

Submission to the Human Rights Committee regarding the UK Examination under the International Covenant on Civil and Political Rights

By Focus on Labour Exploitation (FLEX)

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About Focus on Labour Exploitation (FLEX)

FLEX is a United Kingdom based charity that works to end human trafficking for labour exploitation, both in the UK and worldwide. To achieve this, FLEX conducts research and policy advocacy to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation. Further information on FLEX's work and all of our research publications and policy briefings can be found on our website at www.labourexploitation.org.

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Summary

1. FLEX is a member of the Anti-Trafficking Monitoring Group and supports their submission. This submission provides some supplementary points pertaining to our specific remit.
2. This response pertains to Article 8 of the Convention:
 - Article 8
 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
 2. No one shall be held in servitude.
 3. (a) No one shall be required to perform forced or compulsory labour [...]
3. FLEX considers current key policies to be undermining, or at risk of undermining, UK efforts to prevent, tackle and remediate instances of severe exploitation such as those that fall under Article 8.

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4. These are: the ‘hostile environment’ immigration policies in place; plans for post-Brexit temporary migrant worker programmes, and; under-resourcing of labour inspection.

5. As such, FLEX makes the following recommendations:

- I. The UK to be asked to explain and assess the impact of its ‘hostile environment’ immigration policy regime on its ability to meet its anti-slavery objectives and commitments, based on consideration of evidence provided through public and expert stakeholder consultation.**
- II. The UK to report on how it will continue to meet its anti-slavery obligations if it intends to introduce more temporary migrant worker programmes as part of post-Brexit immigration policy.**
- III. The UK to explain how it allocates funding for labour inspection and to what extent this is based on evidence of (i) prevalence of violations (ii) costliness of meaningful enforcement.**
- IV. The UK to be asked what efforts it has made to reach the ILO recommended ratio of 1 inspector per 10,000 workers and, if it has not done so, why not.**

Issues of Concern for Examination

I. Immigration policy prevents reporting of, and facilitates, severe exploitation

(i) ‘Hostile environment’ policies prevent people exiting exploitation

UK immigration policy is undermining efforts to tackle slavery, servitude and forced labour. The UK currently operates a ‘hostile environment’ policy regime towards undocumented people. The 1996 Asylum and Immigration Act introduced civil penalties for employers for

employing undocumented people. These sanctions were strengthened in subsequent immigration legislation and, in the Immigration Act 2016, ‘illegal working’ as a criminal offence was introduced, including custodial sentences. Additional legislative measures have made it obligatory for landlords and key services to check a person’s right to be in the UK. The impact of this policy approach on public agencies meant to protect and support workers – labour inspectorates and police – has been to curtail workers’ ability to seek help when experiencing exploitation. Undocumented workers, or those with irregular or uncertain status, are prevented from coming forward to seek support because they fear immigration repercussions, such as detention and deportation. This is supported by findings of the Labour Exploitation Advisory Group, a group of ten experts working to end human trafficking for labour exploitation that is coordinated by FLEX. Drawing on the experiences of these experts and their work with at-risk workers, the LEAG position paper, ‘Labour Compliance to Exploitation and the Abuses In-Between’ (2016)¹, found that fear of immigration authorities is a major barrier to reporting abuses for undocumented and documented migrant workers, the latter being unaware of, or insecure in, their migration status. This fear is well-founded: FLEX, along with several other organisations, has found that victims of trafficking are being detained in immigration removal centres in the UK.² The risk of this happening to victims is a significant deterrent to them seeking help. As the EU Agency for Fundamental Rights has noted, “victims of severe labour exploitation who are in an irregular situation of residence are discouraged by their status from reporting to any public authority.” Their report also notes fear of having to leave the country as the main reason victims did not report exploitation.³ This means that, in practice, victims are not identified and supported because they cannot come forward, and their exploiters are not identified and pursued to justice.

(ii) Employers are able to use immigration threats to coerce

The current immigration regime is also directly handing exploitative employers a tool with which to coerce and control victims. Numerous reports by academics and respected institutions have evidenced this, including a 2012 research report examining the criminalisation of migrant women by Cambridge University academics. They interviewed migrant women in prison or immigration removal centres in the UK and found that, of the

women they interviewed, “being handed over to the police or immigration was a common threat used by those who had held them.”⁴ The LEAG paper referred to above also noted that, “The threat of reporting to police or immigration authorities is routinely used by unscrupulous employers to hold workers in abusive situations. Even if the threat does not come directly from the employer, undocumented workers often will not report abuse as they are afraid of coming to the attention of authorities and being deported.” This has been further compounded by Brexit. The LEAG 2017 paper, ‘Lost in Translation: Brexit and Labour Exploitation’⁵, found that uncertainty around Brexit and how it would impact workers’ migrant status was being used by unscrupulous employers to impose or perpetuate abusive working conditions on workers.

FLEX is currently undertaking research into several high-risk labour sectors to understand the nature of abuse and exploitation taking place. Whilst our results will not be published until later in 2020, excerpts from interviews already undertaken with migrant workers are illustrative of the problem, such as:

- Interviewer: How do they [employers] know that people have no documents?
- Worker: When I was recommended to this role, they asked it and said to my friend that they liked people without secure status.
- Interviewer: Why do you think that is?
- Worker: Because if we are illegal here we have no rights to complain or report.

This creates a labour market in which undocumented workers are purposefully selected in order to abuse them and are then prevented from seeking help. This is exacerbated by the practices of joint working and information sharing between labour inspectorates and immigration enforcement. Key labour inspectorates, such as the Gangmasters and Labour Abuse Authority which has police-style powers to tackle slavery and related forms of severe exploitation across the entire labour market, undertake ‘anti-slavery’ raids with immigration enforcement and share personal information with them. Likewise, if victims enter our national

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identification and support framework for potential victims of trafficking and are not found to meet the threshold required to be officially recognised as a victim ('negative grounds'), they are subject to immigration controls. This threshold is frequently misapplied with many cases having to be reconsidered at the request of support providers or legal teams.

FLEX recommends the repeal of the 'illegal working' offence and the introduction of secure reporting mechanisms to address these issues by protecting workers' reporting abuse or exploitation from immigration repercussions. FLEX notes that several jurisdictions outside the UK have implemented versions of this approach, such as Belgium, Amsterdam, the USA and Brazil.⁶ In these contexts, if a worker reports abuse or is identified in the course of a labour conditions operation, their personal information will not be shared with immigration bodies. This is crucial to reducing severe exploitation as it i) fosters confidence in public agencies, enabling people to seek help and ii) removes the coercive power of immigration threats from exploiters. Current government plans to amalgamate key labour inspectorates into one body, a 'single enforcement body', state the intention to continue a close working relationship between labour inspection and immigration enforcement. FLEX considers this contrary to the International Labour Organisation's Convention 81, 'Labour Inspection Convention', which the UK has ratified and which states in Article 3 that "any further duties which may be entrusted to labour inspectors shall not be such as to interfere with effective discharge of their primary duties".⁷ Evidence shows that joint working does indeed interfere with the primary duties set out in the Convention and prevents effective protection of a migrant workers' rights. The government appointed interim Director of Labour Market Enforcement, Matthew Taylor, has recently acknowledged the importance of the separation of labour inspection and immigration enforcement in his response letter to the government's consultation on the single enforcement body, in which he acknowledged concerns and stated, "I share this concern and would want to ensure that the body does not assume any responsibility for immigration enforcement as part of its remit."⁸ However, to date, the government has made no commitments to protect labour inspection or introduce secure reporting. A forthcoming report from the Labour Exploitation Advisory Group (spring 2020) will explore how secure reporting could be implemented in the UK in detail, making key recommendations to government.

FLEX considers it crucial that the UK is asked to explain and assess the impact of this policy regime on its ability to meet its anti-slavery objectives and commitments, based on consideration of evidence provided through public and expert stakeholder consultation and report accordingly.

The fact that these highly impactful measures were introduced in recent years justifies a call for a thorough and comprehensive evaluation of their impact on the UK's ability to meet anti-slavery objectives, and for effective action to be taken against any policy impeding the UK to fulfil its obligations under the Covenant, including the repeal of policies or amendments to legislation found to be impediments.

3. Planned temporary migration programmes likely to raise risks

The UK's upcoming exit from the European Union ('Brexit') is necessitating an overhaul of the its immigration system. The end of free movement means the UK must have alternative immigration pathways for migrant workers. Current plans to achieve this for lower paid sectors include sector-specific temporary migration programmes (TMPs). One such scheme is already operational, providing workers to agriculture, and its expansion from 2,500 to 10,000 workers per annum has been confirmed. TMPs are high risk for worker exploitation, including the most severe forms that fall under Article 8 of the Convention.

FLEX considers it crucial that the UK is asked to report on how it will continue to meet its anti-slavery obligations if it intends to introduce more such schemes.

Migrant workers are more susceptible to exploitation because they may lack in-country support networks, language skills and knowledge of their rights. Migrant workers on temporary work schemes have these factors compounded because they are not in the destination country long enough to improve this resilience. Other risks of TMPs, based on documented cases, include:

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- Debt bondage - migrant workers entering into low paid programmes overseas are likely to have incurred recruitment debt, and are therefore at heightened risk of debt bondage, a form of forced labour. Current UK policies make it likely that workers entering the country on TMPs will be subject to a range of fees and charges, such as visa fees, health service surcharges and travel costs. These increase the likelihood of debt bondage occurring. In past UK TMPs, high recruitment fees have been identified, such as a 2005 Home Office review of the former Sectors Based Scheme that found cases of workers paying over £10,000 to access the scheme.⁹
- Deception in recruitment – workers may have different terms and conditions portrayed to them than are accurate on arrival, but as their visa will only be valid within the proscribed scheme, they may face a choice between undocumented destitution, with potential criminal repercussions, and remaining in abusive circumstances.¹⁰
- Tied visas and barriers to changing jobs or sectors – this significantly increased vulnerability to exploitation as workers will be compelled to accept poor working conditions and employers may leverage the power imbalance to exploit workers.¹¹
- No recourse to public funds = current UK plans do not include recourse to public funds for migrants on TMPs. This will bar them from accessing essential services such as homelessness assistances and welfare benefits. This leaves workers with no choice to leave exploitation as they risk destitution.¹²

In November 2018, the former Home Secretary Sajid Javid acknowledged that the Seasonal Workers Pilot, the only Brexit-related TMP to have already been introduced, raised the risk of exploitation.¹³ Despite this recognition, to date the UK government has provided no substantive assurances that TMPs will be designed cognisant of these risks, without even a commitment to additional workplace inspections being made. FLEX recommends a range of measures that would mitigate the likelihood of post-Brexit migration policy increasing instances of slavery and forced labour, including:

- Ensuring short-term visas are renewable in-country and directly following on from the end of the previous one

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- Providing access to public funds, after specified conditions have been met
- Providing fast-track remediation pathways for temporary workers who experience abuses, such as wage underpayment, but whose length of stay within the UK is under the time period such claims normally take
- Pathways to permanent residency
- Family reunification
- Integration of trade unions and migrants' organisations into the design, governance and evaluation of any programmes
- Improved capacity of labour inspectorates (see point 3)

Further information regarding TMPs, including historical and contemporary evidence of how they increase risks of exploitation and what steps need to be taken to avoid these risks can be found in FLEX's report, 'The Risks of Exploitation in Temporary Migration Programmes' (2019).¹⁴

3. Under-resourcing of labour inspectorates

Labour inspection is vital for preventing slavery, servitude and forced labour because it i) identifies cases and supports victims to exit exploitation; ii) ensures potential exploitative employers are deterred from harmful behaviour, and; iii) prevents abusive working conditions from compounding over time to become severe exploitation. Despite this important role, FLEX has found that UK labour inspection is severely under-resourced. The ILO's recommended ratio of inspectors to workers is one to 10,000. The UK is vastly below that ratio, with approximately 0.4 inspectors per 10,000 workers.¹⁵ In 2017/18, the Gangmasters and Labour Abuse Authority had 101 staff¹⁶ to oversee not only the inspection and licensing of three sectors but also to use police-style powers across the entire labour market in England and Wales to root out modern slavery. To put this into perspective, the Office for National Statistics estimates that for May to July 2019, 32.78 million people aged 16 and over were in employment within the UK¹⁷; even with the proportions of this which pertain to Scotland and Northern Ireland, this remains a large task for an agency with 101 staff. The Employment Agencies Standards Inspectorate (EASI) oversees around 18,000 employment agencies and

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around 1.1 million workers, yet in the same year had a staff of 13 and a budget of £725,000.¹⁸ Finally, as noted in the Director of Labour Market Enforcement's 'Strategy 2018/19', HMRC's minimum/living wage enforcement capacity is so under-resourced that "the average employer can expect an inspection around once every 500 years".¹⁹ FLEX considers this severe under-resourcing renders the current labour inspectorate system in the UK markedly less effective than it both could and should be.

The impact of this under-resourcing is evident from sector-specific research. For example, FLEX research on London's construction sector, 'Shaky Foundations: Labour Exploitation in London's Construction Sector' (2018)²⁰, found that within the London construction workforce:

- 50% of workers surveyed had no written contract
- 36% of workers surveyed reported not being paid for work completed
- 53% of workers surveyed were made to work under dangerous conditions
- 33% of workers surveyed had experienced verbal or physical abuse while at work

During the course of the interviews for this research, FLEX spoke with workers who were unclear about their employment status and did not know to whom they could complain about abuse. Recently published research²¹ from the Latin American Women's Rights Service (LAWRS) provides insight into feminised labour sectors, specifically cleaning, hospitality and domestic work. Their report analysed 326 cases of women supported by the service and found that:

- Over half of the workers faced breaches to their contracts
- 46% of cases had experienced unlawful deduction of wages
- 20% had experienced illegal underpayment of the National Minimum Wage
- 21% were not provided with written contracts
- 28% were not allowed to take time off for being unwell (paid or unpaid)
- 17% were denied annual leave to which they were legally entitled

In practice, this means that sectors recognised to be high risk for severe forms of exploitation by bodies such as the ILO are lacking in meaningful enforcement. This makes them porous to exploitation, prevents workers in exploitation being identified, fails to deter abusive

employers and enables them to operate with impunity. Whilst the examples above are of labour abuses, e.g. under payment of wages, no written contracts, rather than labour exploitation which would fall under Article 8, circumstances like these compound or accumulate to create a situation of forced labour, servitude or slavery. As Professor Conny Rijkens explains, “Decent work can turn into bad labour and bad labour can degenerate into labour exploitation. A situation of labour exploitation is not static, nor are bad labour and decent work.”²² A general failure to ensure decent working standards in an economy – i.e. a high prevalence of violations in the middle section of the continuum – will make it more likely that more instances of severe exploitation occur too.

The UK should be asked to explain how it allocates funding for labour inspection and to what extent this is based on evidence of (i) prevalence of violations (ii) costliness of meaningful enforcement.

The UK should be asked what efforts it has made to reach the ILO recommended ratio of 1 inspector per 10,000 workers and, if it has not done so, why not.

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