



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

**Proposed new amendment on
Servitude and Forced Labour**

June 2009

About Liberty

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

Liberty's policy papers are available at

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

About Anti-Slavery International

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

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Briefing

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

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

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

(ECHR), as well as subjecting someone to force, or using threats or deception designed to induce him or her to provide or acquire services or benefits of any kind. While a person who subjects another to slavery or forced labour is likely to breach a number of different criminal offences¹ and perhaps licensing or employment laws,² there is no freestanding statutory offence of subjecting a person to forced or compulsory labour, despite recent court rulings requiring criminalisation (as explained below). False imprisonment is an offence under the common law and has, on occasion, been used to prosecute those who have held others in slavery like conditions. However, this does not adequately deal with all situations where a person is effectively being held in servitude or where a person is subjected to forced or compulsory labour.

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

5. In addition, the Parliamentary Assembly of the Council of Europe has issued two recommendations⁵ on the subject of slavery and forced labour, noting that *“In the last few years a new form of slavery has appeared in Europe, namely domestic slavery”*. It set out the common features of domestic slavery as including the confiscation of passports, circumstances bordering on imprisonment, physical and/or

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

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

³ The ILO defines forced labour for the purposes of international law as *“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”* Menace of penalty however does not mean just punishment– it might take form of a loss of right or privileges; subtler forms of menace are sometimes of a psychological nature.

⁴ Article 25, ILO Convention No. 29.

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

sexual violence and illegal immigration status, and noted that “[t]he physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.” It made a recommendation that the Committee of Ministers should ask the governments of Member States to “make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes”.

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

7. Slavery and forced labour are undoubtedly still present in the UK. Liberty has recently represented a victim of forced labour who reported her ill treatment to the police but faced extreme reluctance on the part of the police to bring any charges, despite the fact that an Employment Tribunal had made findings that her passport had been confiscated, she had been effectively confined to her employer’s house, her employer had lied to her about her immigration status, her wages had been withheld, and she had been physically abused by her employer. Following the commencement of judicial review proceedings the police accepted that the failure to carry out an effective investigation into the allegations was unlawful and breached Article 4 of the ECHR. Anti-Slavery International is aware of a number of cases where persons were subject to forced labour in the UK, many of them in domestic servitude, including children.

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

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

Case study

Zari came from East Africa as a domestic worker to the UK with her employer. When her employer died, she was taken on by the employer's cousin. The cousin asked for her passport to renew her visa, but her passport was never returned to her. Zari had to work 7 days a week with no time off or breaks. She was paid £100 per week, but after deductions for food and board (mattress on the kitchen floor), she had barely £40 left. She was not allowed out of the house unaccompanied, she was insulted, beaten and also sexually abused by the employer's husband. She managed to run away and tried to complain the police, but they didn't pursue an investigation.

8. Zari's case is just one example of forced labour in the UK. While domestic servitude is one of the best documented forms in the UK (domestic workers assisted by a London charity⁸ report the following abuses: physical abuse 26%, psychological abuse 72%, no time off 70%, not allowed out of the house 62%), cases have been reported in other areas such as agriculture, factory work, food processing and packaging, cleaning and hospitality.

9. In light of all this it is vitally important that Parliament urgently create a statutory offence criminalising the holding of a person in servitude and subjecting a person to forced or compulsory labour. This would lead to better protection for the victims to which the UK is obliged by international law and also send out a strong message to perpetrators that they will no longer be immune from punishment. The amendment proposed below would create two new offences, namely one of holding a person in servitude (a form of modern day slavery) and the other subjecting a person to forced or compulsory labour. The first offence is intended to be a more serious offence and thus subject to a greater penalty (being the same maximum penalty as that applicable to trafficking). The offence of forced or compulsory labour, while still extremely serious, is of a lower order and has therefore a lower maximum sentence. It will be up to the courts, if a person is found guilty of an offence, to determine the appropriate level of sentencing, taking into account all aggravating factors. The age and vulnerability of a person forced into such a situation would be likely to be considered by a court in sentencing. A person who is guilty of holding someone in servitude will also be guilty of subjecting that person to forced or compulsory labour and it will be up to prosecutors, on the basis of the evidence before them, to decide which offence to prosecute.

⁸ The London based charity is Kalayaan (see: www.kalayaan.org.uk).

Proposed New Forced Labour Amendment:

To move the following Chapter—

‘Chapter 4 Servitude and Forced or Compulsory Labour

Servitude

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

Forced or compulsory labour

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

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