

Public consultation

Draft Modern Slavery Strategy 2021/22

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Centre*

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1. Introduction and Context

The existence of modern slavery and various forms of exploitation taking place in Northern Ireland is an ongoing concern. The Human Rights Centre at Queen’s University Belfast welcomes the opportunity to contribute to the consultation by the Department of Justice on the ‘Draft Modern Slavery Strategy 2021/22’.¹

1.1. Modern Slavery in Northern Ireland: Context

While the existence of modern slavery in Northern Ireland is a well-known fact and is an area of great concern, improvements in tackling this invisible crisis in Northern Ireland can still be made. Jean Allain, a leading expert on slavery and modern slavery, has observed that:

As the Twentieth Century turned to the Twenty-First Century it should be recognised that slavery and lesser servitudes had, by and large, been both abolished in law and ended as a State-sanctioned institution. Yet, it became apparent as the Cold War era gave way to an era of neoliberal global economics that human exploitation, while outlawed, was flourishing. Slavery, forced labour, debt bondage and other types of exploitation had remerged, this time at the retail level, as an illegal activity benefiting private actors – individuals and businesses.²

Due to the ‘hidden’³ nature of this crime, the repercussions of this can result in difficulties identifying and assessing the seriousness and magnitude of modern slavery in Northern Ireland. Specific statistics will be given in the following paragraph; however, it must be noted that the Northern Ireland Modern Slavery Strategy 2019/2020 Report⁴ explicitly stated that the reason why numbers may fluctuate from year to year, or the reason for why the number of exploitation type offences may change from year to year is due to Northern Ireland being a ‘small jurisdiction in terms of both geography and population,

¹ Department of Justice Northern Ireland, ‘Draft Modern Slavery Strategy 2021/22’, 16 October 2020.

² Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Brill 2012) 106.

³ Criminal Justice Inspection Northern Ireland, ‘Modern Slavery and Human Trafficking: an inspection of how the criminal justice system deals with modern slavery and human trafficking in Northern Ireland (Criminal Justice Inspection Northern Ireland 2020) 1.1 <<http://www.antislaverycommissioner.co.uk/media/1481/cji-northern-ireland-modern-slavery-human-trafficking-inspection-report.pdf>> accessed 7 December 2020.

⁴ Department of Justice, ‘Northern Ireland Modern Slavery Strategy 2019-2020’ (April 2019) <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/modern-slavery-strategy-2019-2020.pdf>> accessed 7 December 2020.

with relatively low numbers of victim referrals’.⁵ *Low numbers of victim referrals, however, should not be assumed as meaning that the prevalence of modern slavery in Northern Ireland is low.*

A further issue in relation to this may be the absence of legislation concerning the ‘Duty to Notify’ in Northern Ireland which is present in England and Wales. ‘Duty to Notify’ provisions place a statutory duty on public authorities to notify the Home Office of any suspected victims of the crime.⁶ Due to the recent suspension of the Northern Ireland Assembly until January 2020, provisions in this jurisdiction have not been implemented.⁷ This concern was voiced in the recent 2020 Northern Ireland Criminal Justice Inspection Report.⁸ This report shares these concerns and *recommends that Duty to Notify provisions are considered and steps taken to ensure their implementation in legislation by the Department of Justice.*

Modern slavery can include a range of forms of exploitation such as forced labour and crime, sexual exploitation, and organ harvesting.⁹ Typically, the type of exploitation that an individual experiences depends on variables such as sex and age.¹⁰ As shown by the statistics below, while victim referrals, modern slavery searches, and evaluations of suspected cases have slowly been rising over recent years, these numbers are not an accurate representation of the current modern slavery status in Northern Ireland. Compared to the rest of the UK, Northern Ireland has shown the lowest number of referrals and conviction rates in the last few years. For example, the conviction rate in Northern Ireland between 2016 and 2020 has been 50%, compared to the conviction rate of 65.1% (2017/2018) and 68% (2018/2019) in England and Wales.¹¹

The following statistics are available and give a brief overview of the condition of modern slavery in Northern Ireland. In 2017/18, the Modern Slavery and Human Trafficking Unit (MSHTU) of the Police Service of Northern Ireland (PSNI) ‘investigated 36 potential victims of modern slavery and human trafficking who were referred to the National Referral Mechanism (NRM)’.¹² In the same year, five

⁵ *ibid* 2.19.

⁶ Home Office, ‘2020 UK Annual Report on Modern Slavery’ (October 2020) s. 2d.08 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927111/FINAL-2020_Modern_Slavery_Report_14-10-20.pdf> accessed 7 December 2020.

⁷ *ibid* s. 2d.14.

⁸ Criminal Justice Inspection Northern Ireland (n 3) 2.51

⁹ Department of Justice (n 4) 2.7.

¹⁰ *ibid*.

¹¹ Criminal Justice Inspection Northern Ireland (n 3) 4.36.

¹² Department of Justice (n 4) 2.10.

people were prosecuted and two were ‘convicted of human trafficking offences’.¹³ In 2018/19, the MSHTU potential victims reported to the NRM increased to 59, with three people prosecuted and no convictions of human trafficking offences.¹⁴ In 2019/2020, there were no prosecutions and two convictions of human trafficking and exploitation.¹⁵ In 2018 and 2019, 52 and 91 NRM referrals were made in Northern Ireland, respectively.¹⁶ These numbers represent a staggering <1% of the total UK NRM referrals made.¹⁷

In 2015, 2016, 2017, 2018, and 2019, the most common exploitation types were labour and sexual exploitation, followed by domestic servitude and criminal.¹⁸ All referrals of domestic servitude involved adults, whereas the remaining types were a mix of adult and children victims, with a higher adult ratio. Fourteen of the referrals made in 2019 were placed under ‘unknown exploitation’.¹⁹ Support statistics are also available. Support has been offered to victims in Northern Ireland by charities such as ‘Migrant Help’ and ‘Belfast & Lisburn Women’s Aid’.²⁰ In 2016/2017, a total of four males and 16 females sought support; in 2017/2018, 10 males and 17 females sought support; and in 2018/2019, 16 males and 22 females sought support.²¹ These statistics show a steady increase in the number of victims seeking support from organisations and charities.

A conclusion drawn by the Criminal Justice Inspection Northern Ireland based on this data was that: ‘The low number of cases meant that no firm conclusions could be drawn from the data’.²² ***This evidently poses a problem in that if no conclusions may be drawn based on the available statistics coming from the NRM, the Northern Irish stance on modern slavery continues to require more critical reflections regarding steps moving forward.***

The Coronavirus (COVID-19) pandemic has greatly impacted the victims of modern slavery. In order to further support the victims of modern slavery during this pandemic, under section 18(9) of the 2015

¹³ *ibid.*

¹⁴ *ibid* 2.11.

¹⁵ Criminal Justice Inspection Northern Ireland (n 3) 4.35 (table 14).

¹⁶ *ibid* 4.9 (table 3).

¹⁷ *ibid* 4.9.

¹⁸ *ibid* 4.23 (table 5).

¹⁹ *ibid.*

²⁰ Under section 18 of the 2015 Act, the Department of Justice is required to provide support to modern slavery/human trafficking victims. Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

²¹ Department of Justice (n 4) 2.14.

²² Criminal Justice Inspection Northern Ireland (n 3) 4.36.

NI Act,²³ Justice Minister Naomi Long has extended support periods to victims.²⁴ While this extended support is a good start, COVID-19 has exacerbated the ‘hidden’ element of this crime even further through the restrictions that Northern Ireland, and the world, have faced. This fact has been expressed by the Home Office, where it is stated online that: ‘Modern slavery is a harmful and hidden crime and its victims may be especially isolated and hidden from view during the coronavirus outbreak’.²⁵ Victims who are not currently working or have little to no contact with others due to lockdowns may be limited to contact with only their trafficker. *Such consequences may have resulted in fewer NRM referrals from the month of March 2020 onwards. This report recommends that the impact of Covid-19 and ongoing restrictions are kept under review as a matter of priority with regards to the knock-on effect to victims of modern slavery.*

1.2. Modern Slavery in Northern Ireland: Case Studies

As a trend across the globe, we see a dominance of either labour or sexual exploitation.²⁶ Forms of exploitation in Northern Ireland are relatively evenly split between the two groupings.²⁷ *One particular element which this report argues is missing from the analysis and the Draft Modern Slavery Strategy 2021/22 is a greater focus and analysis on the gendered impact of modern slavery in Northern Ireland.* This is important information which needs to be clarified and specified, as it can have a substantial impact on identifying and recognising trends, methods of trafficking and the support services required.²⁸ As noted above, there is a global trend reflecting the dominance of female victims in sexual exploitation and male victims in labour exploitation. It is vital to understand the typology of victims in Northern Ireland. This would enhance the three strands of strategic priorities within the Draft Modern Slavery Strategy for 2021/22; keeping well-informed of trends so that modern slavery can be best prevented, the victims can be best protected, and the justice system can develop best practice to prosecute offenders.

²³ NI Act (n 20).

²⁴ Home Office (n 6) 3.23.

²⁵ Home Office, ‘Guidance: Coronavirus (COVID-19): support for victims of modern slavery’ (2020) <<https://www.gov.uk/government/publications/coronavirus-covid-19-support-for-victims-of-modern-slavery/coronavirus-covid-19-support-for-victims-of-modern-slavery>> accessed 9 December 2020.

²⁶ United Nations Office on Drugs and Crime, ‘Global Report on Trafficking In Persons 2018’ (United Nations 2018) <https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf> accessed 14 December 2020.

²⁷ See Criminal Justice Inspection Northern Ireland (n 3) 4.23 (table 5) for an overview of the breakdown.

²⁸ See European Institute for Gender Equality, ‘Gender-Specific Measures In Anti-Trafficking Actions’ (Publications Office of the European Union 2018) <https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/read_the_report_gender-specific_measures_in_anti-trafficking_actions.pdf> accessed 14 December 2020.

The legal definitions of human trafficking, modern slavery and exploitation will be explored later in this paper. However, below will briefly explore what forms exploitation can take and how they impact individuals living here in Northern Ireland today.

Labour Exploitation

Offences which could come under the definition of labour exploitation are broad. The main identifier is the way an individual is treated, such as use of force or coercion, and, in particular, monetary remuneration (or lack thereof).²⁹ Victims may be kept in squalid conditions, subject to abuse and rarely, if ever, paid as traffickers could provide insufficient accommodation and sustenance instead. For example, an individual could be transported to an isolated rural location to work where they find themselves cut off from a larger community as offenders maintain control of their day-to-day life. Individuals could also work directly for offenders in businesses or on sites that the offenders own or control. It should, however, also be noted that individuals could be employed within a legitimate job with an employer who is not connected to the offender.

In Northern Ireland, the majority of those identified through the NRM system were victims of labour exploitation. Across the UK, a number of industries are being recognised as prone to labour exploitation such as nail bars and car washes. In November 2019 a car wash was inspected in Belfast³⁰ and another in January 2020 in Ballyclare.³¹ No charges were ultimately brought and no victims identified. What both cases, however, highlighted was the requirement of an appropriately nuanced approach to form trust between victims and authorities. *Authorities may also need to consider the involvement of other non-judicial actors when interviewing potential victims.* The section on victim support which follows will address this concern in greater detail.

Sexual Exploitation

The sexual exploitation of adults could include individuals being transported to established locations and kept there, inclusive of brothels or rooms in business premises such as massage parlours.³² Here they would then be forced to engage in sexual acts, and, like labour exploitation, they may have the

²⁹ For indicators see Home Office, 'Labour Exploitation: Spot the Signs' <<https://www.gla.gov.uk/media/3178/spot-the-signs-glaa.pdf>> accessed 6 January 2021.

³⁰ Eve Rosato, 'Belfast Car Wash Raided Over Human Trafficking Concerns' BBC (2019) <<https://www.bbc.co.uk/news/uk-northern-ireland-50578567>> accessed 14 December 2020.

³¹ Police Service of Northern Ireland, 'Multi-Agency Operation At A Hand Car Wash In Ballyclare' (PSNI Latest News, 2020) <<https://www.psni.police.uk/news/Latest-News/310120-multi-agency-operation-at-a-hand-car-wash-in-ballyclare/>> accessed 14 December 2020.

³² For indicators see UNDOC, 'Human Trafficking Indicators' <https://www.unodc.org/documents/human-trafficking/HT_indicators_E_LOWRES.pdf> accessed 6 January 2021.

majority, or all of their earning taken by the offender. Individuals do not need to be based in one location for sexual exploitation to take place. They may also be transported between multiple locations such as hotels, ‘pop-up’ brothels, client residences or simply different streets.

The increase in online services has increased the complexities and the growing challenge of addressing modern slavery. In September 2019, an investigation led to a man from the Belfast area being arrested on suspicion of ‘human trafficking for the purpose of sexual exploitation’, a woman from Antrim arrested on suspicion of ‘controlling prostitution, brothel keeping and money laundering’ and five men for paying for sexual services from Stewartstown, Carrickfergus, Banbridge, Newtownabbey and Omagh areas.³³ This demonstrates the range of offenders who engage in modern slavery.

Sexual exploitation, as with any form of modern slavery, can have serious implications on victims’ health. Severe weight loss, anorexia, unintended pregnancy, sexually transmitted infection, depression, anxiety, and suicidality amongst other health challenges can all be caused by sexual exploitation.³⁴ Therefore it is paramount to have nuanced strategies which can cohesively protect victims. *In addition to gender concerns raised above, this report recommends that specific support is given to the vulnerabilities of female victims of modern slavery. It is recommended that this is specifically addressed in future Draft Strategies in a similar manner to the objective of specialist support for child victims.*³⁵

Broader Critiques

This report will draw attention and details a number of critiques and limitations of the Draft Modern Slavery Strategy 2021/22. However, there are a few broader issues which ought to be mentioned. The figures presented within this report, the legislation assessed, and the success or failures mentioned are not abstract. The reality of the individuals who are represented cannot be ignored. The Draft Modern Slavery Strategy for Northern Ireland 2021/2022 does not efficiently provide a strategy which deals with the many nuances faced within Northern Ireland. The Draft Strategy recognises the need for specific approaches when engaging with children however it is arguably not expansive on their specific vulnerabilities, nor does it explicitly outline how they would need to be appropriately engaged with to

³³ Maurice Fitzmaurice, 'Prostitution Investigation Sparks Arrests Across Northern Ireland' Belfast Live (2019) <<https://www.belfastlive.co.uk/news/belfast-news/prostitution-investigation-sparks-arrests-across-17002299>> accessed 14 December 2020.

³⁴ Elizabeth Miller, Michele R. Decker, Jay G. Silverman, Anita Raj, ‘Migration, Sexual Exploitation, and Women’s Health: A Case Report From a Community Health Centre’ (2007) 13(5) *Violence Against Women* 486-497.

³⁵ Draft Modern Slavery Strategy 2021/22 (n 1). Objective 2.3.3. notes ‘Provide specialised support to child victims of modern slavery that recognises their unique vulnerabilities’.

prevent further distress. *Particularly in reference to Objective 2.2.3, there is no strategy for preventing further victimisation children may face from individuals within the support system and no strategy to support children to reintegrate with peers as part of the recovery process. Further, this report notes that there is insufficient clarity regarding how different forms of exploitation would require different approaches, specifically how gender across the spectrum of exploitation practices will have an impact on the case.*

1.3. Northern Ireland Draft Modern Slavery Strategy 2021/22

This section looks at the proposed actions outlined in the Draft Modern Slavery Strategy 2021/22 critiquing and expanding upon the set proposals. We break down the strategy into tangible, actionable components set around the strategic priorities of Pursue, Protect and Prevent.

Pursue

The pursue component ‘enhances and monitors the operational response to pursue and disrupt offenders and bring them to justice’.³⁶ This requires enhanced monitoring, robust reporting mechanisms, development of surveillance strategies, evaluation of supply chains and enhanced training of the public to recognise the signs of modern slavery. This component focuses on improving the operational and strategic approach to identifying and prosecuting offenders.

Protect

The protect component of the strategy aims to increase ‘the identification of victims of modern slavery and to provide potential victims with appropriate, effective support and protection to help them recover.’³⁷ Victim support is one of the most crucial aspects of helping those involved in slavery recover and to help understand the ways in which modern slavery exists today. This component requires increased allocation of funding to organisations involved in providing healthcare, housing, legal aid and therapy to victims, as well as improving legalities and logistics around visa status, as many victims of slavery are non-citizens.³⁸ Specific attention is drawn to this aspect in the latter part of this report.

³⁶ Draft Modern Slavery Strategy 2021/22 (n 1) 1.7.

³⁷ *ibid* 1.8.

³⁸ Agnieszka Martynowicz and others, ‘The Nature and Extent of Human Trafficking in Northern Ireland NI Human Rights Commission (NIHRC)’ (Northern Ireland Human Rights Commission : Equality Commission for Northern Ireland

Prevent

The Prevent strategic aim refers to ‘developing and delivering awareness training across a range of relevant sectors in Northern Ireland’.³⁹ Raising awareness of the extent of modern slavery in Northern Ireland and how to respond, especially within sectors where it remains predominate such as construction⁴⁰ helps keep the Executive accountable through public pressure, while expanding the net of people who can spot and report modern slavery. The collaborative approach with the Organised Crime Task Force and various regional NGOs have helped to expand efforts to reduce modern slavery across sectors. Increased awareness and public campaigns such as ‘No More Traffik SPOT THE SIGNS’⁴¹ video and NI Direct informational Signs of Modern Slavery posters⁴² show a commitment in practice. *This report recommends that continuing efforts are made to ensure the visibility amongst relevant sectors and public awareness of this issue continues.*

Specific attention is directed to the strategic priorities in relation to definitions in Section 2.3, inclusive of recommendations for reform.

The Role of the Anti-Slavery Commissioner

As established by Section 4 of the Modern Slavery Act 2015 (MSA), the independent Anti-Slavery Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and the identification of victims.⁴³ The advisory role holds remit within all regions of the United Kingdom, encouraging constant liaison with each respective government and continuous examination of anti-slavery measures in place.

Although the creation of the Anti-Slavery Commissioner can be viewed as a positive step forward in combatting modern slavery, the former Anti-Slavery Commissioner has previously claimed that the government were reluctant to implement several recommendations and largely skimmed over frequent

2009) <<https://www.nihrc.org/uploads/publications/nature-and-extent-of-human-trafficking-in-northern-ireland-2010-ecni-nihrc.pdf>> accessed 13 December 2020.

³⁹ Draft Modern Slavery Strategy 2021/22 (n 1) 1.9.

⁴⁰ Antoinette Kennedy, ‘Tackling Modern Slavery | NILGA’ (Northern Ireland Local Government Association 2020) <<https://www.nilga.org/news/2020/may/tackling-modern-slavery>> accessed 13 December 2020.

⁴¹ No More Traffik, ‘No More Traffik SPOT THE SIGNS on Vimeo’ (Vimeo 2014) <<https://vimeo.com/109283004>> accessed 13 December 2020.

⁴² Department of Justice, ‘Modern Slavery Information Poster and Leaflet | Department of Justice’ (Justice, 18 October 2017) <<https://www.justice-ni.gov.uk/publications/modern-slavery-information-poster-and-leaflet>> accessed 13 December 2020.

⁴³ Modern Slavery Act 2015 (MSA) s 41.

reports.⁴⁴ While the issue of modern slavery cannot consistently be the government's main priority, it is essential that recommendations are reviewed and implemented as soon as possible.

Subsequently, a conclusion may be drawn that *the Anti-Slavery Commissioner's role is only as effective as the government allows it to be. The Commissioner may only review and raise issues of concern, but it is the government's duty to enforce legislative change and provide adequate funding to anti-slavery measures.*

⁴⁴ Amelia Gentleman, 'Ex-Commissioner condemns 'failing' UK approach to human trafficking' (The Guardian, 29th October 2019) <<https://www.theguardian.com/law/2019/oct/28/ex-commissioner-condemns-failing-uk-approach-to-human-trafficking>> accessed 1 January 2021.

2. Definitions

2.1. Defining Modern Slavery and Human Trafficking in International Law

The terms ‘modern slavery and human trafficking’ are often used interchangeably. The connection between the two is acknowledged, but what conduct, precisely, do these concepts cover? While ‘slavery’ has been prohibited in international law,⁴⁵ the concept of modern slavery, while frequently utilised in law, policy, and practice, is not clearly defined in international law. It has been argued that while, ‘there is no single definition of the scope and forms of modern slavery, international documents – along with contemporary policies, activist, and scholarly approaches – form a certain image of modern slavery’.⁴⁶ Nevertheless, ‘defining modern slavery in the modern world’ arguably ‘bedevils most writings on the subject.’⁴⁷ A notable attempt to provide clarity on the issue is the 2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery.⁴⁸ While Guideline 8 addresses the ‘Distinction between Slavery and Forced Labour’, the Guidelines do not speak to the distinction between slavery and trafficking. Moreover, the Guidelines are not binding; rather, they are an attempt to take a step in the direction of consensus and clarity as to the definition of ‘slavery’. This consensus is, however, yet to be realised.

In contrast to ‘modern slavery’, international law does contain an explicit definition of the related concept of human trafficking. That definition is contained within the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, herein referred to as the Palermo Protocol.⁴⁹ Of specific note is the fact that trafficking has been addressed in a criminal law context, largely dominated by a law enforcement approach. This approach has been the subject of criticism, specifically in relation to the argument that this is to the detriment of protection-guarantees for trafficked persons. Hathaway, for example has argued that, ‘the fight against human trafficking is more fundamentally in tension with

⁴⁵ Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253; 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3.

⁴⁶ Janne Mende, ‘The Concept of Modern Slavery: Definition, Critique, and the Human Rights Frame’ (2019) 20 *Human Rights Review* 229.

⁴⁷ Orlando Patterson, ‘Trafficking, Gender and Slavery: Past and Present’ in Jean Allain (ed) *The Legal Understanding of Slavery: From the Historical to the Contemporary* (OUP 2012) 322.

⁴⁸ ‘The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery’, available at: <http://glc.yale.edu/sites/default/files/pdf/the_bellagio-harvard_guidelines_on_the_legal_parameters_of_slavery.pdf> accessed 18th December 2020.

⁴⁹ 2237 UNTS 319 (Palermo Protocol), art 3.

core human rights goals than has generally been recognized.’⁵⁰ In the years since the adoption of the Palermo Protocol definition, the importance of a human-rights based approach has continued to be emphasised,⁵¹ and indeed, takes a prominent role within the Council of Europe Convention against Trafficking in Human Beings (ECAT).⁵² Thus, States do not simply have an obligation to criminalise and prosecute trafficking offences, but also to take positive actions to protect rights.

It is in this vein that it is recommended that all three strategic priorities (pursue, protect and prevent) are given equal attention in the strategy moving forward. Within this report, concerns are raised (where applicable) regarding the Draft Modern Slavery Strategy 2021/22, and recommendations are made for potential reform.

As to the definition, the Palermo Protocol defines trafficking as:

‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) ‘Child’ shall mean any person under eighteen years of age.⁵³

⁵⁰ James C. Hathaway, ‘The Human Rights Quagmire of ‘Human Trafficking’ (2008) 49(1) *Virginia Journal of International Law* 1, 4. Although, see: Anne Gallagher, ‘Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway’ (2009) 49(4) *Virginia Journal of International Law* 789.

⁵¹ See e.g. UNOHCHR, ‘Human Rights and Human Trafficking’ (UN 2014). Also of note is the mandate of the UN’s Special Rapporteur on trafficking in persons, especially women and children’ most recently extended by UN Human Rights Council Resolution 44/4 (22 July 2020) UN Doc A/HRC/RES 44/4.

⁵² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) 197 CETS 1.

⁵³ Palermo Protocol (n 49) art 3.

The definition contains three elements, which must be cumulatively fulfilled for conduct to amount to human trafficking:

- **An act** (recruitment, transportation, transfer, harbouring or receipt of persons)
- **A means** (the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person)
- **A purpose** (at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs)

On the above definition, some important points ought to be noted. First, the purpose element is a *mens rea* (mental) element.⁵⁴ This means that, according to the Palermo definition, conduct may amount to trafficking where exploitation was intended, even where it has not actually taken place. In this sense, it can be helpful to distinguish trafficking from the exploitation itself. Stoyanova describes it as ‘a deceptive or coercive process that could potentially lead to exploitation’.⁵⁵

Second, while trafficking often takes place in the context of migration or travel, neither are *required* for conduct to amount to trafficking. As outlined above, the ‘act’ element contains a number of actions, some connected to travel and others not. To illustrate, consider the following example: an individual may be recruited through abuse of a position of vulnerability to provide sexual services online. While an act (recruitment), means (abuse of vulnerability), and a purpose (exploitation) arguably exist here, travel is not involved. Thus, while trafficking and travel often occur together, and while migration may, in certain circumstances, be seen as a risk factor for trafficking, it is not a requisite element of trafficking.

Finally, it should be acknowledged that, despite the existence of an internationally accepted definition of human trafficking, and the broad consensus which this has enshrined, debate still persists as to the conceptual boundaries of trafficking.⁵⁶ Moreover, discussion continues as to the requirement of a

⁵⁴ Anne T. Gallagher, *The International Law of Human Trafficking* (CUP 2010) 34ff; UNODC, ‘Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children’ (UNODC 2004) available at: <https://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf> accessed 5 December 2020 para 33.

⁵⁵ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (CUP 2017) 33.

⁵⁶ *ibid.* See also Jean Allain, ‘No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol’ (2014) 7 *Albany Government Law Review* 111.

transnational and organized crime element.⁵⁷ In the European context, a recent Grand Chamber ruling of the European Court of Human Rights is of significance. In *S.M. v. Croatia*, the Court explicitly noted that:

It is not possible to characterise conduct or a situation as an issue of human trafficking under Article 4 of the Convention unless the constituent elements of the international definition of trafficking (action, means, purpose), under the Anti-Trafficking Convention and the Palermo Protocol, are present. In this connection, from the perspective of Article 4 of the Convention, the concept of human trafficking relates to both national and transnational trafficking in human beings, irrespective of whether or not connected with organised crime.⁵⁸

At the regional level, the Palermo definition is replicated in the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). Importantly, ECAT's explanatory report notes that 'Parties would not be obliged to copy *verbatim* into their domestic law the concepts in Article 4, provided that domestic law covered the concepts in a manner consistent with the principles of the Convention'.⁵⁹ This section has demonstrated where clarity does exist in relation to the concepts of modern slavery and human trafficking. However, it has also demonstrated that gaps, disagreements, and arguably even confusion remains as to what conduct precisely falls within the scope of each of those terms. Thus, the continued pursuit of clarity as to the precise parameters of the trafficking definition must continue, at regional and international levels, and States Parties to the Palermo Protocol and ECAT should engage in such a pursuit. Further, clarity on both the meaning and usefulness of the term 'modern slavery' ought to be pursued. At the same time, where clarity *does* exist, States should ensure that their domestic law and policy reflects such clarity.

Turning then, to the situation in the UK generally, and Northern Ireland specifically, the following section will explore how these terms are defined within UK law, paying particular attention to the situation in Northern Ireland.

⁵⁷ See e.g. Marika McAdam, 'There's no human trafficking or migrant Smuggling without organised crime, the law says – and that matters' (OpenDemocracy, 26 February 2020) <<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/theres-no-human-trafficking-or-migrant-smuggling-without-organised-crime-the-law-says-and-that-matters/>> (accessed 13 September 2020).

⁵⁸ *S.M. v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 303(ii).

⁵⁹ Council of Europe, 'Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings' para 70.

2.2. Defining Modern Slavery and Human Trafficking in the UK

Within the UK, three main instruments are of note, each with its own geographical scope of application. Reference is made to each of the legislative instruments within the UK legal framework for the purposes of analysing the conceptual clarity of the legislation currently in place. Specific attention is then drawn to the Northern Irish provisions and recommendations are made to that effect in Section 2.3 relating to the Draft Modern Slavery Strategy 2021/22. These are:

- The Modern Slavery Act 2015 (MSA)
- The Human Trafficking and Exploitation (Scotland) Act 2015 (Scottish Act)
- The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (NI Act)

The Modern Slavery Act 2015 (MSA)

Turning first to the MSA: its implementation largely stemmed from the United Kingdom's failure to adequately criminalise all slavery offences as mentioned within Article 4 of European Convention of Human Rights (ECHR)⁶⁰ and a need for clarity surrounding current definitional debates of modern slavery.⁶¹ While its geographical scope extends mainly to England and Wales, some provisions do have application beyond this. For example, Section 37 relates to maritime enforcement powers in Northern Ireland.⁶²

Significantly, the MSA directly defines the offences of '[s]lavery, servitude and forced or compulsory labour' in accordance with Article 4 of the ECHR.⁶³ Nevertheless, the MSA does not explicitly define the term 'modern slavery' itself. As will be clear below, the Northern Irish and Scottish instruments follow a similar approach.

'Human trafficking' is arguably less clearly defined within the MSA, which stipulates that: '[a] person commits an offence [of human trafficking] if the person arranges or facilitates the travel of another person with a view to V being exploited.'⁶⁴ Notably, some doubts may be raised as to whether the definition contained in international anti-trafficking instruments is fully reflected in domestic law. First, while actions within the 'act' element of the international definition are contained in the

⁶⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 4.

⁶¹ Jason Haynes, 'The Modern Slavery Act 2015: A legislative commentary' (2016) 37(1) *Statute Law Review* 33, 37.

⁶² MSA (n 43) s 37.

⁶³ *ibid* s 1.

⁶⁴ *ibid* s 2(1).

explanation of how travel maybe arranged or facilitated, these actions are connected to the travel itself.⁶⁵ For example, it remains unclear whether the ‘means’ element of the definition in the Palermo Protocol and ECAT is a necessary element within the offence of human trafficking under the MSA. This is something which has been raised by ECAT’s supervisory body, GRETA. GRETA notes that the ‘means’ element only appears with ‘one form of exploitation’ in Section 3(5) of the MSA.⁶⁶ In response, the UK government noted that, ‘the offence of human trafficking does not specify the ‘means’ by which the person must arrange or facilitate travel, but all of the means listed in the Convention could be taken into account when investigating or prosecuting offences’.⁶⁷

While arguably the MSA has not been entirely successful in remedying definitional debates, the structured and strategic approach towards tackling modern slavery should not be overlooked. One of the most helpful obligations is the recognition of the need for transparency within supply chains⁶⁸ which states that large businesses must publish reports, detailing the steps they have taken to ensure they do not engage in exploitation. Despite the lack of legal and financial repercussions for business which do not comply, it is conceivable that the threat of appearing immoral or indifferent to a subject such as modern slavery is enough to persuade large businesses to comply with anti-slavery regulations. Furthermore, the MSA is not ignorant towards victimisation and has provided a framework for their identification, protection and need to avoid secondary victimisation.⁶⁹ Importantly, the Secretary of State is obligated to issue guidance to authorities, illustrating the most vulnerable individuals, who are likely to fall victims of exploitation and ensuring that the right assistance is given to them.⁷⁰ It is vital that each victim of modern slavery is offered assistance based on their own circumstances, as often victims will need different forms of assistance from each other; this is pertinent in comparing domestic victims of slavery, as opposed to international victims. Further analysis and specific recommendations in relation to the Draft Modern Slavery Strategy 2021/22 are presented in the latter sections of this report on the issues of supply chains and adequate support for victims.

⁶⁵ *ibid* s 2(3).

⁶⁶ Group of Experts on Action Against Trafficking in Human Beings, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom’ (8 July 2016) GRETA (2016)21, para 262.

⁶⁷ *ibid.* para 262.

⁶⁸ MSA (n 43) s 54.

⁶⁹ Haynes (n 61) 36.

⁷⁰ MSA (n 43) s 49.

The Human Trafficking and Exploitation (Scotland) Act 2015 (Scottish Act)

The Human Trafficking and Exploitation Act (Scotland) 2015 is like the MSA insofar as it consolidated previous anti-slavery offences. Similarly, the Scottish legislation mirrors the MSA in its definition of ‘slavery, servitude and forced or compulsory labour’ thereby emphasising its accordance with Article 4 of the ECHR.⁷¹ Brown argues that since ‘ownership’ as mentioned within Article 4 ECHR is already a legally defined concept within Scots property law, no person can traditionally be convicted of ‘slavery’ by a Scottish Court.⁷² Although Brown accepts that a court may decide that an individual has exercised legal ownership over another, depriving the latter of their ‘person hood’,⁷³ the importance of using encompassing language when dealing with slavery offences is evident. The definition of human trafficking in Scotland is arguably more comprehensive than that of the MSA. Section 1 of the Scottish Act stipulates that: ‘A person commits an offence if the person: (a) takes a relevant action, and (b) does so with a view to another person being exploited.’⁷⁴ Importantly, ‘relevant action’ is explicitly defined and closely reflects the ‘act’ element in the international legal definition.⁷⁵ This is significant, since the definition under the Scottish Act does not require ‘travel’. In this way, it could be argued that the Scottish definition reflects international law more accurately than the MSA’s definition. Nevertheless, as with the MSA, the definition within the Scottish Act does not make explicit reference to the ‘means’ element contained in the Palermo and ECAT definitions.

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (NI Act)

Encouragingly, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, has been described as ‘world-leading’.⁷⁶ Consolidating several older pieces of legislation, the NI Act, like its counterparts across the United Kingdom, specifically defines the offences of ‘slavery, or servitude and forced or compulsory labour’ in accordance with Article 4 ECHR.⁷⁷ Significantly, human trafficking was viewed as a ‘phenomenon’ rapidly growing across Northern Ireland⁷⁸ and therefore, the need for a clarified definition became apparent in the drafting of

⁷¹ The Human Trafficking and Exploitation (Scotland) Act (2015) s 4 (Scottish Act); ECHR (n 60) art 4.

⁷² Jonathan Brown, ‘Servitude, slavery and Scots law: historical perspectives on the Human Trafficking and Exploitation (Scotland) Act 2015’ (2020) 40 (3) *Legal Studies* 353, 354.

⁷³ *ibid* 356.

⁷⁴ Scottish Act (n 71) s 1.

⁷⁵ *ibid* s 1(2).

⁷⁶ Jason Haynes, ‘Northern Ireland’s Human Trafficking and Exploitation Act (2015): A preliminary assessment’ (2016) 42 (2) *Commonwealth Law Bulletin* 181, 182.

⁷⁷ NI Act (n 20) s 1(2).

⁷⁸ Haynes 2016 (n 76) 183.

the bill. On the definition of human trafficking, the NI Act takes a similar approach to the MSA, stipulating that: ‘A person (‘A’) commits an offence if A arranges or facilitates the travel of another person (‘B’) with a view to B being exploited.’⁷⁹ As with the MSA, the NI Act provides more details on what precisely would constitute arranging or facilitating travel.⁸⁰ It is here that reference to the ‘acts’ in the international legal definition of trafficking may be observed. Nevertheless, the connection to travel still persists. As with the MSA, this may lead to the perception that local people cannot be trafficked within Northern Ireland. Further, as with both the Scottish Act and the MSA, the NI Act is silent as to the means element of the international definition.⁸¹

Considering the definitions across all three Statutes, some observations may be noted. First, none of the domestic instruments contain a legal definition of ‘modern slavery’, although all define ‘slavery, servitude and forced labour’ in accordance with Article 4 ECHR. Second, all instruments contain a definition of human trafficking. None of the three definitions explicitly refers to the means element of the definition contained in the international definition. As far as the ‘act’ element of the international definition is concerned, it is the Scottish definition which arguably most accurately mirrors what is contained in the Palermo Protocol and ECAT.

Looking beyond the legislation: while modern slavery is not explicitly defined in the legislation, it is consistently defined in government policy and practice as encompassing: ‘human trafficking’ and ‘slavery, servitude and forced or compulsory labour.’⁸² This clarification is helpful in bringing understanding as to what the term ‘modern slavery’ means in the UK domestic context. Nevertheless, in practice, the phrase ‘modern slavery and human trafficking’ is often used.⁸³ As to the definition of human trafficking, beyond the legislation, there is evidence that the ‘act’, ‘means’, and ‘purpose’ elements of the international definition are used in practice to identify victims of trafficking. For example, Home Office Guidance for those making ‘Conclusive Grounds’ decisions under the National Referral Mechanism (NRM), relies on this three-step approach, clearly stating that ‘[a]ll three

⁷⁹ NI Act (n 20) s 2(1).

⁸⁰ *ibid* s 2(2).

⁸¹ However, see GRETA UK Report (n 66) para 262 for the UK’s justification on the ‘means’ element within the MSA.

⁸² See e.g. Home Office, ‘Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland’ (April 2020) available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939411/Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v1.03_.pdf 14.

⁸³ See e.g. National Crime Agency, ‘Modern slavery and human trafficking’ (National Crime Agency) <<https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/modern-slavery-and-human-trafficking>> accessed 3 January 2021.

components must be present in an adult trafficking case'.⁸⁴ There is also evidence of this approach being used by the Courts.⁸⁵

In sum, although the existence of all three Statutes represents a significant step forward in addressing exploitation at domestic level, it could be argued that there are some weaknesses in the legislation which may hinder the potential effectiveness of domestic efforts to address modern slavery and human trafficking. Moreover, although it is helpful that there is a degree of consistency as to how modern slavery is defined in domestic policy and practice, questions do remain. The section below will address some of the definitional problems which have been identified, highlighting the possible impact on the effectiveness of Northern Ireland's Draft Modern Slavery Strategy.

2.3. Bridging the Gap: Pursuing Definitional and Conceptual Clarity to Enhance the Effectiveness of Northern Ireland's Draft Modern Slavery Strategy 2021/22

In accordance with the NI Act, the Department of Justice (DoJ) must publish an annual strategy reviewing current Modern Slavery strategies across Northern Ireland.⁸⁶ The strategy is intended to raise awareness of the prevalence of modern slavery offences, whilst highlighting and protecting the most vulnerable individuals who are most likely to fall victim to such crimes. Pivotal, the Draft Modern Slavery Strategy, which is the focus of the current submission, assures that the DoJ will build on its previous strategy of 'Pursue, Protect and Prevent' suggesting that it has been at least partially successful in eradicating modern slavery.⁸⁷

Regarding the 'Pursue' element, the strategy details the successful steps which have been taken to ensure that relevant authorities have received sufficient training in both the recognition of modern slavery offences and the assistance required for victims.⁸⁸ The 'Protect' element of the strategy appears largely successful, too, since organisations working with vulnerable individuals have received sufficient training in recognising the signs of modern slavery. Lastly, with regards to the 'Prevent' element, it is significant that the impact of Covid-19 only affected one training event in Belfast which had to be cancelled for safety measures.⁸⁹ Positively, it is apt that social media is now being utilised

⁸⁴ Home Office Guidance (n 82)14.

⁸⁵ See e.g. *MS (Pakistan) v Secretary of State for the Home Department* [2020] UKSC 9 [18].

⁸⁶ NI Act (n 20) s 12.

⁸⁷ Draft Modern Slavery Strategy 2021/22 (n 1) 1.6.

⁸⁸ *ibid* 1.2

⁸⁹ *ibid* 36.

as a valid platform to spread key messages surrounding modern slavery; this is helpful as social media is widely accessible and an effective way of communicating information quickly.⁹⁰

While the above demonstrates that the approach of the Strategy has proven to be effective, this section will highlight how definitional issues can have an impact upon the strategy's potential effectiveness. For the protections provided within international and European law to achieve their full potential, it is essential that they are comprehensively understood and implemented within domestic law, policy, and practice. While debate persists as to the conceptual limits of the trafficking definition, it cannot be denied that a considerable degree of clarity exists as to the scope of that definition. If domestic law enshrines a more restrictive definition than exists in international law, concerning consequences may follow. These include:

- lack of protection for those individuals who experience conduct which would amount to trafficking under international law, but not national law
- limits to the potential effectiveness of efforts to prevent and address trafficking.

As indicated in the section above, while the definition of human trafficking under the NI Act⁹¹ represents a step in the direction of clarity, it centres on travel and connects all the elements of the definition to travel. *While it is encouraging that the NI Act explicitly acknowledges that this travel can take place within the borders of the State, it could be argued that the requisite of travel has the impact of restricting the potential scope of the definition as contained within the Palermo Protocol and ECAT.*⁹² Indeed, the United States Trafficking in Persons report has consistently called for change in this element of the definition in the NI Act (and indeed in the MSA).⁹³

This conception is further reflected within the Draft Strategy under review, which distinguishes modern slavery from human trafficking by stating that 'human trafficking...involves the movement of a person for the purposes of exploiting them'.⁹⁴ While it is encouraging that elsewhere in domestic policy and practice, such as within the NRM, the elements of the international legal definition are more comprehensively detailed and applied, *we recommend that the trafficking definition within the Statute and within the strategy, is reconsidered in light of the definition of trafficking agreed upon*

⁹⁰ *ibid* 37.

⁹¹ See Section 2.2 above; see also NI Act (n 20) s 2.

⁹² Palermo Protocol (n 49) art 3, ECAT (n 52) art 4.

⁹³ United States Department of State, 'Trafficking in Persons Report' (June 2020) <<https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>> accessed 3 January 2021, 511-514.

⁹⁴ Draft Modern Slavery Strategy 2021/22 (n 1), 10.

within international and EU law.⁹⁵ Removing the connection to travel and adopting a definition similar to that found within the Scottish Act could help to bring clarity. This will ensure that instances of trafficking, which arguably do not involve travel, such as online sexual exploitation, would be clearly understood as, and prosecuted, as trafficking. As has recently been acknowledged by the UN Special Rapporteur on Trafficking in Persons, this is an issue which increasingly impacts children, and the Covid-19 pandemic has only served to exacerbate the problem.⁹⁶ Thus, it is essential that domestic law and policy adequately captures this kind of trafficking.

In addition, as noted in Section 2.2, the NI Act's definition does not make any explicit reference to the 'means' element in the international definition. While a defence of this approach has been offered to GRETA and while the Northern Irish Parliamentary Committee suggested that the Act would 'amalgamate the 'means' and 'purpose' elements'. Haynes notes that 'it can be argued that such an approach appears to be both inconsistent and problematic in practice.'⁹⁷ Finally, it may be argued that the inconsistency relating to both the use of the terms 'modern slavery' and 'human trafficking' in practice, may also work to hinder clarity and understanding of what precisely these terms mean.

The attention now turns to some of the possible limitations on the effectiveness of the modern slavery strategy, which flow from a restrictive understanding of human trafficking in law, policy, and practice.

Pursue

First, under the 'Pursue' strand: Objective 2.1.1 aims: 'to ensure that modern slavery legislation is used effectively and remains relevant and fit for purpose'.⁹⁸ Given what has been outlined above regarding how trafficking is defined within the legislation, as well as the commitment to the 'development of legislative options *it is recommended that Section 2 of the NI Act should be reviewed, with consideration given as to how it could more accurately reflect the relevant international and regional instruments. Such a review could help to ensure that the legislation is both fit for purpose and used to its full effectiveness. Since similar problems exist in relation to the 'act' element of the MSA's definition and the 'means' element within the relevant legislation in*

⁹⁵ See Section 2.1 above on the parameters of the international legal definition of human trafficking.

⁹⁶ See e.g. 'Comments by the Special Rapporteur on trafficking in persons, especially women and children, Ms Siobhán Mullally, to the Draft General Comment No. 25 on Children's Rights in relation to the Digital Environment' (2020).

⁹⁷ Haynes 2016 (n 76) 188-189.

⁹⁸ Draft Modern Slavery Strategy 2021/22 (n 1) 14.

Scotland, and England and Wales,⁹⁹ any amendments to the definition could lead the way for the rest of the UK in this regard.

Second, when it comes to Objective 2.1.3: to ‘ensure effective development, learning and identification of best practice across the criminal justice system’¹⁰⁰ *we recommend that a focus on developing and delivering training on the international and regional legal frameworks relating to human trafficking could prove to be a helpful use of resources.*

Protect

Arguably, the potential within all three objectives which form part of the ‘Protect’ approach could be enhanced by increased clarity on what precisely falls within the scope of the term, ‘human trafficking’. For example, consider Objective 2.2.1: to ‘proactively identify and report victims of modern slavery.’¹⁰¹ *Effective identification of victims is only possible to the extent that clarity exists as to what precisely should be identified.* The same can be argued for Objectives 2.2.2 and 2.2.3;¹⁰² only with a clear understanding of what conduct amounts to trafficking will ensure that all those who are entitled to the proposed protection and support, actually benefit from it. *A more comprehensive incorporation of the international legal definition of trafficking, and further consistency on the use of the term ‘modern slavery’ would arguably help to enhance the effectiveness of the ‘Protect’ approach.*

Prevent

Finally, the objectives enumerated within the ‘Prevent’ arm of the Strategy could also benefit from the definitional and conceptual clarity that has been recommended above. Of particular note is Objective 2.3.3. which deals with raising ‘public awareness to reduce demand and increase reporting’.¹⁰³ *In raising awareness, it is important that accurate and clear information is disseminated. This will ensure that the wider public has a clear understanding of what precisely falls within the scope of ‘modern slavery’ and ‘human trafficking’, which could lead to more accurate and comprehensive reporting. Furthermore, this report recommends that greater attention is paid to reporting insofar as including data on when the statutory definition of modern slavery and trafficking has been used in legal proceedings.* Simply put, further clarity on the terms ‘modern slavery’ and ‘human trafficking’

⁹⁹ See Section 2.2 above.

¹⁰⁰ Draft Modern Slavery Strategy 2021/22 (n 1) 18.

¹⁰¹ *ibid* 21.

¹⁰² *ibid* 22-24.

¹⁰³ *ibid* 25.

can have a positive impact across the whole strategy. *Moreover, a statutory definition of trafficking which more accurately reflects what is contained within the Palermo Protocol could ensure that all who deserve to be protected by domestic law and policy, are indeed protected.*

A broader point worth considering is the impact of Brexit. Whilst the parameters of Brexit continue to be an ongoing matter, withdrawal from the EU's scope of protection for victims and potential loss of partnership with the EU e.g. EU Arrest Warrant and Europol membership, specifically with regards to the 'Pursue' strategic priority. This is an area which is not addressed in the Draft Modern Slavery Strategy 2021/21. *This report recommends that specific attention is drawn to the legislative mechanisms and cross-border cooperation that will/will not be present post-Brexit in respect of elements related to modern slavery.*

3. Businesses and their Supply Chains

3.1. Overview: Why is this an issue?

‘Slavery is not perpetuated by acts of individual deviants who promote it, but by the passivity of those who could collectively stop it.’¹⁰⁴

Modern slavery permeates the supply chain, with only 6% of British firm managers certain that their supply chains were ‘untainted’ by modern slavery.¹⁰⁵ Examples are manifold: the Thai seafood industry,¹⁰⁶ Malaysian electronics sector,¹⁰⁷ child labour in cobalt mining for the latest phones,¹⁰⁸ coffee production for some of our best known brands¹⁰⁹ and global cotton production linked to China’s forced labour, implicating almost every high-street garment company.¹¹⁰ Current global conditions enable a workforce vulnerable to exploitative practices: the increasingly complex nature of supply chains, weak legal frameworks regarding labour standards, and a business drive for ever-lower labour costs.¹¹¹ Indeed, 94% of the global workforce of 50 major corporations is hidden because responsibility has been outsourced many times over.¹¹² The central issue here is that supply chains are channels of power.¹¹³ ***Any strategy on modern slavery therefore, must include obligations on corporations that limit this exploitative power within supply chains.***

¹⁰⁴ Keith Grint, *The Sociology of Work* (Polity Press 2005) 385.

¹⁰⁵ ‘Supply Chains Based on Modern Slavery May Reach into the West’ (The Economist, 2018) <www.economist.com/graphic-detail/2018/07/19/supply-chains-based-on-modern-slavery-may-reach-into-the-west> accessed 12 November 2020.

¹⁰⁶ Kate Hodal and others, ‘Revealed: Asian slave labour producing prawns for supermarkets in US, UK’ (The Guardian, June 2014) <www.theguardian.com/globaldevelopment/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour> accessed 31 December 2020.

¹⁰⁷ ‘Forced labor in the production of electronic goods in Malaysia: a comprehensive study of scope and characteristics’ (Verité, 2014) <www.verite.org/wp-content/uploads/2016/11/VeriteForcedLaborMalaysianElectronics2014.pdf> accessed 31 December 2020.

¹⁰⁸ Siddharth Kara, ‘Is Your Phone Tainted by the Misery of 35,000 Children in Congo’s Mines?’ (The Guardian, October 2018) <www.theguardian.com/global-development/2018/oct/12/phone-misery-children-congo-cobalt-mines-drc> accessed 22nd November 2020.

¹⁰⁹ ‘Dispatches: Starbucks and Nespresso: The Truth About Your Coffee’ (Channel 4, March 2020) <www.channel4.com/press/news/dispatches-starbucks-and-nespresso-truth-about-your-coffee> accessed 18 December 2020.

¹¹⁰ Katie Chappuis and other, ‘It’s Time Forced Labor in China’s Cotton Production Is Taken Seriously’ (Responsible Sourcing Network, November 2019) <www.sourcingnetwork.org/blog/2019/11/14/forced-labor-china-cotton-fields> accessed 4 January 2021.

¹¹¹ Sharan Burrow and other, ‘Modern Slavery in Company Operations and Supply Chains’ BHRRC, ITUC, September 2012.

¹¹² Stephen John New, ‘Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility?’ (2015) 20(6) *Supply Chain Management* 697.

¹¹³ Andrew Cox, ‘Power, value and supply chain management’ (1999) 4(4) *Supply Chain Management* 167.

The International Labour Organisation (ILO) estimated that, at any given time in 2016, 40.3 million people were living in modern slavery conditions.¹¹⁴ This included 24.9 million in forced labour, of which 16 million were exploited in the private sector and linked to supply chains within international business.¹¹⁵ Driven by comparative-cost advantage, many businesses favour outsourcing goods from external suppliers, or through offshoring business activities. The profitability of these practices was reflected by the ILO putting annual profits from forced labour at \$150bn in 2012¹¹⁶ - three times the revenue of Google (\$50 billion) and significantly higher even than ‘big oil’ (\$120 billion) and the US banking industry (\$141.3 billion).¹¹⁷ Consequently, modern slavery has been described as ‘one of the most acute abuses of human rights in contemporary business practice’.¹¹⁸

Businesses that engage with modern slavery reporting can protect their reputation through supply chain transparency, which can lead to better long-term performance. For example, controversy surrounding Nike’s labour practices led to sales falling by nearly 8% in 1999,¹¹⁹ and in 2001 the company’s stock lost more than 15% of its value.¹²⁰ In response, Nike took significant steps to improve conditions of and transparency around its supply chain, releasing a global database of over 700 of its factories in 2005.¹²¹

Although no laws required Nike to do this at that time, there are now legal requirements for businesses (earning over a certain threshold) to engage with modern slavery reporting, such as requirements for mandatory disclosure of risks of modern slavery in supply chains (UK, USA (California), Australia, France (see below)). These national incentives have been both influenced by and influencers of international initiatives in this space. For example, the UN Guiding Principles on Business and Human Rights (UNGPs) have highlighted that there should be a ‘smart mix’ of mandatory and voluntary measures, and national and international measures, and that human rights due diligence is at the centre

¹¹⁴ International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO Publications 2017).

¹¹⁵ *ibid.*

¹¹⁶ International Labour Organization, *ILO Global Estimate of Forced Labour* (ILO Publications 2012).

¹¹⁷ Michael Pollitt, ‘Freeing the slaves from our supply chains: How far we have come and what more we can do’ (2014) 22(7) *Human Resource Management International Digest* 1.

¹¹⁸ Andrew Crane, ‘Modern slavery as a management practice: exploring the conditions and capabilities for human exploitation’ (2013) 38(1) *Academy of Management Review* 49.

¹¹⁹ Burhan Wazir, ‘Nike accused of tolerating sweatshops’ (The Guardian, May 2001)

<www.theguardian.com/world/2001/may/20/burhanwazir.theobserver> accessed 15 December 2020.

¹²⁰ ‘Disaster Of The Day: Nike’ (Forbes, February 2001)

<www.forbes.com/2001/02/22/0222disasternike.html?sh=6c5111ee5ee9> accessed 15 December 2020.

¹²¹ Bushra Tobah, ‘Just Do It: How Nike Turned a Supply Chain Crisis into Opportunity’ (Network for Business Sustainability, January 2012) <www.nbs.net/articles/just-do-it-how-nike-turned-a-supply-chain-crisis-into-opportunity> accessed 15 December 2020.

of regulatory developments in Europe.¹²² Although human rights due diligence laws provide an impetus for engaging in modern slavery reporting as businesses may be subjected to penalties for non-compliance, the UN General Assembly has made it clear that the responsibility to carry out human rights due diligence applies regardless of any ‘business case’ argument. As Jim Baker, former Co-ordinator of the Council of Global Unions asserted - using the example of the garment industry - the main weakness of the ‘business case’ for respecting human rights is that it is also possible to make a business case for violating human rights.¹²³

3.2. Insights from the Legal and Voluntary Framework for Supply Chains

Themes in Law

Current guidance on supply chains in both legal and voluntary initiatives emphasises the centrality of reporting and transparency. Reporting is a critical element of the human rights monitoring cycle. It constitutes a strategic tool to record and analyse information, present findings, express concern, engage in dialogue with duty bearers, advocate positive change and propose recommendations for corrective action.¹²⁴

Transparency provisions are designed to improve access to information about how companies are identifying and addressing the risks of human rights impacts in their operations.¹²⁵ Reporting promotes accountability by enabling investors to move capital towards more responsible businesses, thereby exerting pressure on organisations to improve their efforts to tackle human rights issues.¹²⁶ Furthermore, human rights due diligence is an important self-assessment tool for businesses that serves to identify weak points internally and within relations with partners or value chains.¹²⁷ Reporting is

¹²² United Nations, Guiding Principles on Business and Human Rights (OHCHR 2011).

¹²³ Jim Baker, ‘The ‘Business Case’ for Corporate Responsibility’ (OHCHR 2012) 1 <www.ohchr.org/Documents/Issues/Business/ForumSession1/SubmissionsStatements/CouncilGlobalUnions.pdf> accessed 18 December 2020.

¹²⁴ ‘Manual on Human Rights Monitoring: Chapter 13’ (OHCHR, 2011) <www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf> accessed 16 December 2020.

¹²⁵ Rae Lindsay and others, ‘Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights’ (2017) 18 *Business Law International* 29.

¹²⁶ *ibid.*

¹²⁷ ‘Why is Reporting Important?’ (Toolbox Human Rights, 2018) <business-humanrights.be/tool/7/why> accessed 16 December 2020.

therefore fundamental as a way of informing what any business enterprise should do to meet its responsibility to respect human rights.¹²⁸

Findings from the 2019 Corporate Human Rights Benchmark suggest a weak implementation of human rights due diligence thus far. With failures of voluntary measures mounting, laws and regulations that deliver human rights due diligence are needed to establish clear, robust and enforceable cross-sectoral requirements.¹²⁹ Mandatory due diligence laws would put the onus on companies to demonstrate that they are taking all necessary measures to identify, prevent and mitigate incidences of modern slavery in their operations and supply chains. A mandatory legal duty to report human and labour rights harms through human rights due diligence requirements would reduce labour exploitation in supply chains and uphold workers' rights - and would do so more effectively than the (UK) Modern Slavery Act which has been criticized for its 'lack of teeth' in enforcing accountability.¹³⁰

The UNGPs, along with the OECD recommendations, are the most widely accepted frameworks for responsible business conduct. The UNGPs reinforce the national obligations to ensure that corporations respect human rights and emphasise the centrality of due diligence reporting. One way of enshrining due diligence is via mandatory reporting requirements. National attempts to encourage or mandate these issues can be subdivided into provisions on disclosure,¹³¹ due diligence¹³² and liability.¹³³ Reporting laws include the *UK Modern Slavery Act*,¹³⁴ *Australia Modern Slavery Act*,¹³⁵

¹²⁸ Working Group on the issue of human rights and transnational corporations and other business enterprises: A note from the Secretary General (2018) A/73/163 <<https://digitallibrary.un.org/record/1639520>>

¹²⁹ Saskia Wilks, 'High Hopes for Mandatory Human Rights Due Diligence in 2020' (Business & Human Rights Resource Centre, December 2019) <www.business-humanrights.org/en/blog/high-hopes-for-mandatory-human-rights-due-diligence-in-2020/> accessed 16 December 2020.

¹³⁰ Patricia Carrier, 'On Anti-Slavery Day: Is the UK Modern Slavery Act the best way to tackle modern slavery?' (Business & Human Rights Resource Centre, October 2020) <www.business-humanrights.org/en/blog/marketing-anti-slavery-day-is-the-uk-modern-slavery-act-the-best-way-to-tackle-modern-slavery/> accessed 16 December 2020

¹³¹ e.g. California Transparency in Supply Chains Act (2010), s.1502 Wall Street Reform and Consumer Protection Act (2010), Modern Slavery Act (UK) 2015, Modern Slavery Act (Aus) 2018, EU Directive 2014/95 on Disclosure of Non-Financial Information.

¹³² Due Diligence provisions do not guarantee access to remedy or compensating harm: e.g. OECDs Due Diligence Guidance for Responsible Supply Chains from Conflict Affected and High-Risk Areas (no sanctions), EU Regulation 2017/821 (no remedy), Dutch Child Labour Due Diligence Bill (no specific liability provisions).

¹³³ These have remediation or liability inbuilt into the legislative proposals: e.g. Loi Relative au devoir de vigilance (France) – includes a fault-based liability grounded in general negligence principles – offers remedy in the form of compensation; Swiss Responsible Business Initiative proposes a change to the Swiss Constitution which would include a constitutional requirement for due diligence – liability (although subject to a counter proposal); Commitment in the German National Action Plan to a legislative process.

¹³⁴ MSA (n43). For discussion see: Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On.' (2018) 81(6) *The Modern Law Review* 1017-1045; Genevieve LeBaron, and Andreas Rühmkorf, 'The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act.' (2019) 17(3) *Socio-Economic Review* 709-743. For the reporting requirements see, Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015, reg. 2. These reporting mechanisms are in addition to those set out in relevant Company Law legislation (e.g. s 415 and s172 Company Act 2007).

¹³⁵ Modern Slavery Act (Aus) 2018.

California Supply Chains Transparency Act,¹³⁶ and the *EU Non-Financial Reporting Directive*.¹³⁷ Whereas, these require companies to disclose their efforts to identify and mitigate human rights risks, they do not place an obligation on companies to conduct any specific due diligence in the first place.

Another way of strengthening corporate responsibility is through mandating due diligence for specific issues or sectors.¹³⁸ Due diligence laws involve a legally binding positive obligation for corporations to carry out due diligence processes which typically have inbuilt remediation or liability inbuilt into their proposals. This framework has been enacted through for example the French ‘*Devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre*’ (*devoir de vigilance*),¹³⁹ The Netherlands’ *Child Labour Due Diligence Law*,¹⁴⁰ and the *EU Conflict Minerals Regulation*.¹⁴¹ Beyond this, the EU’s plans to introduce legislation in 2021 to make human rights due diligence mandatory for all EU companies demonstrates the centrality of these issues to the Business and Human Rights European agenda (in addition to the importance for supply chains).¹⁴² Furthermore, although Switzerland’s ‘Responsible Business Initiative’ - which would have mandated human rights due diligence and made companies liable for human rights violations - was narrowly rejected, the movement built around this initiative will not end now.¹⁴³

Issue in Focus: Public Procurement

The Northern Ireland Strategy on Modern Slavery focuses heavily on public procurement (discussed below). This is an important focus. Public procurement can advance human rights goals within global supply chains by creating market demand for responsibly manufactured goods.¹⁴⁴ Public buyers, as mega-consumers, hold significant leverage over the behaviour of brands and retailers.¹⁴⁵ Their purchasing power can set standards to shift markets towards more humane norms of practice and competition. Public procurement interacts with both the state duty to protect human rights and the

¹³⁶ California Transparency in Supply Chains Act (2010). Also of relevance here is, s.1502 Wall Street Reform and Consumer Protection Act (2010).

¹³⁷ Directive 2014/95/EU.

¹³⁸ OECDs Due Diligence Guidance for Responsible Supply Chains from Conflict Affected and High-Risk Areas.

¹³⁹ Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

¹⁴⁰ Dutch Child Labour Due Diligence Bill.

¹⁴¹ EU Regulation 2017/821.

¹⁴² ‘Proposal for an EU-wide mandatory human rights due diligence law’ (Norton Rose Fulbright, May 2020) <www.nortonrosefulbright.com/en-gb/knowledge/publications/1a58997f/proposal-for-an-eu-wide-mandatory-human-rights-due-diligence-law> accessed 18 December 2020.

¹⁴³ Jessica Davis Plüss, ‘Responsible business initiative rejected at the ballot box’ (SWI swinchainfo.ch, November 2020) <www.swissinfo.ch/eng/swiss-to-vote-on-holding-companies-accountable-for-supply-chain-abuses/46184500> accessed 18 December 2020. Also there is a proposal in the German National Action Plan to a legislative process on this issue.

¹⁴⁴ Olga Martin-Ortega, ‘Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry’ (2018) 3 *Business and Human Rights Journal* 75.

¹⁴⁵ *ibid.*

corporate responsibility to respect human rights, as described in the UNGPs.¹⁴⁶ McCrudden informs on the role of governments and public procurement.¹⁴⁷ He notes that we often think of governments as regulating market participants, using competition law to encourage market participants and restraining markets through employment laws for example.¹⁴⁸ But, as he continues, governments increasingly have a role to play as active participants in the market, purchasing public works, supplies and services.¹⁴⁹ Whereas McCrudden was writing about procurement and linkages to positive social change, his work mirrors discussions around the role of public procurement in advancing the modern slavery agenda.¹⁵⁰ This is not a new concept, although traditionally it did not garner much interest in the UK and the EU. In the US however, federal contracting has traditionally been seen as a key tool to target trafficking.¹⁵¹

The potential of procurement as a driver for human rights is highlighted in the 2030 Agenda for Sustainable Development. SDG 12.7 calls on states to ‘promote public procurement practices that are sustainable, in accordance with national policies and priorities.’ This provides an opportunity for states to prioritise procurement from suppliers which demonstrate economic, social and environmental respect. Human rights due diligence in public procurement reduces the risk of both contract violations and future legal actions, ‘provides transparency... contributes to sustainable development [and] allows suppliers to demonstrate that they took all reasonable measures to avoid... participation’ in human rights violation.¹⁵²

Beyond this, developments have occurred nationally and at an EU level. In the EU, directives provide scope for horizontal objectives (such as those related to labour laws) to be used as a way for governments to combat modern slavery.¹⁵³ In the UK, the planned 2020 update to the Modern Slavery

¹⁴⁶ Danish Institute for Human Rights, ‘Driving change through public procurement: A toolkit on human rights for policy makers and public buyers’

<www.humanrights.dk/sites/humanrights.dk/files/media/billeder/udgivelser/hrb_2019/danish_institute_driving_change_through_public_procurement_-_a_toolkit_on_human_rights_for_policy_makers_and_public_buyers_road-testing_version.pdf> accessed 17 December 2020

¹⁴⁷ Christopher McCrudden, ‘Using Public Procurement to achieve social outcomes’ (2004) 28 *Natural Resources Forum* 257-267.

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

¹⁵¹ e.g. Trafficking in Persons Act 2000, Trafficking in Persons Act, 2003 (amendment).

¹⁵² *ibid.*

¹⁵³ e.g. Public Procurement Directive 2014/24/EU, Public Sector Directive 2004/18/EC. For more see, Richard Craven, ‘Public Procurement and Modern Slavery’ in Gustav Piga and Tude Tatrai (eds) *Public Procurement Policy* (Routledge 2016).

Act ensures that public bodies would be brought into the scope of the legislation.¹⁵⁴ Proposed changes, however, do not go far enough. Dame Sara Thornton (the Independent Anti-Slavery Commissioner) has been critical of these advances and a firm advocate of the crucial role that public procurement has to play in the fight against modern slavery and human trafficking.¹⁵⁵ ***Given the special case of this region due to being post conflict, and the fact that Northern Ireland's economy remains highly reliant on the public sector, it is imperative that Northern Ireland makes reference to the role of public procurement and the public sector more generally in its strategy to combat modern slavery. However, it needs to do this alongside initiatives to combat modern slavery within the private sector. The strategy could be much stronger on this point (see below).***

Voluntary Initiatives

Various voluntary initiatives aimed at encouraging corporate engagement with modern slavery issues have been established. A global example is the *Brazil National Pact for Eradication of Slave Labour 2005* which saw a nationwide pledge by over 400 companies and the Brazilian government to eradicate forced labour within their supply chains. There have been many variations on this model. The Ethical Trading Initiative Base Code is founded on the conventions of the ILO and is an internationally recognised code of labour practice aimed at improving working conditions around the world and rooting out modern slavery in corporations. This code outlines principles on which businesses can base their practice to promote more ethical trading and supply chains (such as no harsh or inhumane treatment, no excessive working hours and paid living wages) and has been adopted by various corporations including Hardscape, a key landscaping material supplier.¹⁵⁶ Commitment to this code promotes a sense of public accountability by corporations in tackling modern slavery issues. More locally, forums such as the Northern Ireland Business and Human Rights Forum established in 2015 allow government, business and civil society to engage on business and human rights issues and share good practice. They have also produced a guide for businesses providing tangible examples on how better practice can be achieved. The Responsible Business Tracker is a further tool which can be employed by businesses who are attempting to tackle abuses in their supply chains, enabling them to

¹⁵⁴ Charlie Hart, 'What new Modern Slavery Act measures mean for you' (Supply Management, 22 September 2020) <www.cips.org/supply-management/news/2020/september/what-new-modern-slavery-act-measures-mean-for-you/> accessed 4 January 2021.

¹⁵⁵ 'Government must use the power of public procurement to tackle modern slavery' Independent Anti Slavery Commissioner (18 June 2018) <www.antislaverycommissioner.co.uk/news-insights/government-must-use-the-power-of-public-procurement-to-tackle-slavery/#:~:text=In%20March%202018%2C%20Sancroft%20and%20Tussell%20published%20their,modern%20slavery%20and%20how%20it%20might%20affect%20businesses> accessed 4 January 2021.

¹⁵⁶ <<https://hardscape.co.uk/>>

assess their performance as a responsible business by tracking their progress against the Business in the Community Responsible Business Map.¹⁵⁷ The tracker offers an opportunity for recognition of leading practice which helps to persuade companies to consider issues of modern slavery, identify areas of strength and weakness in businesses and create traction for change.

Since the introduction of the transparency in supply chains clause outlined in Section 54 of the *Modern Slavery Act 2015* and the recent commitment by the UK government to mandating the principal areas that must be covered by modern slavery statements and introducing harsher penalties for compliance failures,¹⁵⁸ there has been greater engagement with issues of modern slavery from businesses across the UK. However, with 71% of companies believing that there is a likelihood of modern slavery occurring at some stage in their supply chains¹⁵⁹ it is clear that issues with corporate engagement remain, with positives and negatives to both voluntary initiatives and mandatory reporting requirements. An immediate disadvantage of any voluntary initiative is that it must be supported by binding regulation and third-party monitoring to give it teeth and ensure sector-wide transparency. It has very limited effect on its own and works most effectively with organisations that are already seeking to do the right thing in protecting against modern slavery. Thus, voluntary initiatives are designed to complement rather than replace mandatory reporting regimes.

These negatives can arguably be mitigated with mandatory reporting requirements, as mandatory reporting provides greater consensus and predictability for businesses among their peers while the wide variety of voluntary mechanisms can make this difficult.¹⁶⁰ Furthermore, mandatory requirements provide greater credibility for corporations engaging with the standards¹⁶¹ and more easily comparable reporting.¹⁶² This is a clear positive for corporations, with no reputable company wanting the reputation that they choose to not engage with reporting requirements to tackle modern slavery issues with responsible businesses coming to now realise the impact of humanising their markets in ensuring against public disenchantment. Reporting requirements and the introduction of

¹⁵⁷ <<https://www.bitc.org.uk/the-responsible-business-tracker/>>

¹⁵⁸ GoodCorporation, 'UK firms to face tougher new rules on modern slavery reporting' (2020) <www.goodcorporation.com/goodblog/modern-slavery-reporting/> accessed 16 December 2020.

¹⁵⁹ Quintin Lake and others, 'Corporate approaches to addressing modern slavery in supply chains: A snapshot of current practice' (Ashridge Executive Education (Hult), 2015) <www.ethicaltrade.org/sites/default/files/shared_resources/corporate_approaches_to_addressing_modern_slavery.pdf> accessed 16 December 2020.

¹⁶⁰ John McNally, 'Incorporating Voluntary Standards into National Law: An Overview of the Scandinavian Experience' in Liam Leonard and other (eds), *Beyond the UN Global Compact: Institutions and Regulations* (Emerald 2015) 70.

¹⁶¹ *ibid* 83.

¹⁶² Ioannis Ioannou and other, 'The Consequences of Mandatory Corporate Sustainability Reporting' (2012) *Harvard Business School Research Working Paper* No 11-100, 5.

enforcement penalties against companies that are failing to comply with these requirements also empowers businesses by rewarding companies that are spending time and resources in fighting against modern slavery issues in their supply chains and creating a level playing field by punishing those who do not adhere to good practice.¹⁶³

Other approaches: Brazil's 'Dirty List'

The understanding of modern slavery has shifted from a 'remnant of archaic forms of exploitation' to 'an instrument adopted by enterprises in globalized supply chains'.¹⁶⁴ In Brazil, almost 55,000 people have been rescued since 1995, particularly throughout agricultural and urban industry supply chains.¹⁶⁵ To combat this, Brazil adopted a 'dirty list' strategy in 2003; this list, updated by the Ministry of Economy bi-annually, includes those (people and companies) that have engaged in modern slavery practices in their supply chains.¹⁶⁶ Whereas there are some limitations of this (e.g. companies can file for injunctions to remove themselves from the list for a certain period of time), the basic premise is sound and worth considering, namely that employers remain on the list for two years and are barred from receiving state and (some) private loans.¹⁶⁷ At its most effective, this type of initiative can ensure enhanced visibility on modern slavery practice and associated consumer accountability. This in turn can act as a deterrent for those companies that may engage in modern slavery practice in their supply chains (or are negligent in their transparency checks on same). For example, the share value of many 'dirty list' companies have suffered significant decreases in the market.¹⁶⁸ This diminishes any competitive advantage incentive for engaging with modern slavery, and may act as a deterrent for continuing such practices (or an incentive to improve transparency procedures in this area). Several

¹⁶³ Colleen Theron, 'Modern Slavery Act: An assessment of the first five years' (Ardea International, 2020) <www.edie.net/blog/Modern-Slavery-Act-An-assessment-of-the-first-five-years/6098748> accessed 16 December 2020.

¹⁶⁴ Leonardo Sakamoto, 'OPINION: Brazil's 'dirty list' is key to stopping slave labor. But it is being undermined' (Thomson Reuters Foundation News, June 2020) <news.trust.org/item/20200609091211-h4qkf/> accessed 18 December 2020.

¹⁶⁵ *ibid.*

¹⁶⁶ Including multinational corporations such as Starbucks. See, Charlotte Newell, 'Brazil's Dirty List – Not Making a Dent in Modern Slavery' (InSight Crime, 30 November 2020) <www.insightcrime.org/news/analysis/brazil-dirty-list-modern-slavery/> accessed 18 December 2020.

¹⁶⁷ *ibid.*

¹⁶⁸ Leonardo Sakamoto, 'OPINION: Brazil's 'dirty list' is key to stopping slave labor. But it is being undermined' (Thomson Reuters Foundation News, June 2020) <news.trust.org/item/20200609091211-h4qkf/> accessed 18 December 2020.

companies have used this list for their risk management,¹⁶⁹ and have committed to ending and indeed avoiding relationships with those on the list.¹⁷⁰

Remediation

Section 54 of the Modern Slavery Act 2015 requires any commercial organisation carrying out all or part of their business in the UK with a turnover of at least £36 million to prepare and publish an annual slavery and human trafficking statement.¹⁷¹ In 2017 the UK Government revised guidance on the section 54(5)¹⁷² reporting obligation to ensure sustained engagement and transparency from organisations regarding the information published within the annual statements.¹⁷³ Section 54(11) of the Act enables the Secretary of State to seek an injunction against non-compliant companies, however in lieu of legal responsibility for companies, it is for the consumers, investors and NGOs to monitor and apply pressure to assert their compliance.¹⁷⁴

Victims of modern slavery are able to pursue compensation claims against corporations under the Legal Aid Sentencing and Punishment of Offenders Act 2012. Similarly, through ordinary civil law and the Human Rights Act 1998, remedies in tort exist for victims of trafficking and slavery to claim damages from perpetrators. Damages can, for example, be recovered for loss or damage caused to victims under the torts of intimidation, harassment, assault, unlawful imprisonment, negligence and breach of duty.¹⁷⁵ Section 45 of the Modern Slavery Act 2015 provides a statutory defence which ensures that a victim can give evidence against their abuser without fear of conviction for a crime which they were compelled to commit as a result of their enslavement or trafficking.

Existing international standards, such as the UNGPs and the ILO Protocol on Forced Labour, emphasise the role that due diligence should play to identify, prevent and mitigate incidences of modern slavery within supply chains.¹⁷⁶ The UK Joint Committee on Human Rights published the

¹⁶⁹ Leonardo Sakamoto, 'Using a 'Dirty List' to Clean up 'Modern Slavery' in Brazil' (openDemocracy, September 2016) <www.opendemocracy.net/en/beyond-trafficking-and-slavery/leonardo-sakamoto-yes/> accessed 22 December 2020.

¹⁷⁰ Fabio Teixeira, 'Picked by Slaves: Coffee Crisis Brews in Brazil' (Reuters, December 2019) <www.reuters.com/article/us-brazil-coffee-slavery-idUSKBN1YG13E> accessed 20 December 2020.

¹⁷¹ Frank Field and other, 'Independent Review Of The Modern Slavery Act 2015: Final Report' (2019) <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf> accessed 4 January 2021.

¹⁷² MSA (n43).

¹⁷³ Modern Slavery Unit, 'Independent Review Of The Modern Slavery Act: Final Report' (APS Group on behalf of the Controller of Her Majesty's Stationery Office 2019).

¹⁷⁴ Home Office, 'Transparency in supply chains: a practical guide' 2015, 6.

¹⁷⁵ The Parliamentary Under Secretary of State, Home Office (Lord Bates), Modern Slavery Bill - Lords Report (1st Day) (Continued), 23 February 2015, Volume 759, Column 1464.

¹⁷⁶ ILO Protocol on Forced Labour Art 2(e).

Preventing Human Rights Abuses by Business Report in 2017,¹⁷⁷ where recommendations were made to make reporting on due diligence compulsory with a monitoring mechanism and an enforcement procedure.¹⁷⁸ In effect this would create an evidence trail to help overcome barriers to justice and would allow increased accessibility to remedies for victims.

The 2017 Independent Review of the Modern Slavery Act 2015 encouraged a more robust and systematic approach to tackling the non-compliance of business. The UK government could go further in providing legislative provisions within section 54 Modern Slavery Act 2015. Increased use of the Secretary of State's provision to issue injunctions, initial warnings, fines, court summons and directors' disqualifications would also be of use.¹⁷⁹ Finally, legislation could require the compliance of companies to aid in the monitoring of supply chains, and the identification and prevention of instances of modern slavery.¹⁸⁰ We believe that it is not enough to 'punish' the offending companies in a manner similar to the 'Dirty List' as noted above. Rather, we emphasise the centrality of the victim here and argue that it is imperative that they are entitled to the full suite of remedies (civil and where possible, criminal) for their suffering. The means that there needs to be a concentrated effort to ensure that victims of supply chain modern slavery are protected, respected and remediated in line with the language used in the UNGPs.

3.3. Covid-19 and Supply Chains

The Covid-19 pandemic has created distress and uncertainty throughout society, with repercussions still ongoing within Northern Ireland. Preliminary research demonstrates that vulnerable individuals in society have been affected, namely 'migrants, undocumented workers and those in the informal economy.'¹⁸¹

Such vulnerable workers include garment workers, who frequently experience modern slavery irrespective of Covid-19's impact, since the nature of their work constitutes extensive working hours

¹⁷⁷ 'Human Rights and Business 2017: Promoting responsibility and ensuring accountability' (2017) <publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44302.htm> accessed 4 January 2021.

¹⁷⁸ *ibid.*

¹⁷⁹ Frank Field and other, 'Independent Review Of The Modern Slavery Act 2015: Final Report' (2019) <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf> accessed 4 January 2021.

¹⁸⁰ *ibid.*

¹⁸¹ 'Protecting People in a Pandemic' (The Minderoo Foundation, 2020) <cdn.minderoo.org/content/uploads/2020/04/30211819/Walk-Free-Foundation-COVID-19-Report.pdf?mc_cid=e744db66e5&mc_eid=96ce13ad78> accessed 30 November 2020

for little pay. However, the pandemic has heightened this problem: in April 2020, factories situated in Leicester were reported as a zone of exploitation for garment workers.¹⁸² This was primarily caused by fast-fashion clothing brand Boohoo, which continued to trade online. Labour behind the Label¹⁸³ conducted a report finding that the Leicester factories consisted of dilapidated buildings with insufficient safety and ventilation and were operating at 100% capacity. These conditions coupled with a £3.50 an hour salary¹⁸⁴ are indicative of modern slavery and accordingly the organisation has called for reforms on forced labour. Although the issue with garment workers occurred in England, this example is relevant for Northern Ireland in minimising any risk of the same exploitation occurring on its own territory.

Exploitation also pervades the domestic work sector as workers are mostly migrants,¹⁸⁵ who experience little social protection. This was reinforced during Covid-19 since domestic workers were deemed essential, meaning that their continued work during a pandemic created additional risk for modern slavery occurring.¹⁸⁶ This was reported predominantly in London¹⁸⁷ where enforced lockdowns meant that victims of modern slavery were confined in their environment of exploitation and were unable to access services and support.¹⁸⁸ As domestic workers are a hidden workforce, their exploitation goes largely undetected, which explains why there is little clear evidence of incidents in Northern Ireland. Therefore, the modern slavery issues occurring elsewhere in the UK can act as a precaution for NI to investigate unseen exploitation and accordingly alleviate the risk of their occurrence.

¹⁸² Archie Bland, 'Police and health officials visit garment factories in Leicester' (The Guardian, July 2020) <www.theguardian.com/uk-news/2020/jul/03/police-and-health-officials-visit-garment-factories-in-leicester> accessed 30 November 2020.

¹⁸³ Labour Behind the Label, 'Boohoo and Covid-19; (June 2020) 3 <labourbehindthelabel.net/wp-content/uploads/2020/06/LBL-Boohoo-WEB.pdf> accessed 10 November 2020.

¹⁸⁴ *ibid* 4.

¹⁸⁵ Shayak Sarkar, 'The New Legal World of Domestic Work' (2020) 32 *Yale JL & Feminism* 1, 11.

¹⁸⁶ Helen Johnson, 'Can cleaners go back to work? UK coronavirus lockdown rules and advice for domestic cleaners, explained' (INews, May 2020) <inews.co.uk/inews-lifestyle/work/cleaners-can-go-back-to-work-uk-coronavirus-rules-advice-domestic-cleaning-allowed-explained-427181> accessed 12 December 2020.

¹⁸⁷ Devyani Nighoskar, 'Migrant domestic workers and covid-19: a call to action' (Futures of Work, May 2020) <futuresofwork.co.uk/2020/05/05/migrant-domestic-workers-and-covid-19-a-call-to-action/> accessed 12 December 2020.

¹⁸⁸ 'Advice for legislators: The impact of COVID-19 on modern slavery' (Commonwealth Parliamentary Association UK, May 2020) <www.uk-cpa.org/news-and-views/advice-for-legislators-the-impact-of-covid-19-on-modern-slavery/#_ftn1> accessed 2 December 2020.

Focusing specifically on Northern Ireland, modern slavery is mostly prevalent in agriculture, specifically in the poultry sector as identified by GLAA intelligence.¹⁸⁹ Although no concrete evidence of Covid-19's impact on modern slavery within this sector surfaced in media reports, there were governmental calls to assess the 'crisis' in the agriculture-food industry¹⁹⁰ because as hospitality and non-essential stores were closed, the food-service sector suffered a loss. Based on the previous findings of modern slavery's existence in the poultry sector, this loss could have led to workers labouring for little or zero pay, with a likelihood of forced labour on the horizon.

3.4. Northern Ireland in Focus. The DOJ Strategy on Modern Slavery: An analysis (from the Supply Chain perspective)

The Strategy's purpose is to raise awareness of modern slavery offences, thereby reducing the threat from, the vulnerability to, and the prevalence of, modern slavery in Northern Ireland. Success is measured through adherence to three priorities: Pursue (offenders), Protect (victims) and Prevent (modern slavery through engagement with other actors). Certain actors ('First Responders') are responsible for identifying and supporting victims/potential victims of modern slavery.

'Pursue' regarding supply chains

The 'pursue' priority detects, disrupts and prosecutes perpetrators of modern slavery, and brings victims to safety. The 2019 Strategy engages minimally with supply chain issues, stating generally that 'robust legislation for Northern Ireland is in place' and training/guidance for PSNI officers and prosecutors has been implemented.

The 'pursue' priority *specifically* concerning supply chains is vital. The ability of the government to 'pursue' offenders is limited without adequate information from the companies concerned. Therefore, a more robust and indeed mandatory legislative framework for corporate reporting must be implemented. The Strategy aims to 'make full use of cross-Government tools, sanctions and the regulatory regime to disrupt offenders' – this should include new legislation to disrupt offenders within

¹⁸⁹ Gangmasters and Labour Abuse Authority, 'The Nature and Scale of Labour Exploitation across all Sectors within the United Kingdom' (2018) <www.gla.gov.uk/media/3537/external-nature-and-scale-of-labour-exploitation-report-final-version-may-2018.pdf> accessed 12 December 2020.

¹⁹⁰ Conor Macauley, 'Coronavirus: Minister warns of 'crisis' in NI agri-food industry' (BBC News, April 2020) <www.bbc.co.uk/news/uk-northern-ireland-52235934> accessed 8 December 2020.

supply chains, where presently, despite impacting the NI state and economy, the NI state does not reach. Extraterritorial liability is a crucial step. This is supported by the Strategy's statement: 'an effective operational response *must...* draw on available resources for effective international collaboration', including 'information-sharing between government agencies'.

'Protect' regarding supply chains

The 'protect' priority reduces continued harm through improved proactive identification and effective support. The 2019 Strategy states that 'robust arrangements' and 'effective mechanisms' are 'already in place' in this respect. While true overall, regarding supply chains this is less the case: reliance on corporate discretion and disclosure is necessary. Therefore, mandatory disclosure concerning suppliers should be introduced. Moreover, existing mechanisms such as 'links to support reintegration of victims into society... in countries of origin'; 'avenues for victim reparation and compensation' and legal aid for victims could clearly be extended extraterritorially. Regarding child victims, the focus is presently wholly national. Given the significant use of child labour in supply chain factories (at second- or third-tier; a majority of companies report on first-tier suppliers on this issue), this is an important consideration for any Modern Slavery Strategy.

'Prevent' regarding supply chains

The 'prevent' priority aims to reduce offending, demand, entrapment and vulnerability of (potential) victims – in collaboration with relevant organisations. Regarding supply chains, awareness-raising must be implemented more broadly than to members of the public and should be extended to specific high-level individuals in corporations. Victim vulnerability presently focuses on at-risk communities nationally; this is not possible regarding supply chains; however, it should therefore be emphasised more at a business level – both in terms of procurement and corporate supply chains. While awareness-raising has been considered in other sectors, specifically agri-food, more should be done to ensure similar engagement with e.g. the fashion industry. Training for public sector procurement leads in respect of transparency in supply chains has been implemented and should be strengthened.

The impact of Covid-19 on the importance and limitations of the Strategy

Globally, vulnerable communities including migrant workers have been more susceptible to modern slavery due to the deterioration of safe working conditions.¹⁹¹ In Bangladesh, over 1,150 factories have

¹⁹¹ Hinrich Voss, 'Implications of the COVID-19 Pandemic for Human Rights and Modern Slavery Vulnerabilities in Global Value Chains' (2020) 27(2) *Transnational Corporations Journal* 113, 116.

lost business, exposing 2.3 million workers to exploitative employment.¹⁹² A strong DOJ strategy is crucial to monitor Northern Ireland retailers/businesses that rely on supply chains abroad.

Covid-19 restrictions have also disrupted response efforts. For example in Northern Ireland, in-person investigation such as visits to car washes to uncover signs of labour exploitation was commonly relied upon before lockdown.¹⁹³ Covid-19 has led to a lack of frontline services, shelters, in-person counselling access, financial assistance and legal aid.¹⁹⁴ Moreover, modern slavery and Public Prosecution Services review reports were delayed and cut short.¹⁹⁵ These are just the tip of the iceberg when resources required to sustain anti-slavery effort (funding/public attention) were overshadowed by Covid-19.¹⁹⁶

With regard to limitations of the draft strategy, primarily, there is a lack of clarification as to *how* cross-agency collaborations could be undertaken considering the pandemic's disruption. Cancellations of on-site investigations, the shift of working arrangements¹⁹⁷ and public attention¹⁹⁸ may all affect the standard 'collaboration' the DOJ is used to. Furthermore, Covid-19, alongside its strict movement restrictions, puts vulnerable groups at risk of modern slavery¹⁹⁹ – and makes the issue harder for authorities to identify. A clear 'investigation' strategy on how modern slavery in supply chains could be identified/reported on top of applying the usual standards/checklist should be included. Whilst training programmes will be provided under the Strategy heading of 'protect', especially to frontline professionals, a curriculum that includes the manifestation of Modern Slavery during Covid-19 and how to identify them should be implemented.²⁰⁰ Similarly, ongoing training for public sector procurement leads on supply chains transparency must include 'red flags' that are unique to NI businesses. Conditions including proper health-related safety measures and sanitisations²⁰¹ should be included to prevent employers from taking advantage of the archaic Modern Slavery standards enacted pre-Covid.

¹⁹² *ibid* 115-116.

¹⁹³ '2020 UK Annual Report (n6).

¹⁹⁴ 'Advice for legislators: The impact of COVID-19 on modern slavery' (n188).

¹⁹⁵ 'Modern Slavery and Human Trafficking' (n3).

¹⁹⁶ James Cockayne and Angharad Smith, 'The Impact of COVID-19 on Modern Slavery' (Delta8.7, March 2020) <delta87.org/2020/03/impact-covid-19-modern-slavery/> accessed 24 November 2020.

¹⁹⁷ 'Modern Slavery and Human Trafficking' (n3).

¹⁹⁸ Cockayne and Smith (n196).

¹⁹⁹ *ibid*.

²⁰⁰ '2020 UK Annual Report on Modern Slavery' (n6).

²⁰¹ 'Advice for legislators: The impact of COVID-19 on modern slavery' (n188).

3.5. Recommendations

References to supply chains in the Strategy are presently minimal, linked only to the goal of *preventing* modern slavery (not protecting or pursuing). The Strategy creates merely a commitment to implement ‘ongoing training for public sector procurement leads in respect of transparency in supply chains’. Both the Strategy and the draft Strategy focus wholly on public procurement impacts concerning supply chains, and not on private companies. Whereas the region’s unique history and traditional economic reliance on the public sector may explain this, if Northern Ireland expects to compete as a centre for private companies, it needs to ensure that regulations, guidance and policy reflect the equity in public and private sector obligations.

Recommendations on how the Modern Slavery Strategy (NI) can better capture modern slavery issues within supply chains

Briefly, reporting on supply chain issues should be mandated for companies. This should be accompanied by binding public standards or sanctions for non-compliance, as well as clearer regulation regarding extraterritorial liability.

Current company-led supply chain auditing is insufficient, focusing mostly on first-tier suppliers.²⁰² The UK-level reporting requirements, while not approaching those of Australia and France, are welcome in the Northern Irish context, ‘requiring [certain] businesses... to disclose annually... [how] they... ensure that their business and supply chains are [unaffected] by modern slavery’.

Legislation should be developed to restrict business activities which promote modern slavery (as in Australia). At a less stringent level, the French *devoir de vigilance* law requires companies to adopt and publish a due diligence plan²⁰³ utilising civil liability and sanctions for violations.²⁰⁴ The present soft-law self-governing due diligence approach is a direct contrast to these,²⁰⁵ as is the UK Modern Slavery Act 2015, which covers transparency regulation rather than creating legal liability for violations.

²⁰² Genevieve LeBaron, ‘Reconceptualizing Debt Bondage: Debt as a Class-Based Form of Labor Discipline’ (2014) 40 *Critical Sociology* 763, 769

²⁰³ Genevieve LeBaron and others, ‘Steering CSR Through Home State Regulation’ (2017) 8 *Global Policy* 15, 19

²⁰⁴ Justine Nolan, ‘Hardening Soft Law: Are the Emerging Corporate Social Disclosure Laws Capable of Generating Substantive Compliance with Human Rights?’ (2018) 15(2) *Brazilian Journal of International Law* 65, 73

²⁰⁵ Harry J Van Buren and others, ‘Business and Human Trafficking: A Social Connection and Political Responsibility Model’ (2019) *Business & Society* 1, 9

Businesses and consumers should be better educated concerning the impact of demand for cheap goods and services. This demand has two main causes: a lack of comprehensive information, and the fact that ‘consumers only care about ethical issues which influence them directly’.²⁰⁶ While the DoJ states ‘some awareness-raising targeting businesses regarding supply chains has... taken place and will continue’, more could be mandated in this respect.

Long term, aspirational recommendations beyond the strategy

Longer-term, the focus should remain on prevention and structural modification, rather than rectification after the fact. Ultimately, modern slavery’s elimination rests on removing the (monetary) incentive for engaging in it. If supply chains’ functioning no longer centres on lowering the financial bottom line, but instead on the human impact of those supply chains, modern slavery will no longer be profitable and thereby minimised within the system. This would require a broader overhaul of the regulatory system surrounding businesses and supply chains, including further mandatory requirements for action and reporting. For example, living wages through supply chains should be mandated, to limit the need for people to engage with those who would present modern slavery as a viable option.

Second, it is ‘rarely acknowledged’ that those considered victims of modern slavery are often forced, through debts and a lack of options, to ‘turn to illicit means to overcome the legally enforced obstacles... in their way.’²⁰⁷ This ‘severe control over human mobility [and]... deregulation of labour markets’²⁰⁸ in the UK and Europe is a structural condition causing modern slavery. A shift away from the ‘binary thinking structures that conflate trafficking with lax immigration control’ is required²⁰⁹ to manage this structural issue.

Longer term, we note the potential positive impact of Brazil’s Dirty List (above). We propose that any future Modern Slavery Statement consider incorporating a similar type of ‘name and shame’ list but would recommend that this list be wholly politically independent. Whereas we recognise the importance of housing any ‘dirty list’ within a political ministry, we also recognise the challenges that this would have pertaining to sanctions and state investments. We believe that there will be increased

²⁰⁶ Doris Berger-Grabner, ‘Sustainability in Fashion: An Oxymoron?’ in Reinhard Altenburger (ed), *Innovation Management and Corporate Social Responsibility* (Springer International Publishing 2018) 173

²⁰⁷ David Gadd and Rose Broad, ‘Troubling Recognitions in British Responses to Modern Slavery’ (2018) 58 *Brit J Criminology* 1440, 1454

²⁰⁸ Nicolas Lainez, ‘Modern Vietnamese Slaves in the UK: Are Raid and Rescue Operations Appropriate?’ (OpenDemocracy, November 2017) <www.opendemocracy.net/en/beyond-trafficking-and-slavery/modern-vietnamese-slaves-in-uk-are-raid-and-rescue-operations-appropriat/> accessed 31 November 2020

²⁰⁹ David Gadd and Rose Broad (n207).

need for state investment in business, post Covid-19. To ensure optimal transparency, we believe that any list developed might be most effective if independent from the executive that may be relied upon to provide aid. For this, we would recommend working with the third sector, or indeed the Northern Ireland Human Rights Commission.

Eventual creation of criminal corporate liability legislation should be the main goal. ‘The triumph of voluntary reporting over more stringent public labour standards [has] undermined the effectiveness of recent governance initiatives’ in this area.²¹⁰ Criminal liability is already seen in the UK context regarding bribery (UK Bribery Act); issues of modern slavery have thus far been afforded less importance.²¹¹

²¹⁰ Genevieve LeBaron and others (n203).

²¹¹ *ibid* 22.

4. Victim Protection and Support

4.1. Overview

One of the most vulnerable groups of crime victims are those subjected to modern slavery. In many cases, they come from the most marginalised and impoverished sections of society, may have been transported to another country (therefore lacking a local support system and an ability to communicate and seek help), and experience high rates of abuse. Effectively tackling modern slavery requires a comprehensive strategy that focuses not only on discovering and prosecuting perpetrators, but also providing sufficient protection and support to victims and addressing the ‘root causes’ of these crimes.

While aspects of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (HTA) have been effectively designed to protect and support victims, there are significant shortcomings that must be addressed. In line with the structure of the current Modern Slavery Strategy, the following section will address the various issues related to the themes of pursue, protect, and prevent. Each subsection will highlight the central issues and provide accompanying recommendations. Throughout the report, the impact of the Covid-19 pandemic will also be addressed.

4.2. Covid-19 and Modern Slavery

While it has been suggested that the fewer numbers of people on the streets due to Covid-19 restrictions have decreased overall crime levels,²¹² this has not been the case for human trafficking. Instead, traffickers have worked around global preventative measures²¹³ resulting in an increase of cases.²¹⁴ This is accompanied by an exacerbation of victim vulnerabilities.²¹⁵ a greater risk to trafficked victims

²¹² Tara McKelvey, ‘Coronavirus lockdown: How has it affected crime? (BBC, 24 April 2020) <<https://www.bbc.co.uk/news/world-us-canada-52416330>> accessed 10 December 2020.

²¹³ Interpol, ‘COVID-19 impact on migrant smuggling and human trafficking’ (Interpol, 11 June 2020) <<https://www.interpol.int/News-and-Events/News/2020/COVID-19-impact-on-migrant-smuggling-and-human-trafficking>> accessed 1 December 2020.

²¹⁴ Caritas Internationalis, ‘Cases of human trafficking increase during the Covid-19 pandemic’ (Caritas Internationalis, ND) <<https://www.caritas.org/2020/07/covid-19-and-human-trafficking/>> accessed 29 November 2020.

²¹⁵ OSCE Office for Democratic Institutions and Human Rights (ODIHR), ‘Guidance: Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic’ (2020), 7-8.

of contracting Covid-19 due to a lack of safeguarding, ability to socially distance, and access to Personal Protective Equipment.²¹⁶

While health responses have been a priority, there are emerging concerns about the short and long-term impact that the pandemic and the measures taken to control it have and will likely have on victims of trafficking.²¹⁷ Also, COVID-19 responses may disproportionately affect specific categories of people at risk of exploitation. For example, undocumented migrants and seasonal workers are faced with more precarious working and living conditions, resulting in greater vulnerability to criminal networks. There are concerns that people in the sex industry, domestic work and garment industry will be more vulnerable to exploitation.²¹⁸ The following vulnerabilities have been identified by the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) and the OSCE ODIHR:

- Hindered access to healthcare for victims who may be more exposed to the virus. There are concerns that victims will not seek medical assistance for COVID-19 due to fear of administrative detention deriving from their irregular migration status.
- Complications surrounding debt bondage. Victims may become increasingly desperate to repay their growing debts to traffickers. Traffickers continue to charge victims for rent and food during the pandemic and force victims to engage in high-risk activities, such as exploitative informal labour, prostitution or the production of online pornography.
- Victims usually have their documents seized by the traffickers, and as stated above, they may experience additional barriers in accessing COVID-19 related healthcare and services. Lack of personal documentation might also put them at risk of abuse, detention and re-victimisation from security actors/police officers enforcing quarantines and managing checkpoints.²¹⁹

Covid-19 also raises particular concerns for two specific vulnerable groups in Northern Ireland: domestic workers and those working in the informal car-wash industry. As expanded upon below, domestic workers are particularly vulnerable to labour exploitation. They are bound to their employers

²¹⁶ Human Trafficking Project, 'Covid-19 and Human Trafficking' (Human Trafficking Project, ND) <<https://www.humantraffickingproject.com/covid-19-and-human-trafficking/>> accessed 29 November 2020.

²¹⁷ ICAT, 'COVID-19 pandemic and its impact for victims and survivors of trafficking in persons' (2020).

²¹⁸ United Nations Office on Drugs and Crime, 'Impact Of The Covid-19 Pandemic on Trafficking in Persons' <<https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/Thematic-Brief-on-COVID-19-EN-ver.21.pdf>> Accessed 07/12/2020.

²¹⁹ The Global Protection Cluster Anti-Trafficking Task Team < https://www.globalprotectioncluster.org/wp-content/uploads/GPC-Task-Team-on-Anti-Trafficking_COVID-guidance_final_SM.pdf> Accessed on 21/11/2020. The Global Protection Cluster is a network of nongovernmental organizations (NGOs), international organizations and United Nations (UN) agencies, engaged in protection work in humanitarian crises including armed conflict, climate change related and natural disaster.

who may deny or withhold their work permits. During the lockdown, domestic workers may work extra hours – due to all members of families locked down at home. They may also be required to take care of people who contracted COVID-19 without adequate health protections. With families losing jobs, domestic workers may also experience delays in payment of their wages or lose their income. Also, alongside the rise of domestic violence during the lockdown, domestic workers in abusive or exploitative working conditions are at a higher risk of violence and abuse by their employers or family members.²²⁰

Further, the informal car-wash industry is a known destination for victims of modern slavery. In recognition of this, authorities should not suspend labour inspections, inspectorates should be trained to recognise cases of trafficking and exploitation. Irregular migrants within the car wash industry in Northern Ireland might even be more vulnerable at this time – their supervisors may involve them in other exploitative activities. As such, inspections should not be suspended but done safely to identify if migrants have slipped into exploitative conditions during the lockdown in the absence of car washing.²²¹

4.3. The Strategic Priority of Pursue in relation to Victim Support

Pursue is defined as ‘detecting, investigating, disrupting and prosecuting modern slavery offenders.’ While the strategy measures success in this area as including ‘victims of modern slavery identified and brought to safety’, objectives listed under this strand are very much focused on law enforcement and legalistic aspects. All of which arguably relates to the perpetrators of modern slavery and human trafficking offences, rather than the victims.

Enforcement at Entry Points

State entry points are a key area for identifying potential perpetrators and victims. While the strategy makes a commitment to review and update guidance on ‘the use of interpreting and translating services to include potential issues related to ethnic, culture and religious sensitivity issues’ by the PSNI, there is no mention of this commitment for United Kingdom Immigration Enforcement (UKIE) or United Kingdom Border Force (UKBF). Both are first responder organisations who can make referrals under

²²⁰ Maria Grazia Giammarinaro, ‘COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons’ Special Rapporteur on trafficking in persons, especially women and children, June 2020.

²²¹ See generally, Alex Strangwayes-Booth, ‘Safe Car Wash app reveals hundreds of potential slavery cases’ BBC <<https://www.bbc.co.uk/news/uk-england-47829016>> Accessed 11/12/2020.

the National Referral Mechanism (NRM). Given the likely exposure of those working in UKIE and UKBF to people of all ethnicities, cultures, and religions, it is of the utmost importance that there are both adequate interpreting and translation services in place, and also training in detecting strategies to ensure that assumptions are not made, nor anything missed, due to unfamiliarity with ethnicities, cultures, and religions. Concern has been raised over the low rates of referral from both of these agencies. Official Home Office statistics²²² show that during Quarter 3 of 2020, referrals from UKIE and UKBF were substantially lower than from police forces, particularly referrals for children. Furthermore, a 2016 response to the Independent Chief Inspector of Borders and Immigration from the Law Centre NI²²³ noted the extremely low rate of referrals to the NRM from UKBF. It also expressed concern about how potential victims of trafficking are treated upon arrival in the UK, suggesting that immigration detention is or was being used for ‘administrative convenience’, and that there was a potential inappropriate use of handcuffs. This raises concerns that victims are being subjected to treatment as ‘perpetrators’ rather than recognising their victim status. There is nothing in this or previous Modern Slavery Strategies to indicate that these concerns and the low referral rate have been addressed.

Impact of Brexit

A further concern related to the adequacy of detection strategies at entry points into the UK and Northern Ireland is Brexit – another area left out of the Modern Slavery Strategy. There are some Brexit-related factors which could potentially hinder an effective operational response to identifying and reporting victims of trafficking at entry points to the UK and Northern Ireland:

- Access to intelligence about foreign national offenders travelling to the UK is possible due to membership of Europol, but as of 11 November 2020, the UK had not secured access to intelligence sources and security cooperation from the European Union. Without this, UKBF

²²² NRM Statistics UK Home Office, ‘Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2020 – July to September’, (UK Home Office, October 2020) < Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2020 – July to September - GOV.UK (www.gov.uk)> accessed 11 December 2020.

²²³ Law Society NI, ‘Independent Chief Inspector of Borders & Immigration Border Force Inspection Law Centre (NI) response’ (Law Society NI, August 2016) < 2016Response_InspectionIntoBorderForceTreatment_Aug.pdf (lawcentreni.s3.amazonaws.com)> accessed 11 December 2020.

will have no knowledge of convicted or potential traffickers attempting to enter the UK,²²⁴ making them ‘relatively blind’ in terms of previous convictions and potential risk.²²⁵

- Inspectors at Glasgow Airport found that UKBF staff had problems communicating with visitors from Romania, something which was described as self-defeating for identifying trafficking victims.²²⁶ A partnership between UKBF staff at Glasgow Airport and Romanian police officers was set up which, amongst other things, ensured the language barrier was overcome and also meant that support to vulnerable passengers could be provided. Unfortunately, this partnership was suspended in 2019 due to Brexit uncertainty. This highlights the fact that there is a need for interpreting and translation services among UKBF staff, not just the PSNI as set out in the Strategy.
- Tightened borders in Great Britain could have an unintentional side effect for Northern Ireland post-Brexit. Prior to Brexit, the smuggling of illegal drugs, firearms, alcohol, cigarettes and people was already an issue. Concern has been expressed that Northern Ireland could increasingly be used to smuggle victims of modern slavery and human trafficking, as they could be more easily transported from the EU into Great Britain via Northern Ireland.²²⁷ The Strategy does not appear to address this risk.

Immigration Policy

Further, the ‘hostile environment’²²⁸ policies of the UK have potentially created an environment conducive to modern slavery, leaving refugees and asylum seekers vulnerable to forced labour,²²⁹ and failing to prevent potential trafficking victims from being treated as illegal immigrants.²³⁰ Experts have

²²⁴ Louise Gleich and others, ‘Taking Back Control Of Our Borders?’ The Impact Of Modern-Day Slavery’ (Human Trafficking Foundation 2020).

²²⁵ Phil Brewer, ‘UK risks becoming a haven for trafficking exploitation post-Brexit’ (ITV 03 December 2020), <<https://www.itv.com/news/2020-12-03/uk-risks-becoming-a-haven-for-trafficking-exploitation-post-brexit>> accessed 6th January 2021.

²²⁶ Jamie Grierson, ‘Brexit Uncertainty’ Halts Anti-Trafficking Work In Glasgow’ (The Guardian, 2020), <<https://www.theguardian.com/law/2019/oct/31/glasgow-airport-anti-human-trafficking-work-brexit-uncertainty>> accessed 6th January 2021.

²²⁷ Amanda Kramer, ‘Brexit and Policing Cooperation in Ireland’ (UK in a Changing Europe, 2020) <<https://ukandeu.ac.uk/brexit-and-policing-cooperation-in-ireland/>> accessed 6th January 2021.

²²⁸ ‘The Hostile Environment Explained’ (Joint Council for the Welfare of Immigrants) <<https://www.jcwi.org.uk/the-hostile-environment-explained>> accessed 11 December 2020.

²²⁹ Hannah Lewis and others, ‘Precarious Lives Experiences Of Forced Labour Among Refugees And Asylum Seekers In England’ (White Rose 2013) <http://eprints.whiterose.ac.uk/75949/1/Precarious_Lives_Main_Report_2-7-13.pdf> accessed 6 January 2021.

²³⁰ May Bulman, ‘Home Office Unlawfully Failing to Protect Trafficking Survivors From Hostile Environment, Says High Court’ (MSN, 2020) <https://www.msn.com/en-gb/news/uknews/home-office-unlawfully-failing-to-protect-trafficking-survivors-from-hostile-environment-says-high-court/ar-BB1bC6dc> accessed 6th January 2021.

clearly stated that restrictive immigration policies are unhelpful in preventing modern slavery.²³¹ Northern Ireland is part of the UK and subject to these policies,²³² yet the Strategy does not address the implications of this.

While some of these issues may not be covered in the Strategy simply because they are not Northern Ireland specific, it is essential to point out that Northern Ireland does not exist in a vacuum. Any response to an intrastate and interstate issue such as modern slavery requires broader consideration outside the narrow confines of Northern Ireland, considering interactions with the rest of the United Kingdom. Indeed, a report from the Anti-trafficking Monitoring Group on Brexit and the UK's Fight Against Modern Slavery explicitly states that cross-border partnerships are essential to tackling modern slavery.²³³ Failure to consider these issues risks creates loopholes and allows perpetrators of modern slavery to go unpursued and victims to go unprotected.

Impact of Covid-19

Covid-19 is likely to have impacted the effectiveness of *pursue* strategies due to the reduction of resources required to affect an operational response - with Covid-19 resulting in, at one point, 350 PSNI officers absent or self-isolating.²³⁴ Further, there has been a significant diversion of attention and resources to policing Covid-19 restrictions. Both of these factors automatically reduce police numbers and resources available to address human trafficking specifically.

Additionally, the Northern Ireland Courts & Tribunals Service has been negatively impacted. Not only have resources been taken up by cases of Covid-19 restriction breaches; but, the Court has also been operating at a reduced capacity with significantly fewer cases being heard due to lockdown and the resulting backlog. Thus, even if the law enforcement operations are adequate to identify and bring to safety victims of modern slavery and disrupt and apprehend those responsible, prosecution and

²³¹ The Anti-Trafficking Monitoring Group, 'Brexit & The UK'S Fight Against Modern Slavery' (The Anti-Trafficking Monitoring Group 2017) <<https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>>, 15, accessed 11 December 2020.

²³² Fidelma Hagan and others, 'Brexit And Immigration Control In Northern Ireland' (UK in a changing Europe, 2020) <<https://tinyurl.com/y2felotf>> accessed 11 December 2020.

²³³ The Anti-Trafficking Monitoring Group, 'Brexit & The UK'S Fight Against Modern Slavery' (The Anti-Trafficking Monitoring Group 2017), 23.

²³⁴ David Young, 'More than 350 police personnel absent or self-isolating due to Covid-19' (Belfast Telegraph, 1 December 2020) <<https://www.belfasttelegraph.co.uk/news/northern-ireland/more-than-350-police-personnel-absent-or-self-isolating-due-to-covid-19-39814430.html>> accessed 1 December 2020.

conviction of offenders could also be delayed indefinitely. While this may be an unavoidable situation, the strategy should acknowledge and attempt to mitigate this issue.

4.4. The Strategic Priority of Protect in relation to Victim Support

The strategy defines *protect* as ‘[r]educing the harm caused by modern slavery by improved victim identification and support’. It intends to measure success as ‘more victims of modern slavery are identified’ and ‘victims are provided with appropriate and effective support and protection to help them recover’.

The Right to a Remedy

The right to remedy is a key element for the protection of victims of modern slavery. Several international legal instruments have stated that victims of modern slavery are entitled to an effective remedy by the competent judicial authorities, administrative agencies or other competent bodies.²³⁵ In this sense, States are obliged to provide a wide range of measures that repair the harms caused by this human right violation,²³⁶ including but not limited to:

- a) Restitution measures:
 - i. Providing temporary residence status to victims of modern slavery, where a safe return to their country of origin cannot be guaranteed.
 - ii. Addressing the root causes of modern slavery in order to ensure that victims do not return to the pre-existing situation that put them at risk of being trafficked.

²³⁵ Universal Declaration of Human Rights 1948 Art. 8; International Covenant on Civil and Political Rights 1976 Art 2(3); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 Art 83; United Nations Convention against Transnational Organized Crime 2000 Arts 6(3)-25(2); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2000 Arts 6 and 7; Protocol to the Forced Labour Convention 2014 Arts 3 and 4; European Convention on Human Rights 1953 Art 13; UNDOC, Legislative Guide for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols 2004 para 60; UN Guiding Principles on Business and Human Rights 2011 27.

²³⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2006; Special Rapporteur on trafficking in persons, especially women and children, ‘Draft Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons’ (Special Rapporteur on trafficking in persons, especially women and children 2014) A/HRC/26/18-Annex A; *CN v the United Kingdom* [2012] European Court of Human Rights Application no. 4239/08; *Rantsev v Cyprus and Russia* [2010] European Court of Human Rights Application no. 25965/04; Inter-Agency Coordination Group against Trafficking in Persons (ICAT), ‘Providing Effective Remedies for Victims Of Trafficking in Persons’ (Inter-Agency Coordination Group against Trafficking in Persons (ICAT) 2016); OHCHR, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (2002) E/2002/68/Add. 1.

- b) Rehabilitation measures:
 - i. Providing measures for the physical, psychological and social recovery of victims, *e.g.*, appropriate housing; counselling; legal advice; medical and psychological treatment; employment; educational and training opportunities.
- c) Compensation measures:
 - i. Implementing domestic laws and procedures that enable victims to obtain civil, labour, criminal and administrative compensations.
 - ii. Ensuring that victims are fully informed and assisted throughout the compensation proceedings.
 - iii. Establishing a compensation fund for victims of modern slavery, which is funded by confiscating and seizing assets of perpetrators.
- d) Satisfaction measures:
 - i. Providing measures for the full public investigation and disclosure of the victimisation.
 - ii. Apologising and commemorating the victims publicly.
- e) Guarantees of non-repetition:
 - i. Promoting educational and legal training on human rights to public authorities, police officers, immigration authorities, and business to prevent the occurrence of modern slavery.
 - ii. Promoting mechanisms for preventing and monitoring the occurrence of modern slavery.
 - iii. Reviewing and reforming laws contributing to the occurrence of modern slavery.

Although the HTA provides a legal framework for accessing reparations, the number of victims obtaining an effective remedy is minimal.²³⁷ Consequently, many victims of modern slavery have not received sufficient support to be able to move forward with their lives and process the trauma they have endured. The UK Government has reported that the current decrease in the number of victims of

²³⁷ As of October 2020, there have been no reparation orders made under the HTA. Likewise, the number of applications for criminal compensation in respect of modern slavery victims was very low in comparison to the number of NRM submitted. Over the last five years, there has been no successful applications from victims of modern slavery under the Criminal Injury Compensation Scheme (a total of 10 applications were made during this period), Criminal Justice Inspection Northern Ireland (n3); ‘Joint Civil Society Report on Trafficking and Modern Slavery in the UK to the UN Human Rights Committee’ (UN Human Rights Committee 2020) Examination of the eighth periodic report of the United Kingdom.

modern slavery accessing remedy measures in 2020 was likely to be a result of the COVID-19 related restrictions.²³⁸

In this context, the following measures are recommended in order to satisfy the right of the victims of modern slavery to effective reparation in the 2021-22 strategy:

- Regularise the immigration status of victims of modern slavery, in order to ensure access to further recovery mechanisms, e.g. health and psychological services, free COVID-19 testing, housing programs, social security, job stability and unemployment benefits.²³⁹
- Make more visible and accessible mechanisms for free legal aid, civil society support and translation-interpretation services, aiming to allow the effective participation of victims in reparations proceedings.

Promote greater engagement of business, civil society groups, and trade unions in the remedy schemes for victims.²⁴⁰

The Non-Punishment Principle

In some cases, victims of modern slavery may be exploited to engage in criminal behaviour or unlawful activities, for instance, drug trafficking, petty crime, possession or use of fraudulent documents or irregularities with the compliance of immigration laws.²⁴¹ Therefore, international human rights law has enshrined the principle of non-punishment as one of the main mechanisms for modern slavery victim protection.²⁴² This principle establishes the right for victims not to be subject to arrest, charge, detention, or prosecution for crimes committed as a direct consequence of their victimisation.²⁴³ This

²³⁸ Special Rapporteur on contemporary forms of slavery, 'Impact of the Coronavirus Disease Pandemic on Contemporary Forms of Slavery and Slavery-like Practices' (Human Rights Council 2020) A/HRC/45/8 para 60.

²³⁹ These mechanisms have been implemented by the governments of Italy, Portugal, Cabo Verde, Togo, Peru, Philippines, Japan, Qatar and Saudi Arabia during the COVID-19 pandemic. Inter-Agency Coordination Group against Trafficking in Persons (ICAT) (n 236).

²⁴⁰ In Brazil, the ILO has partnered with local businesses and civil society groups to identify rescued victims of modern slavery, providing them with education and vocational skills training, and reintegrating them back into the labour market. In Germany, a trade union obtained wage arrears on behalf of a trafficked Serbian metal worker after he had returned home. *ibid.*

²⁴¹ Maria Grazia Giammarinaro, 'The Importance of Implementing the Non-Punishment Provision: The Obligation to Protect Victims' (Special Rapporteur on trafficking in persons, especially women and children 2020); Inter-Agency Coordination Group against Trafficking in Persons (ICAT), 'Non-Punishment of Victims of Trafficking' (Inter-Agency Coordination Group against Trafficking in Persons (ICAT) 2020) Issue Brief 8.

²⁴² OHCHR (n 25); Convention on Action against Trafficking in Human Beings 2005 s Art 26; Directive on preventing and combating trafficking in human beings and protecting its victims 2011 (Directive 2011/36/EU) s Art 8; UNDOC Legislative Guide for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols (n 60); Protocol to the Forced Labour Convention s Art 4.

²⁴³ Inter-Agency Coordination Group against Trafficking in Persons (ICAT) (n 236).

principle supports the interests of justice by ensuring that victims are not subjected to further trauma or victimisation, and encourages them to report crimes committed against them.²⁴⁴

This principle is characterised by the following elements: (i) it applies to victims of modern slavery; (ii) it can cover a broad range of unlawful acts to which victims were compelled to commit; and (iii) the non-punishment principle applies to all stages of the criminal, administrative and immigration proceedings in which the victim could be involved.²⁴⁵ Section 45 of the Modern Slavery Act (2015) (MSA) and section 22 of HTA provide a statutory defence to victims of modern slavery. These mechanisms contest the alleged criminal responsibility of victims,²⁴⁶ and can be invoked as long as the individual complies with at least one of the conditions stated.

Despite the introduction of statutory defences in both MSA and HTA, victims of modern slavery continue to be wrongly prosecuted for drug, benefit and immigration offences.²⁴⁷ The statutory defences are insufficient to protect victims and guarantee the principle of non-punishment, as they apply only once the criminal proceeding has commenced and it do not offer additional protections during the arrest, detention, criminal charge, or within any further administrative or immigration proceeding against the victim.²⁴⁸ In this context, the following measures are recommended to guarantee the principle of non-punishment of victims of modern slavery in the 2021-22 strategy:

- Extend the scope of the non-punishment measures to other stages of the criminal proceedings, such as criminal charges, arrest and detention. Likewise, it is recommended to extend the scope of this principle to administrative and immigration proceedings against victims of modern slavery.
- Implement the public interest test in criminal, administrative and immigration proceedings against victims of modern slavery. This test can be a more flexible than the statutory defence, and it is no subjected to a previous conclusive decision of the NRM in relation to the victim status.²⁴⁹
- Promote educational material and training session for judges, prosecutors, defence lawyers, immigration and police officers on the non-punishment principle.

²⁴⁴ *ibid.*

²⁴⁵ *ibid*; UNICEF, 'Victim, Not Criminal' (UNICEF 2017).

²⁴⁶ Inter-Agency Coordination Group against Trafficking in Persons (ICAT) (n 236).

²⁴⁷ 'Joint Civil Society Report on Trafficking and Modern Slavery in the UK to the UN Human Rights Committee' (n 237)

²⁴⁸ *ibid.*

²⁴⁹ UNICEF (n 245).

The Protection of Victim's Immigration Status

The discretionary powers of the Home Office (HO) in relation to the immigration status of victims of modern slavery create significant barriers to full recovery from their victimisation. Following the conclusive grounds of the NRM decision, the HO considers the possibility of granting a discretionary leave for migrant victims.²⁵⁰ This form of leave derives from the rights enshrined in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) which outlines that member states should issue renewable residence permits to victims when required, in order to pursue compensation or due to ongoing cooperation with law enforcement. Additionally, in the case of children, the HO is obligated to consider whether granting leave is in the child's best interest.²⁵¹

However, in the last four years, of the 4,695 individuals with a positive conclusive grounds decision subject to immigration control, the HO granted a total of 549 positive decisions for discretionary leave under the modern slavery policy.²⁵² Of these, only 28 grants of discretionary leave were issued to child victims. This means less than 12% of confirmed victims were granted discretionary leave in this four-year period. Of those who were granted leave, less than 0.6% were children. Further, the FOI data states that for 74% of all victims of trafficking granted discretionary leave, the leave lasted between 7 – 12 months. A total of 7.8% were granted leave of just 0 – 6 months. Only 9.1 % were granted leave of 13 – 24 months and 8.3% for more than 25 months. Thus, not only is the leave period insufficient for the vast majority of victims, the discretionary leave policy has been found unlawful as it deprives of access to basic services, dehumanised and penalised victims of modern slavery.²⁵³ These findings contradict the state obligation to protect victims of this form of human rights violation.

The proceedings for asylum, refugee status and humanitarian protection represent the main mechanisms for protecting the rights of immigrant victims of modern slavery. These proceedings grant the possibility to apply for a further extension of leave to stay in the UK and allow the victims to access certain social, health, labour and education benefits.²⁵⁴ However, in some cases, access to these

²⁵⁰ JP, R (On the Application Of) v Secretary of State for the Home Department [2019] EWHC 3346 (Admin) (10 December 2019).

²⁵¹ 'Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings'. 'Discretionary leave for victims of modern slavery' (Home Office 2018).

²⁵² 'FOI Data Tables' <<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=6fe8c52a-2290-4058-98da-68c8f1b534bd>> accessed 15 December 2020.

²⁵³ EOG (Anonymity Order Made) v Secretary of State for the Home Department [2020] EWHC 3310 (England and Wales High Court (Administrative Court) Decisions).

²⁵⁴ John Vassiliou, 'What Is the Difference between Refugee Status and Humanitarian Protection?' (Free Movement, 21 June 2019)

mechanisms could be particularly difficult, considering that some of the victims may not meet the legal conditions for being granted asylum, refugee status or humanitarian protection.²⁵⁵

In relation to child victims, decisions should be left primarily in the hands of social services departments.²⁵⁶ In this way, social services should advise if it would be in the best interest for the child to remain in the UK, and therefore be granted a leave to stay.²⁵⁷ If deemed to be in the best interests of the child then a grant of 4 years would be appropriate, followed by a grant of indefinite leave to remain.

Within this framework, it is essential that the strategy sets out measures to address the structural issues faced by victims of modern slavery subject to immigration control by necessary resources, such as the provision of quality legal advice, support, accommodation and access to health care. The strategy must also acknowledge the specific case of children and mitigate the consequences of extended periods of immigration limbo – considering how this could increase children’s vulnerability to re-trafficking,²⁵⁸ particularly as they transition into adulthood with fear of immigration detention and removal to their country of origin.

Impact of Covid-19

While the intention of the Modern Slavery Strategy is to ‘proactively identify and report victims of modern slavery’, the focus appears to be on the reporting mechanism rather than identification of victims. Furthermore, the aim is to equip ‘relevant sectors and front-line professionals’ with the skills and knowledge to recognise and report suspected trafficking cases. This not only ignores portions of the population who may come across incidences of trafficking but be unable to recognise it, it focuses on areas that are currently overstretched due to Covid-19. The United Nations Office on Drugs and Crime (UNODC) points out that Covid-19 not only diverts law enforcement resources but it is also putting increased pressure on social and public services such as healthcare.²⁵⁹ Thus, this approach to who receives training on recognising and reporting victims means that the only people to be trained are those already stretched to capacity, resulting in the potential for many victims to go unrecognised.

²⁵⁵ Esme Madill, ‘Albanian Asylum Claims: Making a Difference’ (Free Movement, 7 October 2020) .

²⁵⁶ ‘Immigration Directorate Instructions’

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/263240/child_gen.pdf> accessed 15 December 2020.

²⁵⁷ Ibid.

²⁵⁸ Nando Sigona, Elaine Chase and Rachel Humphris, ‘Understanding Causes and Consequences of Going ‘Missing’’ 4.

²⁵⁹ Ghada Waly, ‘COVID-19: UNODC warns of increased risks to human trafficking victims’ (United Nations Office on Drugs and Crime, 5 May 2020) <https://www.unodc.org/unodc/en/frontpage/2020/May/covid-19_-unodc-warns-of-increased-risks-to-human-trafficking-victims.html> accessed 1 December 2020.

Following a global survey conducted by UN Women and the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), OSCE published policy guidelines²⁶⁰ in response to new risks and challenges posed by Covid-19. They point out the difficulties that victims of trafficking (VoTs) and survivors of trafficking have in accessing health care, including ‘access to primary doctors, psychological services, hospitals, pharmacies, COVID-19 testing, and personal protective equipment’. There is nothing in the DOJ draft strategy to acknowledge or address this. Furthermore, a statement from the UN Special Rapporteurs on rights of migrants and trafficking in persons²⁶¹ advises that protection measures must be adopted for the whole population, regardless of migration status. The advice also includes an automatic 6-month extension of all protection and assistance programmes for migrants and trafficked persons to ensure access to adequate ‘prevention measures, testing, medical treatment, health services and social assistance’. Once again, the DOJ draft strategy does not mention this issue.

4.5. The Strategic Priority of Prevent in relation to Victim Support

The strategy identifies prevent as ‘Reducing the threat of modern slavery by reducing vulnerability and demand and by raising awareness’ and aims to measure success as ‘fewer offenders will engage in modern slavery crime’, ‘fewer victims will become entrapped by modern slavery’, and ‘reduced demand through increased awareness’. By addressing the ‘root causes’ of victim vulnerability to inhibit trafficker recruitment efforts,²⁶² people could be prevented from being drawn into slavery.²⁶³ Measures aimed at addressing these root causes must be instituted for systemic change to take hold.²⁶⁴

Reducing the vulnerability of potential victims and addressing re-victimization

Often, when victims return to their communities, they face labelling and ostracisation, which can lead to re-victimization. Thus, it is important to create ‘comprehensive programs for rescued victims of

²⁶⁰ Tatiana Kotlyarenko and others, 'https://www.osce.org/files/f/documents/2/a/458434_4.pdf' (Organization for Security and Cooperation in Europe (OSCE) 2020).

²⁶¹ Felipe González Morales and Maria Grazia Giammarinaro, 'OHCHR | UN Experts Call On Governments To Adopt Urgent Measures To Protect Migrants And Trafficked Persons In Their Response To COVID-19' (United Nations Office of the High Commissioner for Human Rights, 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25774>> accessed 29 November 2020.

²⁶² Jonathan Todres, ‘The Importance of Realizing ‘Other Rights’ to Prevent Sex Trafficking’, (2006) 12 *Cardozo J.L. & Gender* 885, 887.

²⁶³ Department of Justice, 'Consultation on Modern Slavery Strategy 2021-22' (2020).

²⁶⁴ Kalen Fredette, ‘Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation’ (2009) 17(1) *Cardozo Journal of International & Comparative Law* 101-134.

trafficking [which] would help weave a much-needed social safety net to end the re-trafficking cycle'.²⁶⁵ Another strategy for reducing vulnerability has been proposed by the recent Modern Slavery (Victim Support) Bill [HL] 2019-21 in Northern Ireland that will allow at least 12 months' leave to remain for identified victims registered with the NRM. Providing statutory immigration stability and security for confirmed victims would help to prevent re-trafficking and provide an environment in which victims are willing to assist police investigations.²⁶⁶

The Slavery and Trafficking Prevention Orders (STPOs) under the HTA are a preventative measure considered for every eligible person of a PSNI modern slavery investigation.²⁶⁷ Between 2017 and 2020, 2 STPOs have been issued.²⁶⁸ Such orders could be rendered more effective through increased use. These civil orders are an important tool to prevent slavery-related harm before it occurs and to prevent re-offending.²⁶⁹

Another step for overcoming the vulnerability of potential and recent-rescued victims is empowering them to recognise themselves as such²⁷⁰. Therefore, as part of the outlined strategy, the Department of Justice along with legal and societal partners must seek to engage with those deemed to be at risk of trafficking, aiming to reduce their need to migrate through unsafe and risky channels or to take on jobs in exploitative conditions²⁷¹. In order to do so, it is essential to understand and outline the most vulnerable groups by collecting and interpreting data, this way the government and stakeholders can direct actions towards those specific groups.

Child Sexual Exploitation

Child sexual exploitation (CSE) happens when a young person is encouraged or forced to participate in sexual activity, often following a period of grooming by offenders. While the issue of international sex trafficking of both adults and children is well reported, in 2013, Barnardo's²⁷² highlighted the

²⁶⁵ Kalen Fredette, 'Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation' (2009) 17 *Cardozo J Int'l & Comp L* 101, 128.

²⁶⁶ Northern Ireland Assembly, 'Motion: Support for the Modern Slavery (Victim Support) Bill [HL] 2019-21 Official Report: Tuesday 13 October 2020'

²⁶⁷ Section 11 of, and Schedule 3 to, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

²⁶⁸ '2020 UK Annual Report on Modern Slavery' (n6).

²⁶⁹ *ibid.*

²⁷⁰ Department of Justice (n 263)

²⁷¹ Anti Trafficking Monitoring Group, 'Before The Harm Is Done: Examining The UK'S Response To The Prevention Of Trafficking' (2018) 26.

²⁷² Anne Marie Carrie, 'Barnardo's concern over child sex trafficking rise' (BBC, 13 January 2013) <<https://www.bbc.co.uk/news/uk-20999529>> accessed 10 December 2020.

prevalence of children being trafficked for CSE within the United Kingdom. A policy briefing²⁷³ from Barnardos expressed concern regarding a decrease in the number of child protection referrals in Northern Ireland since lockdown began, alongside a rise in internet traffic which could increase the risk of grooming and sexual exploitation. The 2018/19 Childline Annual Review indicates a 16% rise in counselling sessions related to CSE, noting that children typically find this type of abuse hard to identify as perpetrators groom them to believe they love them and are isolated from friends and family.²⁷⁴

There needs to be targeted raising of awareness in schools, youth clubs, care homes, and any other organisations with groups of children and young people to make them aware of the signs of grooming and whom to contact if they have any concerns. Raising awareness among professionals in relevant sectors is only teaching them to recognise the signs once the child is already in danger. More pre-emptive work needs to take place. Vulnerable young people are even more at risks, such as those with disabilities and mental health issues. Rather than a purely reactive strategy, there is a need to be proactive by making an investment in mental health services, after school programmes, and other services which reduce potential vulnerability to trafficking.

Awareness Raising

Effective training and awareness has proved vital for the PSNI in all areas of crime prevention and investigation; particularly so in respect of the hidden nature of modern slavery and human trafficking and the issues involving victims.²⁷⁵ Training of frontline workers has also proved effective in England and Wales, directly leading to over 1,000 referrals to the Modern Slavery Helpline.²⁷⁶ Additionally, there is an important outstanding action from the 2021-22 Strategy: the training event in conjunction with Belfast Council to ‘strengthen cross-sector resilience against modern slavery’.

As recognised in Article 9 of the Palermo Protocols, effective awareness raising necessitates engagement with the media.²⁷⁷ Media coverage and training have proven helpful to tackle stereotypical

²⁷³ Julia Buchanan & Trása Canavan, ‘Policy Briefing Coronavirus – the impact on children & young people’ (Barnardo’s 2020) <<https://www.barnardos.org.uk/sites/default/files/uploads/Barnardos-NI-Policy-Briefing-Coronavirus-May-2020.pdf>> Accessed 10 December 2020.

²⁷⁴ NSPCC Knowledge & Information Service, ‘Childline Annual Review 2018/19’ (NSPCC 2020) <<https://learning.nspcc.org.uk/media/1898/childline-annual-review-2018-19.pdf>> accessed 2 December 2020.

²⁷⁵ Criminal Justice Inspection Northern Ireland, (n3).

²⁷⁶ ‘2020 UK Annual Report on Modern Slavery’ (n6).

²⁷⁷ J Birks and A Gardner, ‘Introducing the Slave Next Door’ 13 *Anti-Trafficking Review* (2019) 66-81.

understandings of modern slavery.²⁷⁸ Media coverage has helped to provide understanding that the circumstances and vulnerabilities imposed on someone along with the demand for forced labour are the main reasons for the continuation of modern slavery. This has been accompanied by shift in public opinion supporting further accountability for employers. This recent shift shows that ‘addressing such issues in local and national press and media campaigns could provide a stronger foundation for de-normalising the conditions which allow exploitation to occur, and greater confidence for those wishing to report abuses.’²⁷⁹

Reducing Demand

Slavery and Trafficking Risk Orders (STROs) outlined in the MSA make provisions for courts in England and Wales to place restrictions on individuals not yet convicted but suspected of involvement in modern slavery offending.²⁸⁰ In 2019-20, 12 Interim Slavery Orders and STROs were issued in the UK.²⁸¹ Such orders are not in force in Northern Ireland. Police officers in England and Wales found that Risk Orders were a useful tool to disrupt offending networks and prevent further exploitation or trafficking.²⁸² The Independent Anti-Slavery Commissioner commented that STROs can be used to prevent further exploitation whilst investigations of modern slavery are ongoing.²⁸³ Given its effectiveness elsewhere in the UK, the implementation of Risk Orders in Northern Ireland should be reviewed. The Criminal Justice Inspection Northern Ireland (CJINI) have recommended that the Department of Justice, in consultation with the PSNI and Public Prosecution Service for Northern Ireland, and after consideration of the experience in England and Wales, should re-examine the need for STROs in Northern Ireland to prevent modern slavery and human trafficking-related crime and support victims.²⁸⁴

It is essential that Northern Ireland follows what the Palermo Protocol establishes as a main action to prevent modern slavery: engage in an international cooperation to disclose ‘information sharing about offenders, trafficked persons, their documentation, and trafficking methodologies’.²⁸⁵ It must also connect the government agencies and stakeholders responsible to tackle modern slavery to make the

²⁷⁸ Kalen Fredette, 'Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation' 17 *Cardozo J Int'l & Comp L* 101 (2009) 127.

²⁷⁹ *ibid*

²⁸⁰ Modern Slavery Act 2015 s23 – 29

²⁸¹ Home Office (n 268)

²⁸² Home Office, 'Independent Review of the Modern Slavery Act 2015: Final Report' 22 May 2019

²⁸³ Independent Anti-Slavery Commissioner, 'Dame Sara Thornton comments on the exposure of UK's largest modern slavery network' (Independent Anti-Slavery Commissioner, 05 July 2019).

²⁸⁴ Criminal Justice Inspection Northern Ireland, (n3).

²⁸⁵ Fredette (n78).

policies and operations more effective. For example, sectors should also work together to ‘licens[e] and regulat[e] sectors where workers are particularly vulnerable to exploitation’.²⁸⁶ Taking a collaborative approach will help to ameliorate the conditions leading to modern slavery and facilitate the reintegration of survivors, addressing revictimization and the curbing the modern slavery cycle.

Impact of Covid-19

The strategy focuses heavily on engagement with at-risk communities, awareness-raising, and information dissemination. However, their progress report on the 19/20 strategy acknowledges the cancellation of a training event due to Covid-19, yet no allowances are made for the restrictions necessitated by Covid-19 and what this means for how they will address this. For example, there is an intention to ‘[d]isseminate information about Modern slavery at high profile public events’ with no backup plan for how to disseminate information if no public events can occur due to Covid-19. There is no stated intention to run online training or awareness-raising sessions or facilitate online engagement, both of which are vital in the current situation.

4.6. Domestic Work as a High-risk Sector: Addressing emerging issues

Domestic work is a high-risk sector within Northern Ireland and thus requires specific consideration. It has been argued²⁸⁷ that ‘the unique circumstances’ of working inside an employer’s private household combined with a lack of legal protection,²⁸⁸ place domestic workers at the focal point of the privatisation of modern slavery. According to the International Labour Organisation, domestic workers are employed by, ‘private households, often without clear terms of employment, unregistered in any book’, and therefore face forced exclusion ‘from the scope of labour legislation.’²⁸⁹ Domestic work embraces a wide variety of household tasks; typically characterised by, meagre wages, ‘excessively long hours’, along with ‘no guaranteed weekly day of rest’ and greater exposure ‘to physical, mental

²⁸⁶ Anti Trafficking Monitoring Group, 'Before The Harm Is Done: Examining The UK’S Response To The Prevention Of Trafficking' (2018) 17

²⁸⁷ Virginia Mantouvalou, ‘The Modern Slavery Act 2015 Three Years On’ (2018) *The Modern Law Review*.

²⁸⁸ Anti-Slavery Organisation, ‘Domestic Slavery: What is it?’ <<https://www.antislavery.org/slavery-today/domestic-work-and-slavery/>> accessed 12 December 2020.

²⁸⁹ *Ibid.*

and sexual abuse or restrictions on freedom of movement.’²⁹⁰ These individuals essentially face ‘unparalleled vulnerability’²⁹¹ to the dangers of labour exploitation.

The following central issues have been identified:

- Victims of labour exploitation in domestic work typically ‘do not...view their circumstances as modern slavery.’²⁹² This issue is a particular drawback because the current mechanisms in place require workers and witnesses to report employers who are enforcing exploitative measures on their workers.
- Kalayaan,²⁹³ a UK-based charity working to support and educate migrant domestic workers about their available rights, have found that victims fail to report their employers due to the debilitating fear of losing their immigration status²⁹⁴ and inability to change employers due to the 6-month visa restrictions in place. Likewise, the Filipino Domestic Workers Association has reported that ‘women head back into exploitative situations’ as they cannot find adequate employment ‘on what remains of their six-month visas.’²⁹⁵
- Prosecutors in Brazil, a country ‘struggling to tackle a hidden domestic servitude crisis’, have suggested the ‘low compensation victims tend to receive and the infrequency with which their captors face prison’ exacerbates the hidden nature of this crime. Similarly, scholars have found, ‘criminalisation of modern slavery has not been accompanied by the enactment of suitable civil remedies for them’.²⁹⁶

The following recommendations are suggested to address the specificities of domestic workers experiencing labour exploitation:

- Provisions such as greater social assistance to workers and their families, along with educational workshops in local communities could aid the reporting procedure by raising awareness regarding the prominence of labour exploitation in our society.

²⁹⁰ Mantouvalou (n 287)

²⁹¹ Ibid.

²⁹² Freedom United, Let’s End Modern Slavery Together, ‘Officials Struggle to Tackle Domestic Servitude in Brazil’ <<https://www.freedomunited.org/news/officials-struggle-to-tackle-domestic-servitude-in-brazil/>> accessed 12 December 2020.

²⁹³ See Kalayaan, a registered charity educating migrant domestic workers <www.kalayann.org>

²⁹⁴ Labour Exploitation Advisory Group, ‘Opportunity Knocks: Improving Responses to Labour Exploitation With Secure Reporting.’ (April 2020) London: Focus on Labour Exploitation (FLEX).

²⁹⁵ Annie Kelly & Harriet Grant, ‘Absolutely unacceptable: UK accused of failing to protect domestic workers,’ The Guardian

²⁹⁶ Mantouvalou (n 287)

- To remedy concerns about immigration status, an adequate response is to end ‘data-sharing between statutory services and the Home Office’. This would help to provide ‘safe reporting mechanisms for migrants to report exploitation,’²⁹⁷ and increase the number of deviant employers facing prosecution and prevent further exploitation.
- The six-month visa is a leading risk for labour exploitation in domestic settings. By extending the timeframe, workers would be more equipped to secure safe employment.
- A minimum wage should be implemented to rectify the low-income domestic labourers receive.
- Prescribed contracts should be enforced to outline the number of hours employers can reasonably expect domestic workers to undertake and the compulsory registration of domestic workers to combat the difficulties surrounding forced exclusion from labour legislation.
- The International Labour Organisation Convention 189 on Decent Work for Domestic Workers should be ratified to strengthen the legislation.
- More training opportunities should be provided to police and other local authorities to highlight the particular issues ‘faced by migrant domestic workers including employers keeping workers passports, and for better statutory anti-trafficking provisions.’²⁹⁸ Further training and awareness will enable local authorities and the PSNI to be greater equipped to identify, respond and address domestic workers who are enduring a life of modern slavery.

4.7. General Recommendations for Victims

As elucidated above, there are a number of significant weak spots in the protection and support of victims provided in Northern Ireland’s response to Modern Slavery. These weak spots were identified within each of the themes of pursue, protect, and prevent. A host of recommendations have been suggested throughout the report to ameliorate these issues. To supplement the specific recommendations made in each section, this section will outline further general recommendations designed to protect vulnerable groups. Adequately protecting vulnerable groups requires deliberate effort and the exercise of due diligence from the authorities. If rescued victims are not protected, they are ultimately susceptible to re-trafficking. The following can be done to improve protection:

²⁹⁷ Focus on Labour Exploitation, ‘International Domestic Workers; Day 2020: Protecting Migrant Domestic Workers From Exploitation in the UK’ (June 2020).

²⁹⁸ Kalayaan <www.kalayaan.org.uk> Accessed 13 December 2020.

- States should formally acknowledge the role of migrant workers in supporting economies and filling labour shortages.²⁹⁹
- States should strengthen legal and social protection pathways for victims of labour exploitation to avoid increased vulnerabilities.³⁰⁰
- States should facilitate access to justice for victims of trafficking and exploitation.³⁰¹
- Support during COVID-19, including medical treatment, testing and social assistance, should be provided and accessible to vulnerable populations.³⁰²
- Suitable protection and support must be provided to vulnerable people, including free shelter and comprehensive support services.³⁰³ This effectively removes the control from the trafficker – who may be holding their documents or extorting exorbitant rent from them.
- States should support victims in order to avoid the risks of re-victimisation³⁰⁴ or re-trafficking.

²⁹⁹ *ibid*

³⁰⁰ *ibid.*

³⁰¹ *ibid.*

³⁰² Deanna Davy, 'The Effects of COVID-19 on Migration and Modern Slavery' (2020) Blog, Global Policy <<https://www.globalpolicyjournal.com/blog/09/10/2020/effects-covid-19-migration-and-modern-slavery>> Accessed 07/12/2020.

³⁰³ *ibid.*

³⁰⁴ Giammarinaro (n 241)