



**Liberty and Anti-Slavery International
Joint Briefing on the Coroners and
Justice Bill for the Report Stage of the
House of Lords**

**Servitude and Forced Labour
amendment**

October 2009

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

About Anti-Slavery International

Anti-Slavery International, founded in 1839, is committed to eliminating all forms of slavery throughout the world. Slavery, servitude and forced labour are violations of individual freedoms, which deny millions of people their basic dignity and fundamental human rights. Anti-Slavery International works to end these abuses by campaigning for slavery's eradication, exposing current cases, supporting the initiatives of local organisations to release people and pressing for more effective implementation of international laws against slavery. For further information see www.antislavery.org

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1. Slavery and forced or compulsory labour have long been offences under international law. Yet, modern day slavery continues unabated and many workers, often migrants, are forced into performing compulsory work for little or no wages in conditions where they are effectively prevented from escaping. There are at minimum 12.3 million people in forced labour worldwide, some 360,000 in industrialised countries. The UK is not immune to this violation of human rights and dignity.

2. While the UK long ago abolished the slave trade, and while trafficking in persons is illegal, there is currently no clear stand alone statutory offence under UK law of holding a person in servitude or subjecting a person to forced or compulsory labour. The Coroners and Justice Bill currently before Parliament provides a perfect opportunity to criminalise this practice to bring the UK in line with its international obligations. There is no doubt that the UK's international obligations require the criminalisation of servitude and forced labour, yet the current state of the criminal law in England and Wales on the issue is far from clear. Despite numerous criminal justice initiatives over recent years, Parliament has not yet considered criminalisation in this area. Liberty and Anti-Slavery International are committed to ensuring that our laws are sufficiently robust to deal with this modern-day form of slavery. Anti-Slavery International has worked in a number of countries proposing laws against slavery and its various forms, including the anti-trafficking legislation in the UK. Although Liberty is not traditionally in the business of proposing additional criminal offences, this is one area in which it is clear that the current law does not adequately protect the human rights of victims.

3. The *Slavery Abolition Act 1833* officially abolished the slave trade throughout the British Empire, and *trading* in slaves remains an offence under provisions of the Slave Trade Acts of 1824, 1843 and 1873. The only other statutory offence which specifically criminalises an aspect of modern-day slavery is contained in section 4 of the *Asylum and Immigration (Treatment of Claimants etc) Act 2003*. Section 4 creates an offence of 'trafficking people for exploitation' and provides that a person commits an offence if he or she arranges or facilitates the arrival in the UK (or subsequent travel within the UK) of an individual and intends to exploit the individual or believes that another person is likely to do so. 'Exploitation' is defined as including behaviour which contravenes Article 4 of the European Convention on Human Rights (ECHR), as well as subjecting someone to force, or using threats or deception designed to induce him or her to provide or acquire services or benefits of any kind. While a person who subjects another to slavery or forced labour is likely to breach a

number of different criminal offences¹ and perhaps licensing² or employment laws as we shall explore below, there is no freestanding statutory offence of subjecting a person to forced or compulsory labour, despite recent court rulings requiring criminalisation (as explained below).

4. Article 4 of the ECHR, which is incorporated into UK law by the *Human Rights Act 1998*, provides that no one shall be held in slavery or servitude or be required to perform forced or compulsory labour. This is an absolute right and it imposes on public authorities in the UK an obligation to protect people from slavery, servitude or forced or compulsory labour. The UK is also bound by the International Labour Organisation (ILO) Conventions No. 29 (Forced Labour Convention)³ and No. 105 (the Abolition of Forced Labour Convention). The Convention No. 29 stipulates that “*the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this convention to ensure that penalties imposed by law are really adequate and are strictly enforced.*”⁴

5. In addition, the Parliamentary Assembly of the Council of Europe has issued two recommendations⁵ on the subject of slavery and forced labour, noting that “*In the last few years a new form of slavery has appeared in Europe, namely domestic slavery*”. It set out the common features of domestic slavery as including the confiscation of passports, circumstances bordering on imprisonment, physical and/or sexual violence and illegal immigration status, and noted that “[*t]he physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.*” It made a recommendation that the Committee of Ministers should ask the governments of Member States to “*make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes*”.

¹ Including, for example, the common law offence of false imprisonment (which involves preventing the victim’s freedom of movement); the offence of blackmail (under section 21 of the *Theft Act 1968*), potential theft offences if passports or identity documents are confiscated and offences of assault if physical violence is used.

² See licensing standards set out by the Gangmasters Licensing Authority.

³ The ILO defines forced labour for the purposes of international law as “*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.*” Menace of penalty however does not mean just punishment– it might take form of a loss of right or privileges; subtler forms of menace are sometimes of a psychological nature.

⁴ Article 25, ILO Convention No. 29.

⁵ Recommendation 1523 (2001), adopted on 26 June 2001; Recommendation 1663 (2004), adopted on 22 June 2004.

6. In 2005 the European Court of Human Rights considered an application by a young Togolese girl who had been forced to work as a private unpaid servant for families in France.⁶ The Court found that the applicant had been subjected to 'forced labour' and 'servitude' and that France (and all other Member States) were under an obligation to criminalise such acts.⁷ As servitude and forced labour were not in themselves classified as criminal offences under French criminal law (despite there being other laws that applied), France was held to be in breach of Article 4 as it failed to provide specific and effective protection to the victim. UK criminal law is vulnerable to the same criticisms, and as such it is very likely that the UK is in breach of its obligations under Article 4 of the ECHR in failing to criminalise forced labour and servitude.

7. Slavery and forced labour are undoubtedly still present in the UK. All too often there are reports of vulnerable people, often migrants and very often women, being kept in horrendous conditions and subjected to forced labour. Just in the last few months there have been reports about Chinese migrants being held in abysmal factory conditions to produce pirated DVDs. Despite reports that the workers slept, ate and worked in conditions described by the prosecution as 'virtual slavery', convictions were secured only in relation to producing pirated DVDs and laundering the proceeds. The person who organised the workforce was convicted simply of concealing the proceeds of crime and sentenced to 27 months. Despite the appalling conditions in which the workers were held (including the police recovering confiscated passports and reports of debt bondage), no one was charged with the offence of subjecting a person to forced or compulsory labour.⁸ The reason being, of course, that there is currently no such offence.

8. Liberty has recently represented a victim of forced labour who reported her ill treatment to the police but faced extreme reluctance on the part of the police to investigate, despite the fact that an Employment Tribunal had made findings that her passport had been confiscated, she had been effectively confined to her employer's

⁶ See *Siliadin v France*, App. No. 73316/01, 26 July 2005.

⁷ See *Siliadin v France* at para 112: "In those circumstances, the Court considers that, in accordance with contemporary norms and trends in this field, the member States' positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation".

⁸ See 'The Invisible Victims: DVD Piracy', *The Guardian*, 28 July 2009, available at: <http://www.guardian.co.uk/film/2009/jul/13/dvd-piracy-chinese-workers-london> . See also 'Benefit Family Jailed for UK's Biggest DVD Scam', *Daily Express*, 28 July 2009, available at: <http://www.dailypress.co.uk/posts/view/116934/Benefit-family-jailed-for-UK-s-biggest-DVD-piracy-scam>

house, her employer had lied to her about her immigration status, her wages had been withheld, and she had been physically abused by her employer. Following the commencement of judicial review proceedings the police accepted that the failure to carry out an effective investigation into the allegations was unlawful and breached Article 4 of the ECHR. Anti-Slavery International is aware of a number of cases where persons were subject to forced labour in the UK, many of them in domestic servitude, including children.

9. Since this amendment was last debated at Committee Stage, our campaign for the criminalisation of forced labour has received huge support. Unite, the largest trade union in the UK which represents workers from every industrial, occupational and professional sector of the economy, has expressed its full support for the creation of a new offence. In September Tony Woodley, the Joint General Secretary of Unite, stated:

Unite and its founder unions have long championed individual and collective rights for workers and their families. Unite intends to use its influence and to work with Liberty by pledging its support to the Liberty and Anti-Slavery International proposed amendment to the Coroners and Justice Bill. We know from our experience how essential this is to support those most at risk. Liberty's campaign to criminalise the outrageous actions, which in our view amount to modern day slavery, deserves our support and Unite will use whatever political levers it can to persuade government to accept this amendment.⁹

10. The Board of the Gangmasters Licensing Authority (GLA), which regulates those who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging, has also stated that such an offence would be of assistance in its work. The GLA has identified instances of bonded labour in a number of cases yet it has no power to prosecute for forced labour or related offences. The Board at a recent meeting recognised the importance of this issue and noted that the proposed offences of servitude and forced labour are in the spirit of the GLA's objectives and that adoption of such

⁹ Statement from Tony Woodley on 15 September 2009 at the TUC Annual Conference at the Liberty and Unite joint Fringe event: 'Defending the Human Rights Act'.

offences could strengthen the efficacy of the GLA's efforts to protect workers from exploitation.¹⁰

11. Forced labour and servitude in the UK is unfortunately not that unusual. In fact we know of at least three cases that may be taken against the UK before the European Court of Human Rights for possible breaches of Article 4. There are many more that go undetected and where victims are unable to seek assistance. It is telling, for example, that the Poppy Project, which ran a pilot project investigating the prevalence of trafficking for labour exploitation, turned victims of forced labour away from their services when they were being held in situations of slavery or servitude but had not been trafficked in the UK.¹¹ While it is certainly understandable that a project with a specific mandate and limited funding should confine itself to helping only those who are victims of trafficking, their experience makes it clear there are extremely vulnerable victims who have not been trafficked in dire need of protection who are falling through the gaps. We set out below just a few of these many real-life instances:¹²

Case Study One

M fled her home country of Sierra Leone after experiencing sexual violence. A relative in the UK offered to help her get travel documents to travel to the UK and to find her work and help her continue her schooling. She was unaware that it was illegal to enter or work without official authorisation. M travelled to the UK and shortly after arrival she started work as a domestic worker for one of the relative's wives. She was not paid as she was told she had to pay off her travel debt and her travel documents were taken from her. Later, through an agent, her relative organised for M to work as a carer for an elderly woman with a degenerative condition. She was required to work 7 days a week with one afternoon's leave per month. She was on call 24 hours a day. Her wages were paid directly to the agent who passed half of the money on to her relative. Although she was told that she would receive a monthly salary of £850 she instead received between £20 and £40 at irregular intervals, mainly from her relative on her monthly afternoon's leave. At other times she received nothing at all. Although the family she was working for were not abusive to

¹⁰ See minutes of the GLA Board meeting held on 7 October 2009 available on the GLA website, www.gla.gov.uk.

¹¹ See Poppy Project, 'Operation Tolerance': Trafficking for Forced Labour Pilot, 18 December 2008.

¹² Some minor identifying facts have been changed to protect the identity of victims of forced labour.

her apart from the long hours she was expected to work, as her relative had warned her to fear all authorities and the outside world she hardly ventured outside the house. Her relative nurtured in her a fear that she would be deported. Once the family she was working for realised she had no legal right to work in the UK M returned to live with one of her relative's wives for a short period of time. Here she was watched constantly and not allowed to leave the house unescorted. She eventually escaped yet the police failed to prosecute her relative or the agent. There was no offence of forced labour with which to charge them and as she was complicit in her transit to the UK the section 4 anti-trafficking offence was not applicable.

Case Study Two

In May 2008 the GLA discovered what they classified as "a disgraceful story of forced labour in 21st century Britain". Mainly Polish migrant workers were being paid less than the minimum wage to pick flowers throughout the UK. The workers were threatened with massive fines if they left their employment before the end of their contract, which would be recovered from the workers or their families in their home country. They were made to sleep in sub-standard accommodation (with not enough beds or toilets and where the kitchen facilities had serious hygiene concerns and fire hazards). Workers were transported in unsafe vehicles for which deductions were made to their wages and charged for the protective clothing needed to carry out their job. The GLA revoked the relevant gangmaster's licence but criminal proceedings for an offence of forced labour have not been able to be brought.¹³

Case Study Three

E worked for Z as a domestic worker in Tanzania. Z came to the UK in order to have surgery and brought E to assist her. While Z returned to Tanzania one week later, E was required to remain at Z's parent's house in London. She was made to work as a domestic worker performing tasks from 7am to 10pm every day of the week. She was not paid, was made to sleep on the kitchen floor and given stale bread and tea to eat. She was not allowed to leave the house other than to attend church services on Sunday and her passport was withheld. E spoke only Swahili. She was eventually able to escape only after befriending another Swahili speaker at her church. After a reluctant police investigation the CPS decided not to press any charges on the basis that trafficking under section 4 of the *Asylum and Immigration (Treatment of Claimants etc) Act 2003* could not be made out. E was awarded

¹³ See GLA Press Release, 7 May 2008, 'Forced labour at 4p a bunch'.

£58,000 in Employment Tribunal proceedings but to date it has not been possible to enforce the award.

12. These cases are just a few examples of forced labour in the UK. While domestic servitude is one of the best documented forms in the UK (domestic workers assisted by a London charity¹⁴ report the following abuses: physical abuse 26%, psychological abuse 72%, no time off 70%, not allowed out of the house 62%), cases have been reported in other areas such as agriculture, factory work, food processing and packaging, cleaning and hospitality. Despite there being some common law, employment law and other regulatory offences that can apply in some situations, it is clear that prosecutions are not being brought to cover the specific situation of forced labour. False imprisonment is an offence under the common law and has, on occasion, been used to prosecute those who have held others in slavery like conditions where false imprisonment can be proven. However this offence does not reflect the gravity of the crime of modern day slavery and does not adequately deal with all situations where a person is being held in servitude or where a person is subjected to forced or compulsory labour. Attached to this briefing are two opinions from Sir Ken Macdonald QC, the ex-Director of Public Prosecutions, and Helen Mountfield, both of Matrix Chambers, which confirm the clear gap in the current law. The Opinion also explains that even in situations where there may be a trafficking element involved, it is often extremely difficult to prove the requisite intention. As the European Experts Group on Trafficking in Human Beings said in 2004:

From a human rights perspective, there is no reason to distinguish between forced labour involving “illegal migrants”, “smuggled persons” or “victims of trafficking”... States should criminalize any exploitation of human beings under forced labour, slavery or slavery-like conditions, in line with the major human rights treaties that prohibit the use of forced labour, slavery, servitude etc. If such policies were followed, then many of the current confusions of the trafficking definition – whether a case was smuggling or trafficking, whether a case was trafficking or forced labour and whether a trafficked person was perceived as “innocent” or “guilty” would become redundant. By policymakers concentrating primarily on the forced labour outcome the Trafficking Protocol can overcome its current definitional and practical operational difficulties and

¹⁴ The London based charity is Kalayaan (see: www.kalayaan.org.uk).

*has the potential of a tool to more effectively tackle the human rights violation of trafficking in human beings.*¹⁵

13. Not only is there no law in the UK that properly governs the very serious problem of forced labour in situations not involving trafficking, but even when trafficking has occurred, prosecutions are not taking place because of difficulties in proving the trafficking element (despite it being a clear-cut case of forced labour). In light of all this it is vitally important that Parliament urgently create a statutory offence criminalising the holding of a person in servitude and subjecting a person to forced or compulsory labour. This would lead to better protection from this crime in line with the UK's obligations under international law and would also send out a strong message to perpetrators that they will no longer be immune from punishment. The amendment proposed below would create two new offences, namely one of holding a person in servitude (a form of modern day slavery) and the other subjecting a person to forced or compulsory labour. The first offence is intended to be a more serious offence and thus subject to a greater penalty (being the same maximum penalty as that applicable to trafficking). The offence of forced or compulsory labour, while still extremely serious, is of a lower order and has therefore a lower maximum sentence. It will be up to the courts, if a person is found guilty of an offence, to determine the appropriate level of sentencing, taking into account all aggravating factors. The age and vulnerability of a person forced into such a situation would be likely to be considered by a court in sentencing. A person who is guilty of holding someone in servitude will also be guilty of subjecting that person to forced or compulsory labour and it will be up to prosecutors, on the basis of the evidence before them, to decide which offence to prosecute.

14. The amendments to the Coroners and Justice Bill are subject to clause 170 of the Bill which provides that subject to anything else in the Bill, the Bill, when it becomes an Act, will apply only to England and Wales. Because of issues of devolution we have not proposed applying this offence to Scotland and Northern Ireland. However, it is clear that the United Kingdom as a whole must comply with the obligations of Article 4 of the ECHR and victims of forced labour should be protected throughout the UK. We therefore urge the Government to ensure that these proposed offences apply throughout the whole of the UK.

¹⁵ European Experts Group on Trafficking in Human Beings, *Draft Report. 26 October 2004. Consultative Workshop Framework of the EU Forum for the Prevention of Organised Crime*. Brussels, at page 9

Proposed New Forced Labour Amendment:

To move the following Chapter—

‘Chapter 4 Servitude and Forced or Compulsory Labour

Servitude

- (1) A person commits an offence if he or she holds another person in servitude.
- (2) For the purposes of this section, a person holds another person in servitude if he or she severely restricts that person’s freedom of movement and choice of residence and subjects the person to forced or compulsory labour.
- (3) In this section, subjecting a person to forced or compulsory labour has the same meaning as in section [*forced or compulsory labour*].
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Forced or compulsory labour

- (1) A person (A) commits an offence if he or she subjects another person (B) to forced or compulsory labour.
- (2) A subjects B to forced or compulsory labour if he or she compels B, by physical or other means, to undertake work or service in circumstances where A knows, or ought to know that—
 - (a) B is not freely consenting to perform the work or service; and
 - (b) B has been or is being threatened with harm if he or she does not perform the work or service.
- (3) In this section B is to be taken not to have consented to perform work or service if the consent was obtained through deception, fraud or coercion or if B is performing the work or service under debt-bondage.

- (4) In this section forced or compulsory labour does not include—
- (a) work or service normally required of a person who is under detention because of a lawful court order or who, under a lawful court order, has been conditionally released from detention or ordered to perform work in the community;
 - (b) work or service required because of an emergency threatening the life or well-being of the community;
 - (c) work or service which forms part of normal civic obligations.
- (5) In determining if A has subjected B to forced or compulsory labour the indicators that may be taken into account include that A—
- (a) subjected B or a member of B's family to physical violence or threatened B or a member of B's family with violence;
 - (b) took advantage of B's vulnerability;
 - (c) withheld wages or made excessive deductions of wages or imposed financial penalties on B or a member of B's family;
 - (d) retained, and refused to return, B's passport or other form of identification;
 - (e) deprived B of adequate food, shelter or other necessities of life;
 - (f) threatened to inform immigration officials of B's immigration status or prevented B from seeking to obtain a different immigration status.
- (6) To avoid doubt—
- (a) the indicators listed in subsection (5) are not exhaustive of the factors that may be taken into account in determining if A has subjected B to forced or compulsory labour;
 - (b) A may be taken to have subjected B to forced or compulsory labour even if B previously worked for A in conditions that did not amount to forced or compulsory labour.
- (7) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.'