

State responsibility for modern slavery - Informal participation of State organs and military elements in modern slavery

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

A public official may actively participate or cooperate in the commission of a modern slavery offence. That act of a corrupt official could be attributable to the State, entailing its international responsibility under the ILC Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA).

Evidence on the involvement of public officials in modern slavery cases is abundant. Their involvement in the smuggling of migrants, their recruitment and the facilitation of their exploitation by private companies, frequently subjecting them to forced labour, physical abuse and withholding of wages has been documented in various States.³ The involvement of government officials in deployment of forced labour has also been reported at the local and national level for various States.⁴

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 Garcíandia (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 ILO, Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF), 20 March 2017, pp. 14/15; International Bar Association, Human Trafficking and Public Corruption. A Report by the IBA's Presidential Task Force Against Human Trafficking, 2016, pp. 25-26; "Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Eritrea", UN Doc. S/2013/440, 25 July 2013, Annex, paras 137-144.

⁴ UN, "Fact-finding Mission on Myanmar: concrete and overwhelming information points to international crimes", 12 March 2018; Franceschini, I., *Cronache dalle fornaci cinesi (Chronicles from the Chinese Kilns)*, Cafoscarina, 2009; SACOM, *Apple Watch 3 – Exploit Student Workers Further an Investigative Report on Apple Watch's Exclusive Manufacturer*, 2018.

Recommendations for strengthening efforts against modern slavery

States are encouraged to:

- i. Strengthen controls to identify corrupt officials and networks and to set effective penalties for corruption in line with the UN Convention against Corruption and to instruct public officials on modern slavery and its consequences as part of routine training.
- ii. Waive the immunity from jurisdiction of public officials when there are credible allegations of their involvement in modern slavery, in the territory of the State or in a foreign country.
- iii. Use existing human rights mechanisms to tackle modern slavery, by addressing structural situations and policies (e.g. economic migration) that may create the circumstances for unlawful behaviours amounting to modern slavery. The Palermo Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of the Child provide mechanisms for inter-state dispute or complaints mechanisms that could be used for those purposes.⁵
- iv. Invoke the responsibility of another State for failing to investigate and prosecute with due diligence corrupt officials that may facilitate the commission of modern slavery offences (Article 4 ARSIWA). State responsibility may be invoked through diplomatic protection by the State whose nationals are victims of modern slavery (Article 42 ARSIWA), or by other States based on *erga omnes* or *erga omnes partes* obligations (Article 48 ARSIWA).
- v. Consider adopting countermeasures (Article 49 ARSIWA) against another State, for the acts or omissions of a corrupt official of that State facilitating or committing a modern slavery offence that are attributable to the State. Examples of possible countermeasures include asset freezes, import restrictions or travel bans.

Domestic courts are encouraged to consider the application of exceptions to State immunity from jurisdiction when there are credible allegations of the involvement of a public official or body in modern slavery. Examples of these exceptions are the commercial activity or territorial tort exceptions to State immunity.

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

- i. Consider imposing economic, commercial or other types of sanctions against corrupt public officials 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.

⁵ Also relevant is art. 24.c of the Council of Europe anti-trafficking convention, which considers the involvement of public officials as an aggravating circumstance. The Global Compact for Migration adopted on 10 December 2018 contains several provisions on modern slavery.