

Thematic Overview: Law Enforcement

The role of law enforcement in investigating, prosecuting and fighting modern slavery, human trafficking, forced labour and child labour.

Introduction

Law enforcement is a core component of the fight against modern slavery. While many countries have adopted legislation tackling modern slavery, its content and enforcement differ from country to country.

Criminal justice responses remain limited given the challenges of turning investigations into prosecutions and convictions.

Partnerships between law enforcement authorities and civil society organizations supporting victims are effective and provide a holistic response.

International law prohibits modern slavery and creates obligations for states to prevent it, protect victims and punish perpetrators under the 1926 and 1956 Slavery Conventions, the ILO Forced Labour Convention and its 2014 Protocol, and the [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children \(Palermo Protocol\)](#), supplementing the United Nations Convention against Transnational Organized Crime, among other instruments.

The Palermo Protocol is the most comprehensive instrument as it tackles various components of modern slavery: it focuses on trafficking and it considers forced labour, sexual exploitation, slavery or servitude as forms of exploitation that the trafficking may intend to infringe. Its 173 States Parties must ensure protection and prevention “to the extent possible”, whereas the language related to criminality is more demanding, effectively creating a transnational [criminal law regime](#) against trafficking that facilitates inter-state law enforcement cooperation to counter the organized crime of human trafficking.

By 2018, 93 per cent of the States Parties to the Palermo Protocol [had implemented legislation criminalizing sex and labour trafficking](#), an additional 5 per cent had implemented partial legislation and only 2 per cent had no specific trafficking offence in their domestic legislation. Many States also have programmes to prevent modern slavery and protect victims, such as referral mechanisms and social services delivered by NGOs with government support. This thematic overview discusses the enforcement of national legislation on modern slavery. It focuses on existing legislation, the challenges of its enforcement and the need for cooperation and partnerships.

What legislation is in place?



Upholding their international obligations, many countries have legislation in place criminalizing most forms of exploitation outlined in the Palermo Protocol, the ILO Protocol to the Forced Labour Convention and the ILO Worst Forms of Child Labour Convention. Most States have trafficking-specific offences in place, although the content of these laws varies widely..

According to UNODC, 168 countries [have legislation in place that criminalizes trafficking](#) in line with the Palermo Protocol, and 20 additional countries base their [legislation against trafficking](#) on definitions different from those in the Protocol. In addition, some countries have not criminalized internal trafficking, wrongly assuming that it is not covered by the Palermo Protocol.

Trends show a stronger criminalization of human trafficking for sexual or child exploitation than of other forms of modern slavery. Over the past two decades, most countries have enacted criminal legislation to combat human trafficking in some form, but their efforts to criminalize other forms of modern slavery have often been inconsistent and incomplete. While 97 per cent of countries have enacted penal provisions addressing human trafficking, 47 per cent of countries do not have provisions in their domestic legislation criminalizing slavery or slave trade, 58 per cent do not criminalize forced labour and 68 per cent do not have criminal provisions prohibiting any form of servitude, according to the Human Exploitation in Domestic Legislation Database. In addition, in countries that do criminalize modern slavery in their domestic legislation, substantial gaps remain in the translation of international definitions and obligations in national legislation. This uneven criminalization of modern slavery at the domestic level means that [at least two billion people](#) were without adequate protection from exploitation in countries with only partial or no legislation addressing these issues.

Against this fragmented picture, the work of certain regional systems, such as the Council of Europe and the European Union, has contributed to convergence of standards. The 2005 Council of Europe [Convention on Action against Trafficking in Human Beings](#) implemented the definition of human trafficking of the Palermo Protocol. This was followed in 2011 by the [European Union Directive on preventing and combating trafficking in human beings and protecting its victims](#). The Directive established minimum rules for the definition of criminal offences and sanctions on human trafficking to be adopted by EU Member States and extended the definitions and requirements of the Palermo Protocol. Several Member States, including Belgium, Spain, France, Cyprus and the UK have modified their legislation to include, for example, explicit references to forced labour, slavery, servitude or the exploitation of criminal activities as forms of exploitation, in [compliance with the Directive](#).

A recent legislative trend is the adoption of a Modern Slavery Act as the main legal instrument to combat modern slavery. The UK [Modern Slavery Act 2015](#) was the first legislation of this kind, followed by the [Australian Modern Slavery Act 2018](#). Similar legislation is now under consideration in Canada and Norway.



A key component of the UK and Australian Modern Slavery Acts is improving transparency in the supply chains of business and organizations operating in these two countries. Businesses must present yearly slavery and human trafficking statements that the government then examines. A similar focus on supply-chain due diligence and reporting is present in other domestic legislation e.g. (French Law on the Corporate Duty of Vigilance, California Transparency in Supply Chains Act), in line with the [UN Guiding Principles on Business and Human Rights](#). The [Australian Modern Slavery Act](#) also introduces reporting obligations for the government in public procurement, acknowledging that the State is also bound by the prohibition of modern slavery. In the US, a [Federal Acquisition Regulation](#) has a similar effect.

Is that legislation effectively enforced?

The complexities of modern slavery create difficulties for effective enforcement of existing legislation. The challenge starts with the identification of victims. Many of the tools available against other types of trafficking (e.g. surveillance or controlled deliveries) cannot be used for human trafficking or other forms of modern slavery, given the risk they would represent for victims. Identification is also challenging as the line between coercion and consent is normally blurry. Victims may end up consenting to exploitative conditions driven by extreme personal or family deprivation, even as they are subject to coercion and threats to them or their families. Those threats [are also dissuading factors](#) for victims to cooperate. The fear of traffickers and the risk of finding themselves detained or deported makes many victims reluctant to come forward or to cooperate with law enforcement authorities.

Differentiating victims of trafficking from other types of migrants is also a challenge. Human trafficking and asylum decisions [may be conflated](#) where the same body makes decisions in both cases. In contrast, in Sudan, the [national referral system](#) applies a different approach to [refugees](#), [irregular migrants](#) and [victims of trafficking](#), with a high risk of criminalizing all detainees as smuggled migrants.

Another difficulty in the identification of victims, as well as in the investigation and prosecution of offenders, is [corruption](#) of public officials. Corrupt officials may turn a blind eye to trafficking networks or alert them to imminent investigations, allowing them to change their tactics and compromising investigations and prosecutions. An additional challenge is posed by the transnational nature of modern slavery and particularly of human trafficking. Legislative responses are developed at the state level, but the crime may occur in multiple locations and include the crossing of borders.

Taking these features into consideration, States have defined different strategies for the effective enforcement of legislation dealing with Target 8.7 exploitation. Following recommendations of the OSCE Action Plan to Combat Trafficking in Human Beings, more than 60 countries currently [have a National Referral Mechanism in place](#) to formally identify victims of human trafficking and to help them receive appropriate support. The UK offers a useful example in this regard. Under its [National Referral Mechanism \(NRM\)](#), being formally identified



as a victim means having access to legal and financial assistance, and being able to remain in the country for 12 months or longer. The [Modern Slavery Human Trafficking Unit \(MSHTU\)](#), led by the National Crime Agency, brings together different agencies with responsibility for trafficking. Its purpose is to provide expertise, support and coordination for the UK's response to modern slavery, and to safeguard potential and actual victims.

Figures on the criminal justice response to modern slavery indicate that progress has been made but there is still, however, much work to be done to make law enforcement responses effective. Data available, focused on the criminal justice response to trafficking, indicates that rates of prosecution and convictions are increasing, but the absolute numbers of convictions remain very low, and the risk of traffickers facing justice is minimal. According to the [UNODC Global Report on Trafficking in Persons 2018](#), from 2007 to 2017, the share of countries recording no convictions declined from 15 per cent to 9 per cent, and the number of convictions has increased globally, except in parts of Europe and Central Asia. In addition, the criminal response is not uniform against all forms of trafficking. Trafficking for sexual exploitation is the primary form of exploitation prosecuted and convicted. Within the [European Union](#), 72 per cent of convictions in 2015-2016 were in connection with trafficking for sexual exploitation, compared to 1 per cent for labour exploitation and 28 per cent for all other forms of exploitation. In the [US](#), 95 per cent of the prosecutions and 97 per cent of the convictions in 2016 were related to sex trafficking.

As cases move from investigation into prosecution and conviction numbers decrease significantly—[UNODC](#) refers to this as the criminal justice funnel, because for every four people investigated for human trafficking crimes, there is one successful conviction. And asset confiscations and proceeds of crime recovery are even more meagre. This is mainly due to the [challenges](#) of collecting evidence of the crime and relying on victims as witnesses, in addition to transnational complexities and unclear domestic legal frameworks. It is common practice within law enforcement authorities to overcome those challenges by convicting traffickers for other crimes that are easier to prosecute.

The way forward: domestic and cross-border partnerships

An effective response to those complexities is building and enhancing domestic and cross-border partnerships which facilitate more effective enforcement-relevant legislation. Collaboration between the public, civil society organizations, statutory bodies and law enforcement authorities is crucial for victim identification as well as for investigation, prosecution and asset confiscation. Cooperation between police investigating trafficking cases and NGOs skilled in victim support is an example of the potential of such partnerships. It ensures that victims' needs are taken into consideration and their dignity respected, while it may increase their willingness to cooperate and ultimately recover from their victimization.

Two promising partnership examples are found in the UK and the Netherlands. The UK's [Crown Prosecution Service \(2017-2018\) reports](#) that the effectiveness of its response results from a



close partnership working with the police and other partner agencies or stakeholders such as local authorities, health services and non-governmental organizations who provide essential victim care and sustained support throughout. The Government of the Netherlands produced a manual [to promote a multi-disciplinary response](#) to trafficking for labour exploitation, containing advice on collaboration which has resonance for other forms of exploitation as well. Such partnerships will help ensure the effectiveness of law enforcement operations.

Law enforcement authorities should also consider the benefits of partnerships with financial institutions, using initiatives against money laundering and countering the financing of terrorism to detect and prosecute traffickers. An illustrative example are Financial Information Sharing Partnerships, which facilitate the exchange of information between financial institutions, law enforcement authorities and national and international oversight bodies to track the money back to perpetrators of trafficking crimes. Examples of such partnerships include [Project Protect](#) in Canada and the [Joint Money-Laundering Intelligence Taskforce](#) in the UK.

Cross-border cooperation is also key to tackle organized transnational human trafficking covering all actors involved, from recruiters and other facilitators to exploiters. Collaboration is often bilateral and relies on personal relationships between law enforcement authorities. International police liaison officers in source countries are effective at working with their counterparts to identify and pursue traffickers.

Multilateral attempts are also providing promising results. An illustrative example of multilateral cross-border cooperation are the Europol-hosted Joint Investigation Teams (JITs), which bring together law enforcement authorities from source and destination countries to pursue traffickers. In February 2018, a year-long [operation](#) was concluded with an action day supported by Europol, involving British, Spanish and Nigerian authorities. The operation dismantled a network operating in Spain, Italy, the UK, Libya, Niger and Nigeria, trafficking women into prostitution. Another successful operation concluded in May 2018 with 57 trafficking arrests, 192 people detained for other offences, 379 potential victims identified, and 56 new investigations launched. This [Europe-wide operation](#) of the European multidisciplinary platform against criminal threats – Trafficking in human beings (EMPACT THB), brought together law enforcement agencies, labour inspectors, immigration services, tax authorities, trade unions and other actors targeting organized crime groups trafficking vulnerable people for the purpose of labour exploitation.

Further readings:

- Jean Allain, Katarina Schwarz, Human Exploitation in Domestic Legislation Database, forthcoming.
- Anti-Trafficking Monitoring Group, [“In the Dock: Examining the UK’s Criminal Justice Response to Trafficking”](#), (2013)



- Fiona David, “[Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice](#)”, *Trends and Issues in Crime and Criminal Justice*, 347, (2017).
- Siddharth Kara, “[Designing More Effective Laws Against Human Trafficking](#)”, *Northwestern Journal of International Human Rights*, Vol 9, Issue 2, 123-147, (2011).
- Prabha Kotiswaran, [Revisiting the Law and Governance of Trafficking, Forced Labour and Modern Slavery](#), Cambridge University Press, (2017).
- UNODC, “[Global Report on Trafficking in Persons](#)”, (2018).
- European Review of Organised Crime, [Special Issue on Human Trafficking](#), (2017).

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