

The Laws of Slavery – and why they do not work

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Slavery was abolished internationally in the early 19th century, by the 1815 Declaration Relative to the Universal Abolition of the Slave Trade, but it did not end there. In fact, there are more slaves today than ever before. Although it is difficult to calculate the exact number of people enslaved, it is estimated to be about 45.8 million worldwide¹. To put this into perspective, that is almost the population of the whole of Spain². Modern day slavery is connected to the term 'human trafficking'; many people do not understand the link the two have, nor do they realise slavery still exists. Despite there being over 300 laws that have attempted to abolish slavery, it is still able to bring about 'high financial profits and a historically low risk of successful prosecutions³'. Slavery is considered to be the second biggest criminality in the world, with the International Labour Organisation valuing it at \$150 billion per annum⁴. We must question then, why it is that millions of people seem to have slipped through these laws and discuss what can be done to ensure that the laws fulfil their ambitions.

UK Slavery Laws

A parliamentary campaign for the abolition of the slave trade first began in the UK in 1787, led by William Wilberforce. The abolitionists work was the world's first grassroots human rights campaign⁵, however, they were faced with great opposition. Support eventually grew, and in 1807 the Slave Trade Act was passed, followed by the 1833 Slavery Abolition Act. As a result, the UK has since been held up as a relative leader when it comes to the policy system, but there is still much to do.

The Modern Slavery Act 2015 (MSA) is the newest piece of legislation that attempts to tackle the ongoing human trafficking issues here in the UK. The Home Office estimates there are around 13,000 slaves within the UK alone, but it is extremely difficult to identify them, and even harder to prosecute the offenders. In 2015, 3,146 potential victims were identified by first responders⁶ (the police force and

¹ The Global Slavery Index (2016) <http://www.globallslaveryindex.org/> accessed 14/02/2017

² Spain has a population of 46,812,000 as of July 1, 2016
http://www.ine.es/inebaseDYN/cp30321/cp_inicio.htm accessed on 07/02/2017

³ Independent Anti-Slavery Commissioner, *Annual Report 2015-2016*, Gov.UK (October 2016)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559571/IASC_Annual_Report_WebReadyFinal.pdf accessed on 30/01/2017

⁴ Kelly, *The UK's new slavery laws explained: what do they mean for business*, The Guardian (14 December 2015) <https://www.theguardian.com/sustainable-business/2015/dec/14/modern-slavery-act-explained-business-responsibility-supply-chain> accessed on 30/01/2017

⁵ Independent Anti-Slavery Commissioner, *History of Slavery*
<http://www.antislaverycommissioner.co.uk/about-modern-slavery/history-of-slavery/> accessed on 06/02/2017

⁶ HM Government, *Modern Slavery Strategy*, Gov.UK (November 2014)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf accessed on 02/02/2017

specified NGOs), a 40% increase, believed by the government to be as a result of 'better awareness of modern slavery and the improved focus of law enforcement'⁷. However, only 884 modern slavery crimes were recorded and only 117 offenders were prosecuted⁸. Modern slavery may be a hidden crime⁹, but, as the Anti-Slavery Commissioner, Kevin Hyland, so rightly states, 'we owe it to victims...to continue to improve the law enforcement and criminal justice response domestically and internationally'¹⁰, and these figures do not show that we are doing so.

The MSA lays out a new transparency in supply chains, which means any business supplying goods or services to the UK and has a turnover of over £36 million must publish an annual slavery and trafficking statement in order to show they have ensured that slavery does not occur within their business. As the MSA is relatively new, there is not a lot of data on the outcome of this, however, we can already see aspects of the law that prevent it from being as beneficial as possible in putting an end to slavery. For example, there are no repercussions for companies that do not comply and fail to publish the statement, they will merely face negative publicity. Not only that, but if companies are to find slavery within their supply chains, there is no law requiring them to act on it. France is considering a draft law where non-compliance in publishing an annual slavery and trafficking statement could result in a court order and a fine of up to ten million euros¹¹. The UK would benefit from doing the same. Parosha Chandran, a leading practitioner in the field of modern slavery, stated that 'we need a stronger incentive for companies to confront and prevent slavery'¹². If a person who commits a crime of slavery will be punished under our law, why not too the UK company that profits from the slave labour within their supply chains?

Although slavery still remains under-reported in the UK, the issues of modern day slavery have been brought to light by the MSA and there has been an increase in awareness within the public¹³. Theresa May called modern slavery 'the great human rights issue of our time' and has since pledged £33.5 million from the UK's aid budget to create a five-year International Slavery Fund focused on high-risk countries¹⁴. However, we are in the midst of the biggest refugee crisis since the

⁷ Syder and Camus-Smith, *Freedom Pass*, New Law Journal (20 January 2017) <https://newlawjournal.co.uk/content/freedom-pass> accessed on 07/02/2017

⁸ Modern Slavery Strategy, n 6

⁹ Silverman, *Modern Slavery: an application of Multiple Systems Estimation*, Gov.UK (27 November 2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386841/Modern_Slavery_an_application_of_MSE_revised.pdf accessed on 13/02/2017

¹⁰ Modern Slavery Strategy, n 6

¹¹ Freedom Pass, n 7

¹² Chandran, *Modern Slavery Act gives UK companies a free pass to profit from Slavery Overseas* (18 October 2016) <https://www.theguardian.com/sustainable-business/2016/oct/18/modern-slavery-act-gives-uk-companies-a-free-pass-to-profit-from-slavery-overseas> accessed on 07/02/2017

¹³ Haughey, *The Modern Slavery Act Review*, Gov.UK (31 July 2016) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf accessed on 30/01/2017

¹⁴ Freedom Pass, n 7

Second World War, and with May's recent decision to end the 'Dubs' scheme, and the government's refusal to take in any more refugee children, they are, in effect, helping the trafficking industry, as criminals are using the increase in refugees to exploit potential victims. In September 2016, Kevin Hyland warned that 'the slow pace of Britain's efforts to give sanctuary to unaccompanied child refugees in Calais is exposing them to the risk of modern slavery'¹⁵. The International Organisation for Migration believes that, of the 5,633 Nigerian women and girls that arrived in Italy by sea in 2015, 80% are potential victims of trafficking¹⁶. It is questionable why, then, the Home Secretary, Amber Rudd, said in the decision to end the 'Dubs' scheme, they were doing so because it 'encourages the people traffickers'¹⁷. It seems, instead, that the two go hand in hand – if we do not help refugees we are merely adding to those who fall victim to modern day slavery, no matter what new laws we instil.

International Slavery Laws

After the Second World War, international treaties proliferated, many of which were connected to human rights and the continued attempt to abolish slavery. The Universal Declaration of Human Rights was one of these. Article 4 states 'No one should be held in slavery or servitude, slavery in all of its forms should be eliminated'¹⁸. Despite the UDHR being signed by the majority of countries in the world, it is not binding and has no legal force. Thus, it can be difficult for less economically developed countries to enforce it, as is the problem with many other declarations regarding slavery. Many countries do not have the capacity to prosecute slavery criminals, hence it leads to the question: Can the International Criminal Court (ICC) prosecute the criminals instead?

One could argue that slavery is a crime against humanity, as it is listed under article 7 of the Rome Statute¹⁹, however the article states that the crime must be committed 'pursuant to...a State or organizational policy'. This is problematic, as there is no country where slavery crimes would be part of state 'policy'. Another issue is that a large amount of slavery occurs in states that are not ICC state parties, for example, India, Pakistan and Nepal, and therefore are not within the ICC's jurisdiction – the ICC would be unable to prosecute criminals from these countries.

¹⁵ Gentleman and Travis, *UK delays resulting in exploitation of Calais children, says anti-slavery chief*, The Guardian (20 September 2016) <https://www.theguardian.com/uk-news/2016/sep/20/uk-delays-calais-children-exploitation-anti-slavery-chief> accessed on 13/02/2017

¹⁶ Annual Report 2015-2016, n 3

¹⁷ Ashmore, *Home Secretary Amber Rudd: Dubs amendment 'encourages people traffickers'*, Politics Home (9 February 2017) <https://www.politicshome.com/news/uk/home-affairs/immigration/news/83216/home-secretary-amber-rudd-dubs-amendment-encourages> accessed on 13/02/2017

¹⁸ United Nations, *Universal Declaration of Human Rights* <http://www.un.org/en/universal-declaration-human-rights/> accessed on 01/02/2017

¹⁹ Rome Statute of the International Criminal Court https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf accessed on 01/02/2017

Karen Corrie's article 'Could the International Criminal Court Strategically Prosecute Modern Day Slavery?'²⁰ lists a number of other problems that could occur if the ICC were to prosecute slavery crimes, such as allocation of resources, securing witness testimony and challenges with transborder investigations. Overall, although the ICC could make a significant contribution whilst working with partners around the world in ending slavery, we can briefly see here why it is unable to prosecute the criminals themselves²¹.

Urmila Bhoola, the UN Special Rapporteur on contemporary forms of slavery, stated that 'International criminal justice is a necessary component in the international struggle to prevent and punish slavery...But international criminal justice is also not, on its own, a sufficient solution to the problem of slavery²²'. The points made above show just a few of the reasons why the international laws of slavery were not able to abolish slavery worldwide, and, although they may have helped in some cases, it shows that we need more than just law to end slavery.

What else needs to be done?

Slavery's root causes include 'poverty, lack of education [and] the profit motive driving the demand for cheap labour²³', thus it is no wonder that we need more than just laws to abolish slavery. End Slavery Now²⁴, an anti-slavery organisation, lists six phases of abolition. These are:

- Awareness: ensuring that people are educated to learn that slavery still exists
- Policy: there is an understanding that the creation of laws will always be needed
- Rescue: rescuing those enslaved
- Prosecution: enforcing the laws that have been created
- Aftercare for slaves: it is not enough merely to rescue the slaves – they must be taken care of after they have been liberated as slavery can cause a vast amount of mental and physical health care problems
- Empowerment: giving survivors new opportunities so they are not able to be targeted again

²⁰ Corrie, *Could the International Criminal Court Strategically Prosecute Modern Day Slavery?*, Journal of International Criminal Justice (29 December 2015) <https://academic.oup.com/jicj/article-abstract/14/2/285/2412013/Could-the-International-Criminal-Court?redirectedFrom=PDF> accessed on 30/02/2017

²¹ Please see Corrie's article for a more in depth analysis (ibid)

²² Bhoola, *Slavery Crimes and the Mandate of the United Nations Special Rapporteur on Contemporary Forms of Slavery*, Journal of International Criminal Justice (6 May 2016) <https://academic.oup.com/jicj/article-abstract/14/2/363/2412037/Slavery-Crimes-and-the-Mandate-of-the-United?redirectedFrom=fulltext> accessed on 02/02/2017

²³ Could the ICC strategically Prosecute Modern Day Slavery?, n 20

²⁴ End Slavery Now, *Abolition Today* <http://www.endslaverynow.org/learn/abolition-today> accessed 02/02/2017

These six phases lay out the minimum that must be done in order to help abolish slavery internationally. The creation and enforcement of the law will always be a key aspect, however, the remaining four phases are also essential. The Modern Slavery Act Review²⁵ described a plan to roll out a nationwide education scheme on Modern Slavery, led by the Policy Directorate, in late 2016. There is no evidence this has happened yet, however, it is crucial that it does occur. Not only do we need to educate those that can help in ending slavery, we must also educate those that are at risk of becoming victims of it. In order to prevent vulnerable people from becoming slaves, we must ensure they are no longer vulnerable, and education plays a great role in doing so.

Conclusion

Kevin Hyland, the Anti-Slavery Commissioner, stated that 'slavery in its modern manifestation cannot be banned by treaty. It is not a trade route that can be cut off. It is integrated, embedded and even institutionalized in our society.²⁶' Thus, we cannot win the fight against slavery with only law, whether it is domestic or international. The ongoing refugee crisis has only made the matter of slavery worse, and if we fail to tackle this issue, the number of slaves worldwide will only increase. If the ICC were able to prosecute slavery criminals, this may assist the countries that cannot do it themselves, however for this to happen, a new statute would need to be created, or an amendment to the Rome Statute, and all countries would have to be state parties to the ICC. Education is key to abolishing slavery, and modern day slavery must become compulsory within the curriculum, as well as focusing efforts internationally to safeguard potential victims. International bodies must work with NGOs and national governments in order to guarantee this happens. The abolition of slavery will not come tomorrow, next year, or even in the next five years. But it can be in this generation.

The question is, will you be a part of it?

²⁵ Modern Slavery Act Review, n 13

²⁶ Hyland, *Putting slavery firmly on development agenda is just the beginning*, The Guardian (17 August 2015)

<https://www.theguardian.com/global-development/2015/aug/17/modern-slavery-act-human-trafficking-development-agenda-just-beginning> accessed 07/02/2017