



Every Child Protected  
Against Trafficking

**FOCUS ON  
LABOUR  
EXPLOITATION**



**HOPE FOR JUSTICE**

HELEN  
BAMBER  
FOUNDATION  
*strength to fly*



**ATLEU**

ANTI TRAFFICKING AND  
LABOUR EXPLOITATION UNIT



**LA WRs**  
LATIN AMERICAN WOMEN'S RIGHTS SERVICE  
Servicio por los Derechos de la Mujer Latinoamericana  
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**unseen**



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*dignity at work*



association of **visitors** to  
immigration detainees

**LOVE146**  
END CHILD TRAFFICKING AND EXPLOITATION



migrant help



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**Bill of Rights Second Reading Briefing: Removing rights and access to justice for  
victims of trafficking and modern slavery**



**TARA**  
Trafficking Awareness Raising Alliance



Our youth can be exceptionally great - knowing them is key



cityhearts



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# Bill of Rights Second Reading Briefing: Removing rights and access to justice for victims of trafficking and modern slavery

## Introduction

As a group of organisations working in the anti-trafficking and children's rights sector, we reject the premise that a Bill of Rights should replace the Human Rights Act 1998 (HRA). The UK has a proud history as one of the drafters of the European Convention on Human Rights, brought into domestic law by the HRA. The existing human rights framework has had profound benefits for victims and survivors of human trafficking and modern slavery. It has been used to ensure their rights are respected and protected, has spurred the development of the UK's anti-trafficking and modern slavery framework, and has helped to ensure that victims have a better knowledge of, and ability to, exercise their rights, among other benefits.

This 'Rights Removal Bill' is not about the protection of people's human rights: it seeks to scrap the HRA and replace people's universal rights with those gifted by the government, whilst removing legal responsibility and accountability and introducing barriers to people actually having their rights upheld. This will affect us all, but will be particularly devastating for more marginalised groups, including victims of human trafficking and modern slavery. We urge you to reject this Bill in its entirety and support our existing human rights protections.

## Executive Summary

We do not agree with replacing the HRA with the Bill of Rights. The HRA works well: it has helped to ensure that rights of victims of trafficking and modern slavery are respected and protected and strengthens the UK's anti-trafficking and modern slavery framework. The Bill of Rights will weaken the protection of victims of trafficking and modern slavery for the following reasons:

- **Changes to the interpretation of human rights** which will lead to greater legal uncertainty and increased costs for survivors
- **Weaker positive obligations for public authorities** to identify and safeguard victims, protect them, and investigate cases of modern slavery
- **Restrictions on the right to family and private life** that will leave victims at risk of deportation, facilitate re-trafficking and breach the rights of children
- **New permission stage** that creates barriers for survivors of trafficking and modern slavery bringing a legal case, increasing trauma and re-exploitation

## 1: Changes to the Interpretation of Human Rights

The UK's Modern Slavery Act (2015) and associated mechanisms were developed in the context of victims being able to rely on the HRA. Changes to the HRA through the Bill of Rights would prevent UK courts from providing strong human rights protection by diverging from the standards of rights offered through the European Court of Human Rights (ECtHR). This is a serious concern for survivors of trafficking and modern slavery as ECtHR judgements have been very important in developing the rights of survivors in the UK. One example of a pivotal judgement where UK courts have relied on ECtHR was the case of a child victim who went missing and was likely re-trafficked, in *R (TDT) v Secretary of State for the Home Department* [2018] EWCA Civ 1395.[i] The Court concluded that a protective duty towards victims is triggered when state authorities (invariably this would include local authorities) "were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual has been or was at real and immediate risk of being trafficked." If UK courts are unable to implement meaningful rights obligations, more individuals will be forced to pursue human rights cases through ECtHR to have their rights recognised by the Government.[ii]

Clause 3 of the Bill of Rights removes the obligation for UK courts to consider case law established by ECtHR. This would likely lead to a lack of legal certainty on rights and entitlements, with victims less likely to come forward and seek assistance as a result.[iii] In addition, the divergence between domestic rights and Convention rights could lead to inconsistencies in human rights protections. Currently, there is already substantial confusion as to the roles, responsibilities and obligations of different state actors and, in our experience, many survivors fall through the resulting gaps. The Bill of Rights is likely to exacerbate this issue. Legal certainty is particularly important in the context of human trafficking where offences often have international components due to the frequent cross-border nature of offences.[iv] Legal uncertainty leads to significant and satellite litigation to clarify rights which can be costly for the government.

Without the HRA, where there is a divergence between domestic rights protections and those offered under the ECtHR, an individual may have to go to court in Strasbourg to pursue the case.[v] This is not a realistic option for the majority of survivors of slavery who are often left destitute by their traffickers, will be daunted by the uncertainty surrounding the process and dismayed by the delays in access to justice. The introduction of the HRA in the UK in 1998 meant that people no longer had to go to Strasbourg to enforce their rights and UK courts could instead deal with cases of potential human rights violations. The change led to a significant decrease in the number of cases brought against the UK before the ECtHR.

## **2: Weaker Positive Obligations for Public Authorities**

Through Clause 12 and Clause 5 of the Bill of Rights, positive obligations on public authorities would be damaged; public authorities could offer a low standard of human rights protection to the detriment of survivors. Positive obligations place a duty on public authorities to take active steps to protect individual rights and prevent harm. The HRA has played a crucial role in ensuring that public authorities identify, safeguard, protect victims, and investigate cases of modern slavery.

Positive, preventative obligation measures are essential to anti-trafficking and anti-slavery efforts, and must sit alongside negative obligations. Without them, victims are at increased risk of re-exploitation; they are less likely to engage with criminal justice processes, perpetrators are not held accountable and a fertile environment is created for abuse. This dilution of positive obligations will be particularly detrimental to children, including child victims who rely on various public bodies for their support and protection. Positive obligations ensure that public bodies take proactive steps to safeguard children from harm. The *Siliadin, CN*, as well as the *VCL and AN* cases highlight the failure to protect children from various forms of child abuse such as child trafficking and the importance of having a domestic remedy which can prevent these failures from taking place.[vi]

## **3: Restrictions on the right to family and private life leaving victims at risk of deportation**

Under Clause 8, UK courts will be prevented from determining that deportation laws are incompatible with the right to family and private life (Article 8 ECHR). Only in cases where the harm caused to a family member by a deportation would be “exceptional and overwhelming” to the extent it overrides public interest would a deportation be permitted. The measure undermines the principle that human rights are universal and should be afforded to everyone. Survivors of modern slavery often have criminal convictions as a result of their exploitation. Over the last two years the NRM data shows 48% and 49% of identified victims’ experiences included some form of criminal exploitation as part of their exploitation.[vii] Under the new measures, they could be at risk of deportation without identification. This would play into the hands of traffickers who will target such individuals knowing that the threat of deportation will prevent them seeking help from the authorities. In our experience, the HRA has not only contributed to survivors’ recovery following exploitation, it has been essential for ensuring key prosecution witnesses were not unlawfully deported; one witness in Operation Fort was prevented from being deported under the HRA. He then played a crucial role in bringing an organised crime network to trial, who were responsible for trafficking around 400 victims. In Operation Fort, traffickers deliberately

targeted victims who had pre-existing offences; a review on Operation Fort by the Independent Anti-Slavery Commissioner noted how traffickers “approached people [...] as they were released from prison with offers of work”.[viii] Clause 8 fails to protect survivors of modern slavery from harm, and instead creates an opportunity for traffickers to further exploit victims.

#### 4: New Permission Stage

Under the HRA, when an individual’s rights have been breached, they can bring a case in the courts to hold the government or public body to account. Clause 15 of the Bill of Rights introduces an additional permission stage for bringing a case, requiring people to show they have suffered a “significant disadvantage” before their claim can be heard by a court. This will make it much harder for survivors of trafficking to access justice and hold the state to account, unless the case is deemed “wholly exceptional” on the grounds of public importance.[ix] The new threshold would introduce new barriers and complexities for survivors of modern slavery, who already face significant barriers when exercising their rights. A permission stage would leave genuine and proven cases of human rights abuses unremedied, and the culture of rights protections damaged.

#### Conclusion

The Bill of Rights risks weakening human rights protections for everyone across the UK. The risk is particularly acute for survivors of trafficking and modern slavery; following exploitation, survivors of trafficking frequently face destitution and rely heavily on the positive obligations of public authorities to rebuild their lives and recover from trauma. The current form of the Bill of Rights creates additional barriers for survivors, such as the potential for increased costs, lower levels of protection in the UK and the prospect of deportations that would have previously been considered unlawful. This harms every aspect of any existing and any new government strategies which aim to ensure that the UK does not allow traffickers to operate with impunity, including those which relate to effective investigation and prosecution.

#### For further information, please contact:

Robyn Heitzman, Policy and Research Officer, Hope for Justice: [robyn.heizman@hopeforjustice.org](mailto:robyn.heizman@hopeforjustice.org),  
Phone: 0300 008 8000

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