have underlying physical health conditions that make them particularly vulnerable to becoming ill if they are exposed to COVID-19. This also increases the harm of shifts in healthcare provision away from non-COVID treatment, reducing their ability to access essential services to meet their healthcare needs. This also holds true for access to critical psychosocial support and addiction treatment, as well as other necessary support services.

20. Social distancing and isolation measures are likely to have disproportionate impacts on survivors of modern slavery, impacting their mental health and recovery. Social isolation is a tool often used by perpetrators to control victims of modern slavery, meaning that the impacts of these measures are likely to be most harshly felt by this group. Further, many survivors do not have access to computers through which to maintain social connections during lockdown. These conditions, and increased stress levels may lead to deterioration in survivors' mental health and trigger trauma, interfering with their recovery and increasing their vulnerability.¹⁸

Recommendations

21. The Government should continue to consider its obligations to prevent modern slavery, protect people who have been subjected to violations, and enforce responsibility for perpetrators through the criminal justice system. The Government should:

- i. **Consider increased risks** some people will face as a result of COVID-19 and Government responses.
- ii. **Build measures for prevention and protection** against modern slavery into response frameworks wherever possible, including measures to prevent exploitation of key workers.
- iii. **Continue and adapt efforts to identify victims** of modern slavery in the changing context, considering where and how victims might now be identified (e.g. through digital technology).

¹⁴ National Crime Agency, above n 8; Home Office and Foreign and Commonwealth Office, 'Forced Marriage Unit Statistics 2018' (24 May 2019).

¹⁵ See Fiona David, Katharine Bryant, and Jacqueline Joudo Larsen, *Migrants and their Vulnerability to Human Trafficking, Modern Slavery, and Forced Labour* (Minderoo Foundation and IOM 2019).

¹⁶ National Crime Agency, above n 8.

¹⁷ See Carlos Vargas-Silva and Cinzia Rienzo, 'Migrants in the UK: An Overview' (*The Migration Observatory*, 04 October 2019); Office for National Statistics, 'Population of the UK by Country of Birth and Nationality: January to December 2018' (*ONS*, 28 November 2019), Table 2.1.

¹⁸ See for instance Kate Garbers, 'The Impact of C-19 on Modern Slavery Survivors' (*Unseen*, 9 April 2020) <<https://www.unseenuk.org/news/95>>.

- iv. **Ensure appropriate support and assistance** continues to be available and accessible to victims, adapting service provision to respond to the changing situation. This should include consideration of additional emergency resources for frontline service providers, provision of remote payment cards for subsistence allowances, provision of phones and laptops to isolated survivors, extending accommodation support for victims in the NRM, and ensuring newly referred victims are properly supported and accommodated.
- v. **Work with local partners** to ensure support for vulnerable people.
- vi. **Provide guidance for businesses** on protecting human rights during the pandemic.¹⁹
- vii. **Ensure access to basic necessities** for all vulnerable people,²⁰ including non-UK nationals, to prevent them from falling into, or returning to, modern slavery.

Abbreviations

AFLC	Abolition of Forced Labour Convention 1957
CAHB	Council of Europe Convention on Action against Trafficking in Human Beings 2005
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women 1979
CRC	Convention on the Rights of the Child 1989
CRC-OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
CVAW	Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence 2011
ECHR	European Convention on Human Rights 1950
ECtHR	European Court of Human Rights

¹⁹ See for instance Business and Human Rights and UNDP, 'Human Rights Due Diligence and COVID-19: A Rapid Self-Assessment for Business' (10 April 2020), <<https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human-rights-due-diligence-and-covid-19-rapid-self-assessment-for-business.html>>.

²⁰ It should be noted that the Government has an obligation to ensure food, shelter, and the basic necessities of life under article 3 of the ECHR concerning the right to life. See Natasa Mavronicola, 'Positive Obligations in Crisis' (*Strasbourg Observers*, 7 April 2020) <<https://strasbourgobservers.com/2020/04/07/positive-obligations-in-crisis/>>.

FLC	Forced Labour Convention 1930
HRA	UK Human Rights Act 1998
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
ICJ	International Court of Justice
NRM	National Referral Mechanism
PTIP	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
SC	Slavery Convention 1926
SCAS	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956
UDHR	Universal Declaration of Human Rights 1948