

State responsibility for modern slavery - Modern slavery as State policy

The project: uncovering and bridging a gap

Modern slavery, an umbrella term for human trafficking, slavery, servitude, forced or compulsory labour and child labour, is one of the prevailing challenges for the international community, with 40.3 million people in modern slavery on any given day in 2016.¹ States committed to fight against it in the 2030 Sustainable Development Agenda (SDG 8).

The efforts of States against modern slavery are mainly focused on their responsibility to 'prevent, protect and punish' offences committed by non-state actors. This project² goes beyond that approach by focusing on the involvement of the State in the commission of the offence through State policy (direct) or through the actions or omissions of a State organ or official (indirect). It presents proposals that will contribute to strengthening the efforts of the international community in tackling modern slavery, by unfolding the potential of State responsibility to offer an avenue for accountability as well as a tool for resolution of disputes between States.

Fact patterns

Certain practices and policies of some States could amount to a breach of the prohibition of slavery, forced labour and human trafficking³ and constitute an internationally wrongful act entailing the international responsibility of that State under the ILC Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).

The United Nations and the International Labour Organization, among other actors, have reported on modern slavery cases committed as State policy, particularly forced labour and human trafficking.⁴ States deploying forced labour or trafficking persons through State policy should be accountable under international law. Even those States that have not ratified all the relevant conventions may be subject to certain obligations under customary international law or *jus cogens* norms. In addition, depending on their knowledge and involvement, the responsibility of other States aiding or assisting them in the commission of an internationally wrongful act could also be engaged (Article 16 ARSIWA).

¹ Global Estimate of Modern Slavery, September 2017; ILO, Walk Free Foundation.

² The project "State responsibility for modern slavery: uncovering and bridging the gap" has been developed by Dr Philippa Webb and Dr Rosana Garciandia (King's College London) in cooperation with the United Nations University, with the support of the British Academy Scheme Tackling the UK International Challenges 2017. The views expressed are the authors' own and not attributable to the UNU or the British Academy.

³ 1926 Slavery Convention, 1956 Complementary Convention, 2000 Palermo Protocol and 1930 ILO Convention against Forced Labour. Certain forms of forced labour are exempt from the prohibition of the ILO Convention.

⁴ ILO, *Child Labour in Cotton*, 2016, p. 12; ILO, *Third-party monitoring of measures against child labour and forced labour during the 2015 cotton harvest in Uzbekistan*, p. 13, para 41; UN Human Rights Committee, "Concluding Observations on the second periodic report of Turkmenistan", UN Doc. CCPR/C/TKM/CO/2, 20 April 2017, paras 26-27; ILO Committee of Experts, "Individual Case (CAS) – Discussion: 2016, Publication: 105th ILC session (2016); Leiden Asia Centre, "North Korean Forced Labour in the EU, the Polish Case: How the supply of a captive DPRK workforce fits our demand for cheap labour", 2016; Breuker, R., Van Gardingen, I., "People for Profits: North Korean Forced Labour on a Global Scale"; Shin C. H., Go, M. H., *Beyond the UN COI Report on Human Rights in DPRK*, The Asan Institute for Policy Studies, 2014, p. 21.

Recommendations for strengthening efforts against modern slavery as State policy

States are encouraged to:

- i. Perform human rights impact assessments on any legislation on borders and passport controls, in order to reduce vulnerability of victims of trafficking to practices such as confiscation of identity documents.
- ii. Implement enhanced monitoring and human rights due diligence in accordance with the UN Guiding Principles on Business and Human Rights and the OECD Common Approaches, particularly concerning Export Credit Agencies.
- iii. Co-operate with each other and with the United Nations to give effect to the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. This includes communicating to the Secretary-General of the United Nations any measures adopted to implement the Convention. Under Article 8.3, the Secretary-General shall communicate that information to the other Parties and to the ECOSOC as part of the documentation for any discussion which the Council might undertake with a view to making further recommendations for the abolition of slavery, the slave trade or the institutions and practices which are the subject of the Convention.
 - i. Invoke the international responsibility of other States, if they commit an internationally wrongful act by engaging in modern slavery (Articles 42 or 48 ARSIWA).

If the wrongful act constitutes a serious breach of an obligation, States have a positive duty to cooperate in order to bring to an end such breach. They also have the obligations not to recognize the situation created by the internationally wrongful act and not to render aid or assistance in maintaining that situation (Article 41 ARSIWA).
 - ii. Invoke the international responsibility of a State for aiding or assisting another State in the commission of an internationally wrongful act (Article 16 ARSIWA)
 - iii. Consider adopting countermeasures (Article 49 ARSIWA) against another State, if the latter commits an internationally wrongful act by engaging in modern slavery. Examples of possible countermeasures include asset freezes, import restrictions or travel bans.

States and international organizations such as the UN or the EU are encouraged to:

- i. Consider imposing economic, commercial or other types of sanctions within their respective legal frameworks to put pressure on States if there is a sufficiently solid factual basis to believe that they are committing modern slavery offences. The decision on the adoption of those sanctions should take into consideration any potential collateral effects.
- ii. Consider adopting legislation allowing for targeted sanctions or visa bans on individuals who have committed human rights violations in other States.