

Britain's Modern Slavery Act: World-leading or a Timid Start?

Written by Gary Craig

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GARY CRAIG, APR 8 2015

Britain's New Anti-slavery Initiative

On March 26 2015, the British Parliament enacted the Modern Slavery Bill, described by the lead-Parliamentarian Home Secretary Teresa May, as world-leading. Whilst this claim, in the context of an impending General Election might seem slightly hyperbolic, given that several European countries – such as Finland and the Netherlands – have already introduced many of the aspects of the Act such as Anti-Slavery Rapporteurs, as required by the Palermo Protocol, and the final form of the Act left many commentators and lobbyists disappointed at the exclusion or watering-down of key clauses, there is no doubt that it has placed the issue of modern slavery on the British political agenda and introduced some important policy and practice changes which will provide leverage for campaigners in the years to come. This article reviews the history and context of the Act, summarises its key provisions and points to some significant areas for international cooperation.

The Act arrived more than two hundred years after William Wilberforce led the UK parliamentary campaign to abolish the Transatlantic Slave Trade. It is only in the last few years however that British parliamentarians woke up to the fact that slavery still existed, not just, as many thought, on the other side of the world in exploitative or poorly-regulated labour markets, or in autocratic dictatorships, but on their own doorstep. Disbelief in the existence of modern slavery, in all its forms, was widely shared: as Archbishop Desmond Tutu, no stranger to exploitation, put it in 1999, 'Slavery ... I didn't know about all these forms that existed. I think it's largely because we aren't expecting it. It is hidden.'

The British government was initially reluctant to endorse all aspects of the Palermo Protocol, the legal instrument established by the United Nations in 2000 to 'prevent, suppress and punish trafficking in persons, especially women and children', supplementing the United Nations Convention against Transnational Organised Crime, and followed in 2005 by the Council of Europe Convention on Trafficking in Human Beings. Questions in the UK parliament revealed considerable ignorance of the scope and scale of trafficking; estimates of those involved were very vague and, as it later turned out, hopelessly undercounted the actual numbers involved. One estimate in the early 2000s from the then Minister for Equality Harriet Harman suggested a figure of several hundred: the most recent official estimate, itself likely to be a significant understatement, is in the region of 13,000 people in the UK subject to some form of modern slavery.

Evidence of Modern Slavery Grows

As evidence grew, supported by growing awareness of the related issue of forced labour (for example, the death of 23 Chinese cockle pickers working for a criminal gangmaster, who drowned off the English coast in 2004), the UK began to move on the issue. In 2007, a new organisation, the UK Human Trafficking Centre (UKHTC), staffed largely by serving police officers, was created to collect data, and report to government on the extent of human trafficking. By 2013, the scale of human trafficking emerged more clearly with the UKHTC, now part of the umbrella National Crime Agency, receiving almost 3000 referrals of alleged trafficking victims to its National Referral Mechanism (NRM), the official 'entry point' for victims seeking 'rescue' and rehabilitation. It also became clear that human trafficking, whether for sexual or labour exploitation, was the tip of a much larger modern slavery iceberg. The Joseph

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Rowntree Foundation, a charitable foundation sponsoring research into poverty and disadvantage published a report in 2007 into the scope of modern slavery in the UK [1], following this with a large research programme into forced labour [2]. It became clear that both the scale of modern slavery was much larger than presumed, and that its scope was much wider than had been understood, with new forms of slavery practice becoming apparent. These included the imprisonment of young (often Vietnamese) men by Chinese gangs to manage cannabis 'farms', the severe physical and sometimes sexual exploitation of domestic workers by wealthy businessmen/women and diplomats, forced begging and theft by young children trafficked or smuggled into the UK for this purpose and the suggestion, although as yet unsubstantiated, that some people had been trafficked into the UK for the purposes of organ harvesting [3].

The Appearance of the Bill

The growing clamour around issues of modern slavery, focused initially on the issue of trafficking for sexual purposes in particular, where a number of prominent NGOs had been active in lobbying government, alongside growing pressure from groups of MPs, finally led to the government agreeing to publish a draft Modern Slavery Bill, which appeared in December 2013. This Bill was very weak, leading to substantial criticism from virtually every side, notwithstanding the claim by government that it was intended to be world-leading in the fight against modern slavery. The draft Bill went through an unusually prolonged and detailed and highly critical process of scrutiny before reappearing in a final form before Parliament in June 2014. At the same time, many individuals, organisations, NGOs, researchers and others, took the opportunity to promote their own critiques. By the time the government's final Bill was published, it had been very thoroughly examined, the government's claim that it was world-leading looking fragile indeed.

Before a Bill becomes an Act of Parliament, it passes through a series of processes involving both Committee and Plenary debates in each House (Lords – Upper House – and Commons – Lower House). The final debates took place in the week running up to the point at which Parliament was to be suspended for the period of the General Election and this enabled the government to drive through some clauses to which opposition parties were very hostile: running the debates right up to the deadline (literally to the day when Parliament ended) provided the government with the opportunity effectively to say 'you can have half a Bill or no Bill'. In the event, opposition parties in the Lords and Commons both settled for half a Bill: given that the Bill had all-party support in general, no-one was prepared to prevent it from being enacted.

Despite growing awareness of the much wider scope of modern slavery, most of the Bill remains focused on the issue of human trafficking [4]. Much of the early work of the Commons Committee debating the Bill focused on establishing the precise wording needed to encompass all the possible offences which might be involved, and how children in particular might be protected by its provisions [5]. One key argument has been about what form the precise protection for children might take with one suggested scheme, involving children being provided by the state with Advocates, to defend the best interests of the child, being piloted by an NGO [6]. Whilst the issue of trafficking remains very central to the Bill, this has essentially focused almost entirely on trafficking for sexual exploitation of adults and children (those defined by the UK to be under 18). This limited the time available to debate other aspects of modern slavery.

The Focus on Trafficking for Sexual Purposes

During discussion of the Bill, the issue of trafficking for labour exploitation, and of forced labour (which can occur whether or not trafficking is involved) received far less attention. Although forced labour was made a freestanding criminal offence in 2009 [7], thus technically detaching it from the issue of trafficking, the number of cases brought before the courts remained very low and in one notable case, Operation Ruby, what was a clear-cut and very well-prepared case of forced labour was thrown out by the judiciary who had, it seemed, a very limited understanding of how forced labour worked, the judge arguing that if people were free to move around, they could not be regarded as being enslaved. This completely failed to understand the nature of psychological, financial or emotional compulsion. One important victory was won with the government finally agreeing to include a clause requiring companies to take some responsibility for exploring whether slavery might be found in their supply chains [8]. The Act in its final form

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indicates a series of issues which companies with an annual turnover above a threshold (which has yet to be determined) would be required to include in their anti-slavery statements on a website. Contrarily, the government failed to respond to very strong and prolonged demands from inside and outside Parliament to protect overseas domestic workers from the abuse they suffer at the hands of wealthy employers.

There has also been substantial pressure to extend the remit (and thus the resources) of the Gangmasters Licensing Authority from its current narrow focus on three industrial sectors to many more (or even the whole of the labour market), which would probably require it to move its departmental home again. At present the GLA is only able effectively to investigate a small fraction of possible forced labour cases. The Act requires the government to complete a thorough review of the scope of the GLA within a year of its enactment, which many hope will lead to a widening of its remit and increased resources. The Act reflects a substantial amount of unfinished business, some of it explicit as noted above, some of it implicit or contested. There is little doubt that it will be considerably less than 200 years before it is subject to further scrutiny and revision.

International Cooperation?

The Act now provides opportunities for international cooperation although in some cases this cooperation has been underway for a while. Clearly, the Anti-Slavery Commissioner can liaise with his continental counterparts who, with some years experience under their belts, will have much to say about what works in terms of promoting good practice as well as identifying research and guidance needing to be developed. Some police forces, particularly the London-based Metropolitan Police force, have been actively promoting joint working with their counterparts in sending countries involved in trafficking such as Rumania. Many NGOs in the UK, such as ECPAT [9], have also a good track record in working with their counter-parts in sending countries to share experience and mount campaigns against human trafficking, particularly of children. In the area of forced labour, the UK-based Gangmasters Licensing Authority [10] has developed a very positive reputation for the work it has done, generally with very limited resources, in identifying illegal gangmasters. In this instance, it seems likely that there will be a reverse flow of intelligence as other countries are able to access the knowledge and procedural systems of the GLA and apply them to their own country experience. There will also be considerable scope for professionals in the field of child protection in the UK to make use of the experience of other countries in developing effective systems in the field of trafficking. There is still considerable concern about the effectiveness of the National Referral Mechanism. Although the review of the NRM came up with many sensible suggestions, there remains considerable ignorance at ground level about its operation and how to make use of it and there will need to be extensive guidance at a number of levels, for example to ordinary police officers, childrens' services workers and even the judiciary in terms of how to spot signs of trafficking or forced labour. It will also repay the Anti-Slavery Commissioner to monitor the trends in modern slavery across the world and particularly in the industrialised comparator countries. It is clear that trafficking for labour exploitation is likely to become numerically more significant in many countries than trafficking for sexual exploitation. This will confront many countries, who pride themselves on having flexible (i.e. deregulated) labour markets with a serious political challenge since it is clear from evidence across the world that the greater the level of deregulation, the greater the risk of forced labour and labour exploitation more generally occurring [11]. This may explain the UK government's reluctance to become wholeheartedly involved in the work of the International Labour Organisation which has been reviewing and improving its understanding of forced labour indicators and the need for protection of specific groups of workers over the past few years.

Notes

[1] G. Craig, M. Wilkinson, A. Gaus, A. Mcquade and K. Skrivankova (2007) *Modern slavery in the UK*, York: Joseph Rowntree Foundation.

[2] See www.jrf.org.uk/research/forced-labour: for example, A. Geddes, G. Craig and S. Scott (2013) *Forced Labour in the UK*, York: Joseph Rowntree Foundation.

[3] Organs such as livers and kidneys are removed under compulsion or duress of some kind (for example to settle cases of debt bondage), often in dangerous contexts, for sale to wealthy people requiring transplants.

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[4] This is rather more the case in Scotland where the Scottish government is promoting a separate Bill to a more leisurely timetable, the Scottish elections not being due at the same time as the UK General Election, and even more so in Northern Ireland where an anti-trafficking Bill has now been enacted in a manner which leads many to question the motives of the private member (Lord Morrow) who sponsored it, much of the Bill being given over to discussion of a law criminalising the payment of money for sex rather than trafficking per se.

[5] This is important as the UK judiciary remains largely very ill-informed about the nature of modern slavery and has often either failed to recognise the seriousness of offences or regarded victims of trafficking or forced labour as criminals. The government is now committed to recognising victims as just that.

[6] This is one of several initiatives the government took whilst the Bill was still being debated. Another was to create a Modern Slavery Unit within the Home Office; yet another to move departmental responsibility for the Gangmasters' Licensing Authority, which scrutinises businesses for evidence of forced labour and issues licences to agencies supplying labour to companies, from the agricultural department (DEFRA) to the Home Office; a fourth to review the NRM in light of the scathing critique developed by many organisations (see the reports produced by the Anti-Trafficking Monitoring Group); and a fifth, to create the post of Anti-Slavery Commissioner. This role, essentially that of a national rapporteur, was recommended by the Council of Europe to be an independent one but, although the Act alludes to an Independent Commissioner, it is far from clear that the Commissioner can work free from government interference. The designate Commissioner, Kevin Hyland, a former senior police officer, for example, reports to the Home Secretary who can redact his reports, rather than directly to Parliament. The post was advertised before being debated in Parliament which smacked of a government determined to get its own way.

[7] In a clause in the Coroners and Justice Act 2009.

[8] See the report by J. Allain and colleagues on this issue, available through the JRF website, see footnote 2. Perhaps surprisingly, some big businesses (including, for example, supermarkets and hotels) supported further regulation, arguing that unscrupulous companies, using forced labour, would be able to price their goods lower, thus taking a greater market share from what they argued were more responsible companies.

[9] ECPAT is part of a network of similarly named organisations across the world which campaign and work with child victims of trafficking.

[10] At www.gla.gov.uk

[11] See Waite, L., Craig, G., Lewis, H. and Skrivankova, K. (eds.) (2015 forthcoming), *Vulnerability, exploitation and migration*, Palgrave: Basingstoke.

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