University of Nottingham
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Antislavery in domestic legislation

An empirical analysis of national prohibition globally

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For more information about the Antislavery Legislation Database and this report, contact: **katarina.schwarz@nottingham.ac.uk**

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Introduction

“Slavery is illegal in every country in the world.”

This simple sentence has been used as a mantra of antislavery advocacy for decades. The truth of the statement has been taken for granted for equally as long, with antislavery advocates, practitioners, policy-makers, and academics seldom looking beneath the surface of the claim to assess the underpinning evidence. These accounts see Mauritania as legal slavery's last stronghold, ending in 1981 when the country abolished the practice by presidential decree. At this point, so the story goes, slavery had been made illegal in every State.

In part, this presumption is a feature of the understanding of slavery that had prevailed for decades after the signing of the international Slavery Convention in 1926: that slavery could only exist where ownership of persons was permitted by law. By this measure, the abolition of laws permitting property rights in persons was all that was required to make slavery illegal. However, the legal foundations of this belief were overturned by the recognition that the 1926 definition of slavery encapsulates both *de jure* and *de facto* slavery (slavery in law and in fact). [1, 2, 3, 4]

Although *de jure* slavery can be made illegal through abolition, *de facto* slavery requires something more: prohibition. This is explicitly identified in the texts of the 1948 Universal Declaration of Human Rights, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and the 1966 International Covenant on Civil and Political Rights. In these texts, States are called upon to prohibit, rather than simply abolish, slavery and the slave trade.

This paradigm shift fundamentally changes what is required to make slavery illegal. States are required to do more than ensure they do not have laws on the books allowing for slavery; they must actively put in place laws to prevent people from enslaving others, and provide sanctions in the instance of violations. Universal illegality, therefore, cannot be presumed from universal abolition.

The still-dominant understanding of the current state of the field with regard to antislavery laws (i.e. universal illegality) has informed and shaped contemporary efforts to address the phenomenon. If slavery is already illegal everywhere, then the actions now required of States relate to reform and implementation, rather than the fundamental first step of criminalisation.

The **Antislavery Legislation Database** moves beyond presumptions about the current state of antislavery laws, to interrogate the realities of States' current legislative frameworks for the prohibition of slavery and related forms of human exploitation. By conducting a global review of national legislation concerning slavery and related exploitation, this project unearths the realities of slavery's legality and illegality around the world. It explores trends, successes, and failures in the criminalisation of human exploitation, and the alignments between States' international obligations and domestic action.

The collection of domestic legislation concerning slavery, institutions and practices similar to slavery, servitude, forced labour, and human trafficking shows that national engagement with international law governing human exploitation has been erratic, irregular, and incomplete. This paper not only displaces the notion that slavery is now effectively abolished in all States, but reveals the extent to which States have neglected to do so, highlights trends in the provisions outlawing human exploitation, and underscores the critical need for the global antislavery movement to turn its attention to domestic legislation.

The Antislavery Legislation Database

To assess the extent to which slavery and related forms of human exploitation have been prohibited in domestic law, the Antislavery Legislation Database, hosted on the Antislavery in Domestic Legislation platform, compiles the constitutional, criminal, and labour legislation of all 193 UN Member States, drawing provisions dealing with the following forms of exploitation from these texts:

- **Slavery and the slave trade**
- **Servitude**
- **Institutions and practices similar to slavery**
- **Forced or compulsory labour**
- **Trafficking in persons**

From over 700 domestic statutes, more than four thousand individual provisions have been extracted and analysed to establish the extent to which each and every State has prohibited these practices through domestic legislation.

Within the **Antislavery Legislation Database**, these provisions have been collated with a global mapping of States' commitments to relevant international instruments, to assess the extent to which States have met their international obligations with regard to slavery and related forms of exploitation. Core international obligations to prohibit, and the definitions of these practices, are drawn from five core international instruments:

- The 1926 Slavery Convention
- The 1930 Forced Labour Convention
- The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Supplementary Convention)
- The 1966 International Covenant on Civil and Political Rights (ICCPR)
- The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol)

Definitions of the various forms of exploitation are drawn from these texts, supported by relevant international jurisprudence, as are the obligations incumbent upon States. The database also incorporates a range of additional instruments for analysis, including regional human rights instruments, universal human rights and labour treaties, and relevant non-binding international commitments.

For each of the 193 UN Member States, relevant descriptive characteristics supplement information on international obligations and domestic legislation. These characteristics include the kind of legal system in place in the country, geographic region, and membership in regional organisations. Additional explanatory variables have been introduced to the dataset to assess the extent to which these factors relate to States' international commitments and domestic legislation addressing human exploitation.

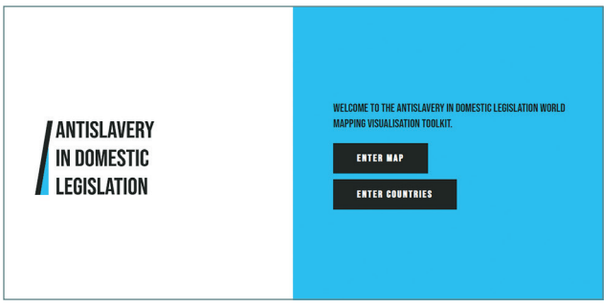
Collectively, this information provides the foundation for our global quantitative analysis, as well as for the 193 Country Reports published on the Antislavery in Domestic Legislation online platform. Each Country Report sets out the international instruments to which the State is party, and the various international obligations with regard to human exploitation flowing from these undertakings. Each Report then provides analysis on the extent to which each UN Member State has carried out its international obligations to prohibit human exploitation through the enactment of domestic legislation.

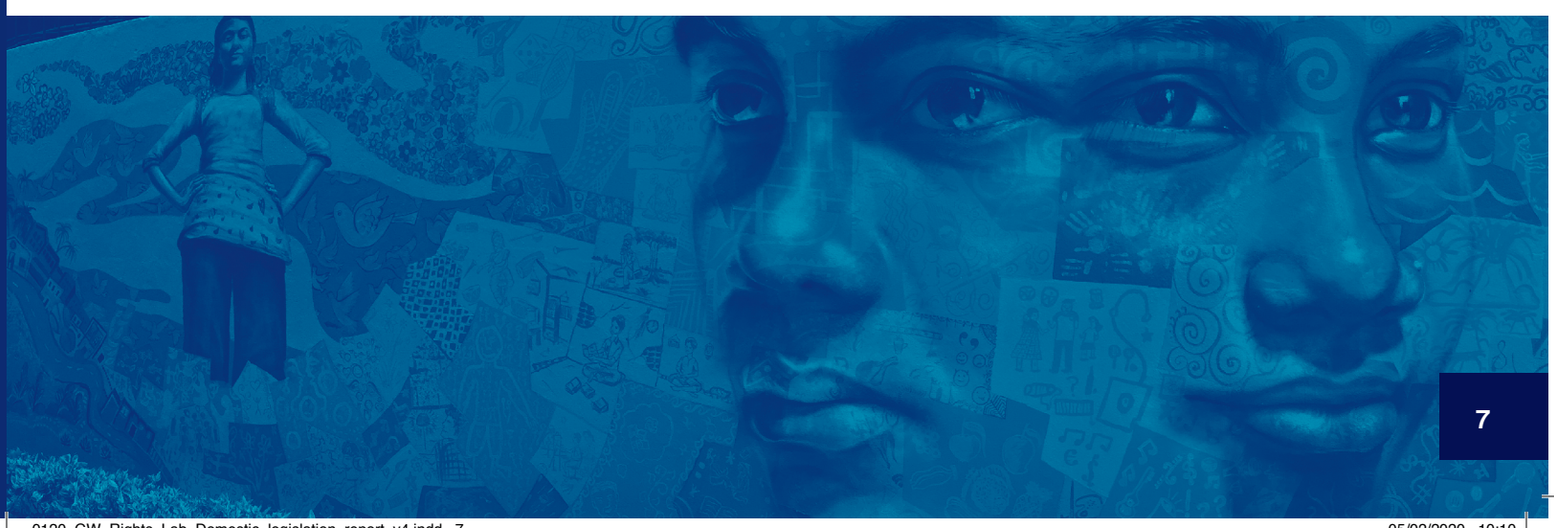
Country scores for the prohibition of each form of exploitation reflect the extent to which domestic legislation encompasses the practice as captured in the international definition. This allows for provisions that extend their protection beyond the boundaries of the international prohibition, while also identifying where the lack of alignment between domestic and international provisions creates a gap in domestic coverage of a situation that ought to be protected according to international law.

Although the database incorporates legislation from all 193 UN Member States, it should be recognised that there are challenges to the global collection and analysis of legislation that had to be faced in the process. Issues relating to the availability of legislation, languages of publication, difficulties in translating legal provisions, and differences in the structures of national legal systems, should all be noted as inherent challenges to developing a global dataset of domestic legislation. These challenges have been offset by utilising key search terms in multiple searches, triangulating sources, and the use of translation software to translate material to English where necessary. Further challenges arise in the attempt to create a quantitative metric for assessing States' compliance with their international obligations to prohibit the various forms of human exploitation. The full methodology for data collection and analysis is set out on the online platform.

Acknowledging the limitations of this data collection exercise, we invite States and other experts to contribute additional evidence and legislation to the database. This is a live project, which continuously seeks to improve the quality of the evidence available for analysis and use by stakeholders. New evidence is welcome and can be submitted (and gaps in existing evidence flagged) through the online portal.

The Antislavery in Domestic Legislation platform is now live, and freely accessible at **antislaverylaw.ac.uk**





Findings

Analysis of the **Antislavery Legislation Database** has already revealed widespread gaps in States' domestic implementation of their international obligations to prohibit human exploitation. While the vast majority of States have undertaken international legal commitments in this regard, a large number have yet to give effect to these at the domestic level. This places many States in breach of international law, and leaves many victims and survivors without adequate redress within their domestic legal systems.

Although in-depth analysis of the database continues, the below represent some key preliminary findings that help to build a better understanding of the domestic implementation of international obligations to prohibit human exploitation globally.

The global picture

States' international obligations

Globally, almost all UN Member States have ratified at least one of the core international instruments addressing human exploitation. Overall, only 3 States (2%) do not have specific treaty obligations to prohibit any one of these practices (Bhutan, Tonga, and Tuvalu), while 113 States (59%) are required to prohibit all five.

Figure 1: Number of States Parties to the core international instruments addressing human exploitation

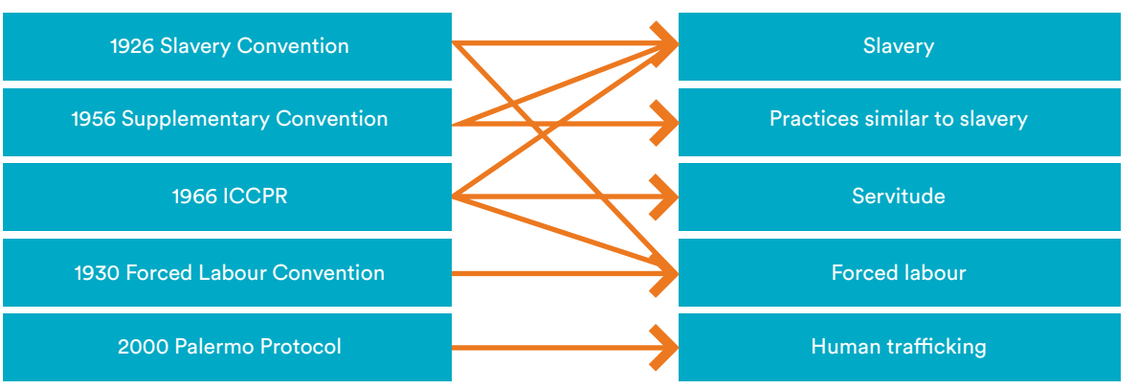


Figure 2: Sources of international obligations to prohibit human exploitation

Slavery

172 States (89%) have obligations to prohibit slavery as a result of membership of the ICCPR, 123 (64%) as a result of the 1956 Supplementary Convention, and 119 (62%) from the 1926 Slavery Convention. This leaves only 10 States (5%) without treaty obligations to prohibit slavery. These 10 States (Bhutan, Brunei, Kiribati, Micronesia, Oman, St Kitts and Nevis, South Sudan, Tonga, Tuvalu, and the United Arab Emirates) nonetheless have international obligations to prohibit slavery by virtue of customary international law.[5]

Practices similar to slavery

Institutions and practices similar to slavery are protected solely under the 1956 Supplementary Convention. This instrument introduced practices similar to slavery into international law, and remains the only international instrument specifically these four practices of: serfdom; debt bondage; practices involving the transfer of women in the context of marriage (sale of a bride, transfer of a wife, or inheritance of a widow); and delivery of children for exploitation by their guardian. A total of 123 States (64%) have ratified this convention, and thus have specific obligations to prohibit each of the four practices outlined in this instrument.

Servitude

With regard to servitude, obligations are derived from the ICCPR, which 172 UN Member States (89%) have ratified, leaving only 21 States (11%) without international obligations to prohibit servitude. States party to the American Convention on Human Rights and the European Convention on Human Rights also have obligations to prohibit servitude under those instruments, however all of these States are also party to the ICCPR.

Forced labour

The prohibition of forced labour first found voice in international law in the 1930 Forced Labour Convention—to which 177 States (92%) are party—although the earlier 1926 Slavery Convention entailed some commitment on the part of States to move towards restricting the practice. 172 States (89%) also have obligations to prohibit forced labour as a result of membership of the ICCPR, and the same number have obligations with regards to specific forms of forced labour as a result of membership of the 1957 Abolition of Forced Labour Convention. This leaves only 8 States (4%) without international treaty obligations to prohibit forced labour (Bhutan, Brunei, China, Micronesia, Nauru, Palau, Tonga, and Tuvalu). Of these 8, China, Nauru, and Palau have signed but not yet ratified the ICCPR, while Brunei and China have obligations with regard to forced labour of children by virtue of membership in the 1999 Worst Forms of Child Labour Convention.

Human trafficking

The obligation to prohibit trafficking in persons specifically derives from the 2000 Palermo Protocol. 173 States (90%) are party to this treaty, with 20 States (10%) non-party. Of the 20 remaining States, 13 are party to the 1999 Worst Forms of Child Labour Convention which requires prohibition of trafficking of children. Trafficking is also addressed in a range of regional instruments.

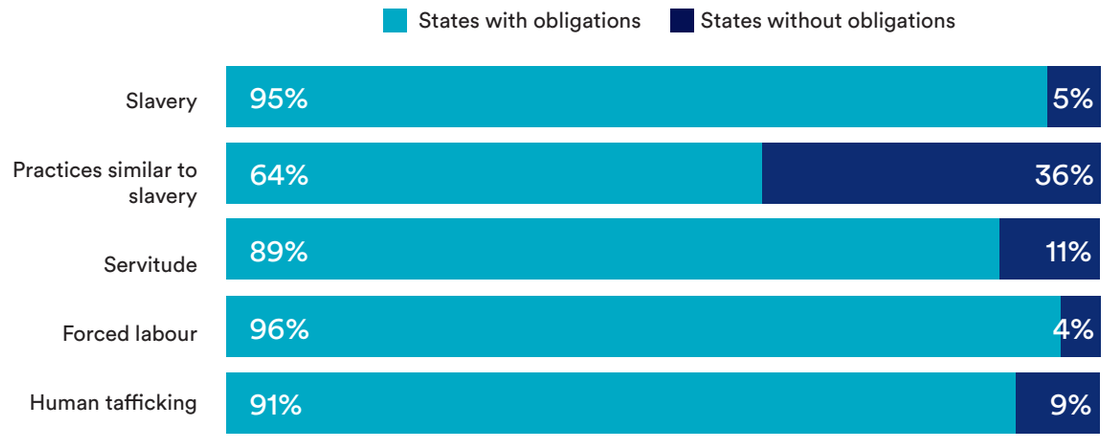


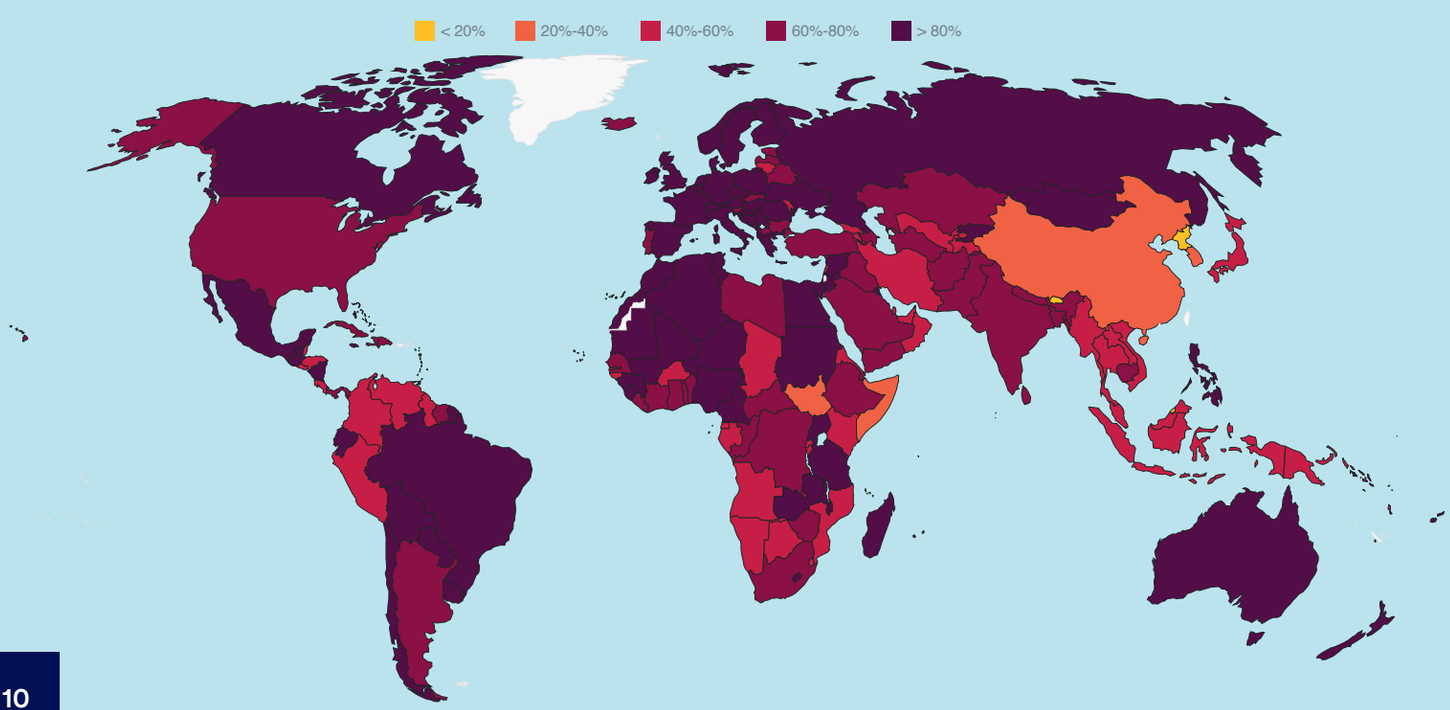
Figure 3: Proportion of States with international treaty obligations to prohibit human exploitation

The geographic distribution of international commitments

The geographic variance between States which have, and have not, committed to the international instruments governing human exploitation as a whole is, for the most part, statistically insignificant. With the exception of the Asia-Pacific region, which has lower engagement with the all the international instruments; there is no significant relationship between consent to the relevant international instruments and geographic region. Divergence in engagement between the remaining regions is not statistically significant.

Regional variance also manifests in relation to treaties specifically addressing slavery, namely the Slavery Convention, Supplementary Convention, and ICCPR. Not only is the Asia Pacific region significantly less engaged in membership in these treaties, but there is significant variance between European and non-European regions. The Eastern Europe and Western Europe and others regions in this case are significantly more engaged in these treaties than those in Africa, Asia Pacific, and Latin America and the Caribbean.

Figure 4: Proportion of relevant international instruments ratified by States



States' domestic legislation

Each of the international instruments considered in this study entails specific obligations on States Parties to *criminalise* the forms of exploitation in question, and not simply to suppress in a broad variety of ways. Yet, despite near universal commitment to these norms, the prohibitions against slavery, practices similar to slavery, servitude, and forced labour have not yet found voice in the penal law of a large number of States. It is only the recent prohibition against trafficking that has achieved almost complete domestic implementation, with 186 of the 193 UN Member States (96%) penal sanction in the context of this transnational crime. With regard to the remaining forms of exploitation:

- **91 States (47%)** appear not to have criminal legislation prohibiting slavery or the slave trade
- **107 States (55%)** appear to have failed to criminalise even one of the four institutions and practices similar to slavery
- **179 States (93%)** appear not to have enacted legislative provisions criminalising servitude
- **112 States (58%)** appear not to have put in place penal provisions for the punishment of forced labour, although a number of these States have put provisions in place in their labour laws.

Overall, 56 States (29%) have provisions in place addressing each of the forms of exploitation in some way, although only 26 of these (13%) have criminal provisions addressing each of the five practices.

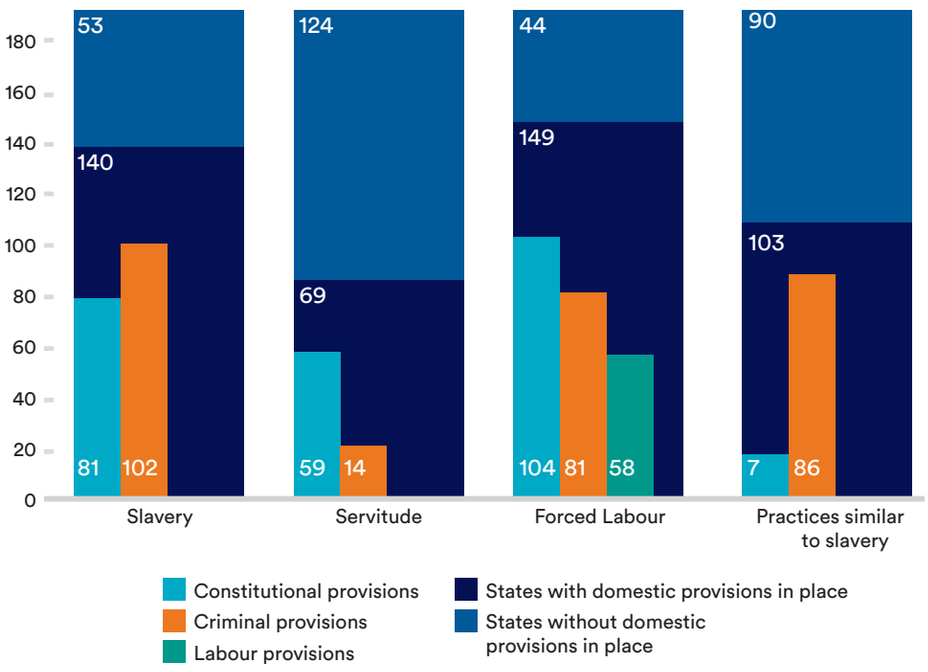


Figure 5: States' domestic legislation prohibiting human exploitation

The geographic distribution of domestic legislation

With the regard to the geographic distribution of States who have enacted implementing legislation, and those who have not, it is important to note that countries without prohibition come from every region of the world, as do the countries with such provisions in place. However, there is variation between regions in the implementation of domestic legislation relating to each form of exploitation, and in the approaches taken to prohibition. For instance, countries from the Western Europe and others group are significantly less likely to adopt prohibitions in their national constitutions than States from any other region. On the other hand, while Latin American States give voice to the prohibitions against human exploitation in their national constitutions in the greatest frequency, they are significantly less likely to have enacted criminal sanctions addressing these practices. The African region has the highest rate of domestic criminalisation across the exploitation types, followed by Asia-Pacific.

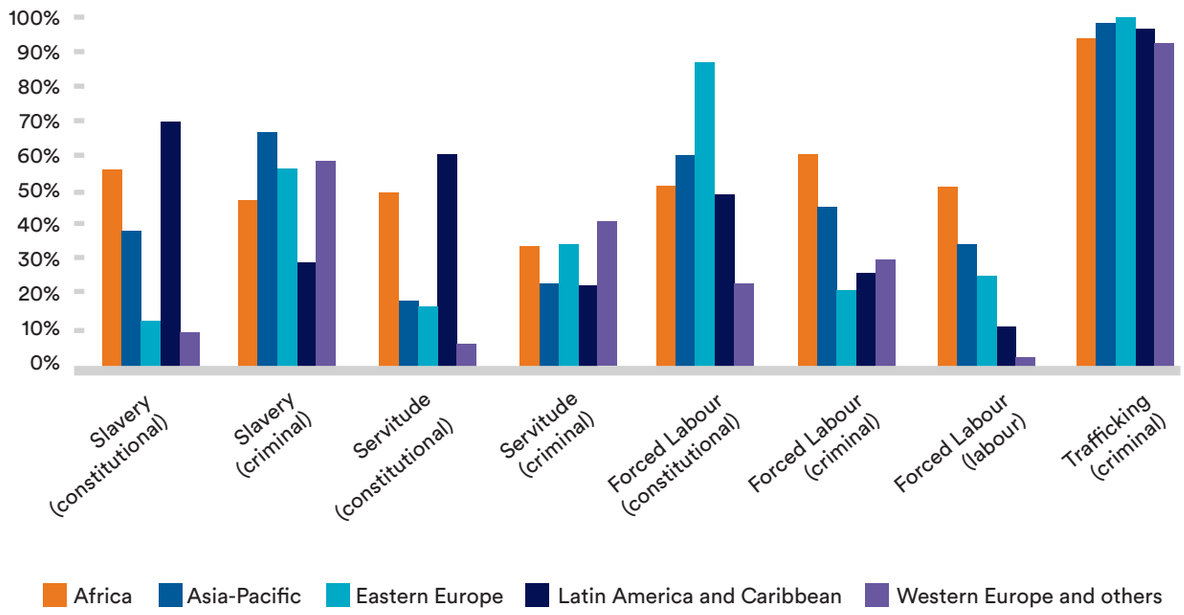


Figure 6: Implementation of domestic legislation by region

Countries with criminal provisions come from every region in the world, and there is no single region performing substantially better than others across the board.

These geographic trends hint at something more general with regards to the prohibition of human exploitation in domestic law: that there is no significant correlation between States having ratified the relevant international instruments and having enacted domestic legislation prohibiting human exploitation. Given that consent to these treaties signals a commitment to take action domestically, and involves an international obligation to do so, it is surprising that this does not substantially impact whether States take such measures in fact. However, it should be noted that this general global trend may not hold for any individual State, and ratification of treaties may have significant impacts on domestic legislation in some cases.

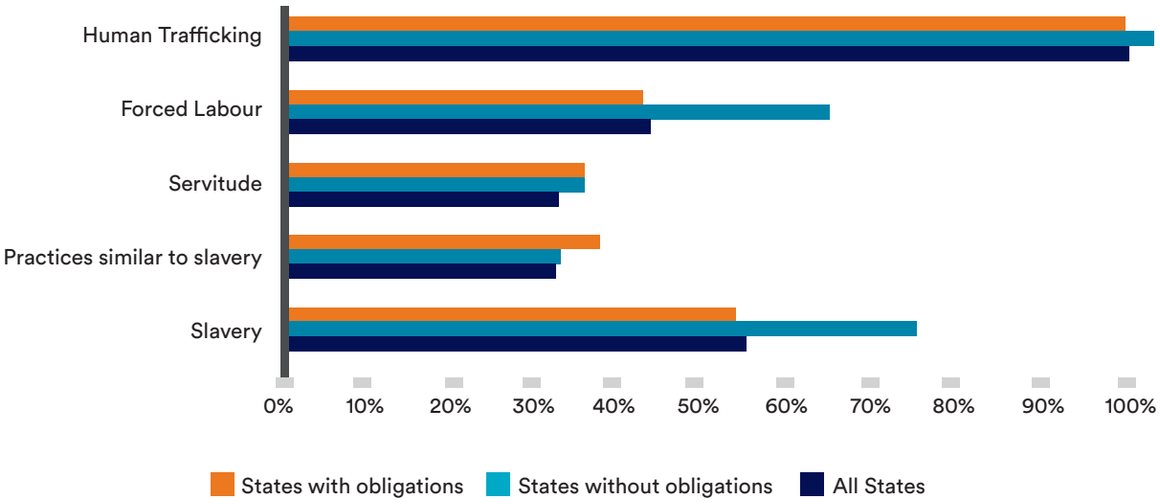


Figure 7: Implementation of domestic legislation by treaty obligations

Ratifying relevant international treaties does not make States statistically more likely to pass domestic law criminalising human exploitation.

Slavery and the slave trade

The definition of slavery

The operative international definition of slavery is drawn from, and was first set out by the League of Nations, in the 1926 Slavery Convention. That definition has been reproduced, in substance, in the 1956 United Nations Supplementary Convention and the 1998 Statute of the International Criminal Court. The original definition of slavery, found at Article 1(1) of the Slavery Convention, reads:

> Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

In 2002, the International Criminal Tribunal for the former Yugoslavia became the first international court to interpret these provisions. In the *Kunarac* case, the Tribunal determined that this concept of slavery encompassed various contemporary forms of slavery based on the experience of the powers attaching to the right of ownership, and not only traditional chattel slavery. In 2016, the Inter-American Court of Human Rights affirmed this reading of slavery's definition in the *Case of the Workers of the Hacienda Brasil Verde,* declaring that it was not limited to legal ownership of persons.

The Inter-American Court went on to consider in depth the two elements of slavery's definition. The court affirmed that the reference to 'status or condition' in the 1926 definition encompassed both *de jure* and *de facto* slavery (respectively) – namely the situation in which a person has the legal status of a slave, and where a person is held in the condition of slavery even if slavery has been abolished in law. This understanding of the nature and scope of slavery has significant implications for States' obligations under international instruments addressing the phenomenon.

States' international obligations

All States have obligations to ensure the prohibition of slavery, as a result of its recognition as a customary norm of international law and by virtue of its status. In light of slavery's definition, this obligation requires States do more than simply abolish laws allowing for enslavement—they must proactively prohibit in order to address both *de jure* and *de facto* slavery. Beyond this universal obligation, the vast majority of States have signed and ratified at least one international treaty involving a commitment to prohibit (and eliminate) slavery and the slave trade. Of the 193 UN Member States, only 11 (6%) have not undertaken obligations under the 1926 Slavery Convention, 1956 Supplementary Convention, or the ICCPR. This leaves 182 States (94%) with specific obligations to prohibit slavery under binding international treaties.

The 1926 Slavery Convention specifically requires that States whose laws do not already make adequate provision for the punishment of violations of laws enacted to give effect to the treaty adopt the necessary measures so that 'severe penalties' may be imposed in respect of infractions (article 6). The 1956 Supplementary Convention further demands that parties criminalise slavery and institutions and practices similar to slavery within their domestic law, with penal sanctions enforced on perpetrators.

In addition to this explicit obligation to criminalise, human rights courts have highlighted criminalisation as a necessary element of States' obligations under

international human rights law. While the United Nations Human Rights Committee, in overseeing the ICCPR, has made plan that the Covenant requires effective domestic legislation be put in place to ensure respect for each of its enumerated human rights, the European Court of Human Rights has had the opportunity, in *Rantsev v Cyprus*, to declared a specific obligation to penalise and prosecute any act aimed at maintaining a person in a situation of slavery, servitude, or forced labour.[6] In *L E v Greece*, the Court was more direct, determining that penal law is the appropriate mechanism for addressing conduct contrary to the prohibition of slavery, the slave trade, servitude, and forced or compulsory labour.[7] States' obligations under the American Convention on Human Rights likewise require criminalisation, suggesting that the framework of international human rights law with regard to human exploitation more broadly—including the provisions of the ICCPR—specifically require domestic criminalisation.

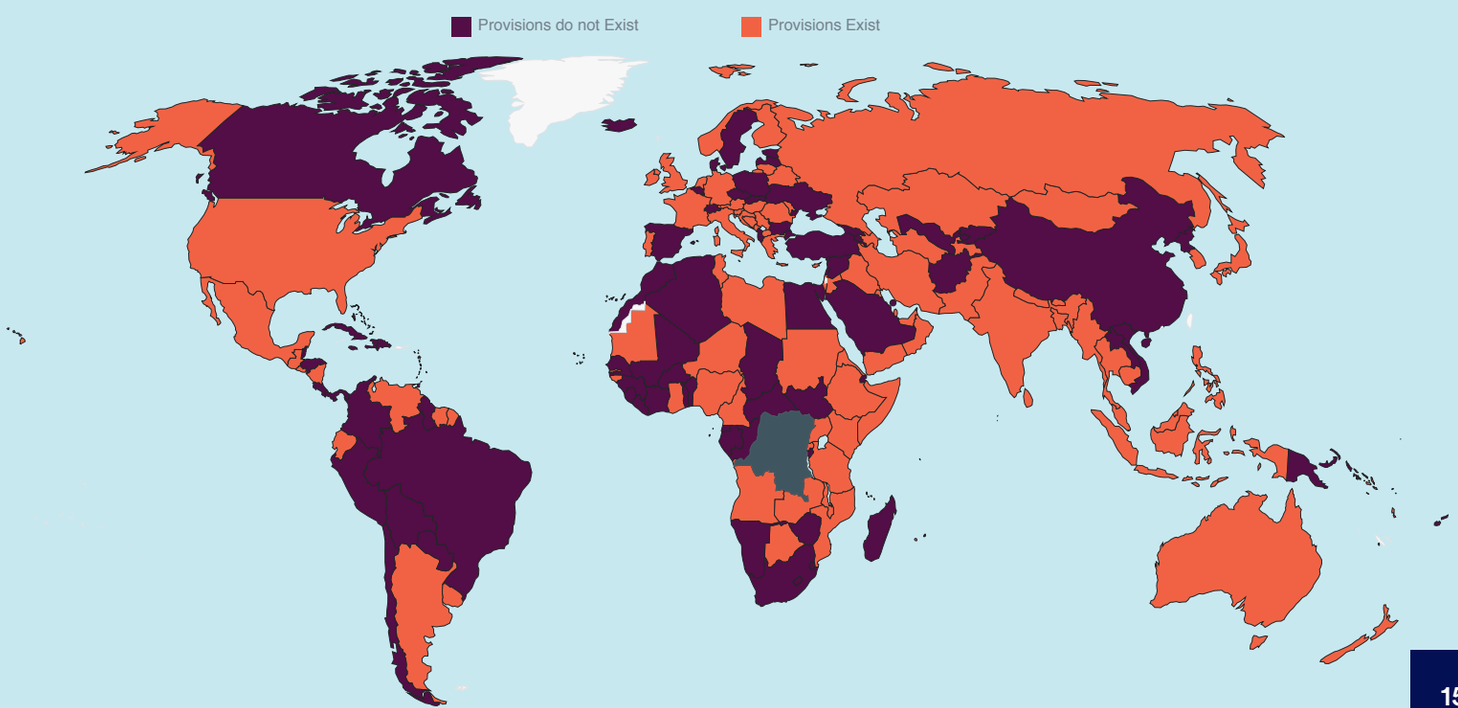
States' domestic legislation

Far from having achieved the universal prohibition claimed by many, the investigation into States' domestic legislation has revealed widespread failures on the part of States when it comes to the prohibition and criminalisation of slavery. Analysis of the database reveals that almost half of all States in the world have yet to make it a crime to enslave another human being. In total, 140 States (73%) have enacted domestic legislative provisions prohibiting slavery in some form. However, only 96 (50%) of these have enacted provisions that impose penal sanctions on perpetrators as required by the 1926 Slavery Convention, 1956 Supplementary Convention, ICCPR, and regional human rights instruments.

Half of all States appear not to have domestic criminal sanctions in place to prohibit slavery and the slave trade. Further, of those States that have enacted penal law, many have not aligned their domestic provisions with the international definition. Only 12 States (6%) include the language of the 1926 definition in their criminal provisions, instead relying on the words 'slavery' and 'slave trading' or focusing simply on acts such as buying and selling of human beings. 84 States (44%) specifically criminalise slavery in

Almost half of all States in the world have yet to make it a crime to enslave another human being.

Figure 8: States with domestic legislative provisions criminalising slavery or the slave trade



such language, while 14 (7%) specifically address the 'slave trade'. Where the terms slavery and slave trade are used without further clarification or explanation of the content of this crime, interpreting the provision in line with international law is often left to the country's courts. When provisions instead use language such as 'buying and selling human beings', however, the scope of slavery is narrowed so that only some of the situations captured in the 1926 definition are covered under national law. This means that even in countries where slavery has been criminalised, only some situations of slavery have been made illegal in a number of States.

Beyond the protection against slavery in domestic criminal law, 78 UN Member States (40%) have provisions in their constitutions addressing slavery. Of these provisions, several have followed the language of the international instruments obliging States to prohibit slavery, 76 States (39%) use the word 'slavery' and 5 (3%) 'slave trade'. In a few States, the language of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and regional human rights instruments have found voice in domestic law. However, no State's constitutional provision includes the 1926 definition of slavery, and as in the case of criminal law, several have provisions addressing specific aspects of slavery (e.g. buying and selling human beings) but not the phenomenon in its entirety.

No State's constitution includes the 1926 definition of slavery.

Forced or compulsory labour

States' international obligations

The prohibition of forced or compulsory labour in international law is found in several key instruments. It finds partial voice in the 1926 Slavery Convention, which calls on States to take all necessary measures to prevent forced labour from developing into conditions analogous to slavery, and involves a commitment to bringing about the end of forced labour used for private purposes. The true substance of the prohibition against forced labour arises in the 1930 Forced Labour Convention. Article 25 of this instrument specifically requires States impose penal sanctions on the illegal exaction of forced labour, and that these be 'really adequate and strictly enforced'. In the same manner as slavery, international human rights law requires criminalisation of forced labour. Thus parties to the ICCPR and regional human rights instruments are also obliged to enact domestic penal sanctions. In total, 185 States (96%) have international obligations to criminalise forced labour as a result of being party to either the 1930 Forced Labour Convention or the ICCPR.

The content of forced labour itself is set out in the 1930 Forced Labour Convention, which States at article 2 that forced or compulsory labour means:

> …all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

The Convention then identifies five situations explicitly excluded from this definition of forced labour for the purpose of international law. The ICCPR likewise sets out five exceptions to the prohibition against forced labour, which align with those established in 1966 but under slightly altered terms.

1930 Forced Labour Convention	1966 ICCPR
2(2)(a) Work of a purely military character exacted under compulsory military service laws	8(3)(c)(ii) Military service and national service required by law of conscientious objectors
2(2)(b) Normal civic obligations of citizens in a fully self-governing country	8(3)(c)(iv) work that forms part of normal civic obligations
2(2)(e) Minor community services (considered normal civic obligations), with a right to consultation	
2(2)(c) Work exacted as a consequence of a court conviction under the control of a public authority and not placed at the disposal of private parties	8(3)(b) Performance of hard labour in pursuance of a criminal sentence by a competent court
	8(3)(c)(i) work normally required of a person in detention or on conditional release as a consequence of a lawful court order
2(2)(d) Work exacted in times of emergency (in general, circumstances endangering the existence or the well-being of the population, in whole or part)	8(3)(c)(iii) service exacted in cases of emergency or calamity threatening life or well-being of the community

Table 1: Exceptions to forced labour established in the Forced Labour Convention and the ICCPR

The extent to which labour may be exacted under these exceptions has been considered in depth by the International Labour Organisation's Committee of Experts on the Application of the Conventions and Recommendations of International Labour.[8]

The 1930 Forced Labour Convention establishes that 'the illegal exaction of forced or compulsory labour shall be punishable as a penal offence'. States party to the ICCPR have likewise made commitments under Article 8 to prohibit forced or compulsory labour, with the same requirement of criminalisation under international human rights law as the prohibition against slavery.

States' domestic legislation

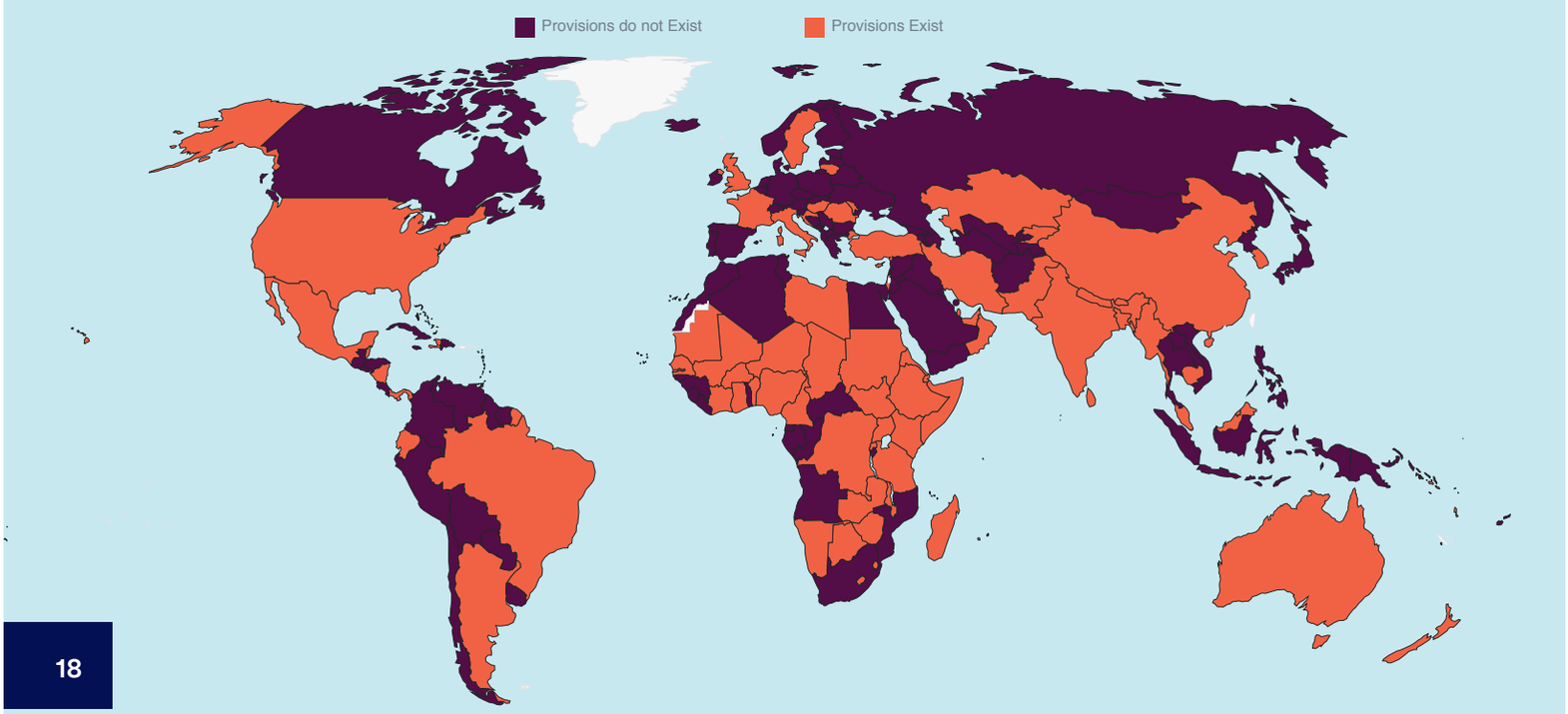
Despite the vast majority of States having undertaken international legal commitments to prohibit and criminalise forced labour, 44 States (23%) have not yet enacted any prohibition against this practice in their domestic law. Of the 149 countries (77%) that do have some form of prohibition in place, 81 (42%) have yet to create penal sanctions as required by the 1930 Forced Labour Convention and international human rights law. 58 States (30%) have provided for some penalty in the case of violations through their labour laws.

Of the States that do have legislation in place, definitions seldom align neatly with international definitions. Only 19 States have aligned their domestic legislation with the definition of forced labour set out in the Forced Labour Convention. It appears that only one State (Tuvalu) has aligned each aspect of its domestic definition of forced labour with that set out in the ICCPR, encompassing each of the identified exceptions captured in this instrument.

Many States have adapted the text of the exceptions contained in the 1930 Forced Labour Convention and ICCPR in their domestic legislation, in some instances narrowing the scope of permissible forced labour, and in others expanding domestic exceptions beyond those recognised in international law. For instance, article 12 of Egypt's 2014 Constitution requires that forced labour extracted for public purposes be restricted to a defined period of time and in return for a 'fair wage'. On the other hand, article 16(3) of Eritrea's Constitution allows forced labour whenever 'authorised by law'. In the former case, the State's definition remains in line with its international obligations, prohibiting all conduct that would be defined as forced labour in international law, and going further to restrict the application of the exceptions. In the latter, however, the definition of permissible forced labour has been expanded beyond the limited exceptions recognised in the international instruments. For the States that adopt this latter approach, expanding permitted forced labour places them in breach of their international obligations.

42% of States have yet to criminalise forced labour in their domestic law, and those that have often fail to align their domestic provisions with their international obligations.

Figure 9: States with domestic legislative provisions criminalising forced labour



Institutions and practices similar to slavery

States' international obligations

States' obligations to enact domestic legislative provisions to address institutions and practices similar to slavery derive exclusively from the 1956 Supplementary Convention, to which 123 States (64%) are party. This instrument requires States Parties ensure that the four outlined practices are 'completely abolished and abandoned', and that they have in place criminal offences under their laws, with persons convicted liable to punishment. The States Parties are to ensure that such liability attaches not only the acts of inducing or subjecting a person to the institutions or practice similar to slavery, but also in regard to attempting, being accessory thereto, or being a party to a conspiracy to accomplish such an act.

The institutions and practices similar to slavery addressed by the Supplementary Convention are:

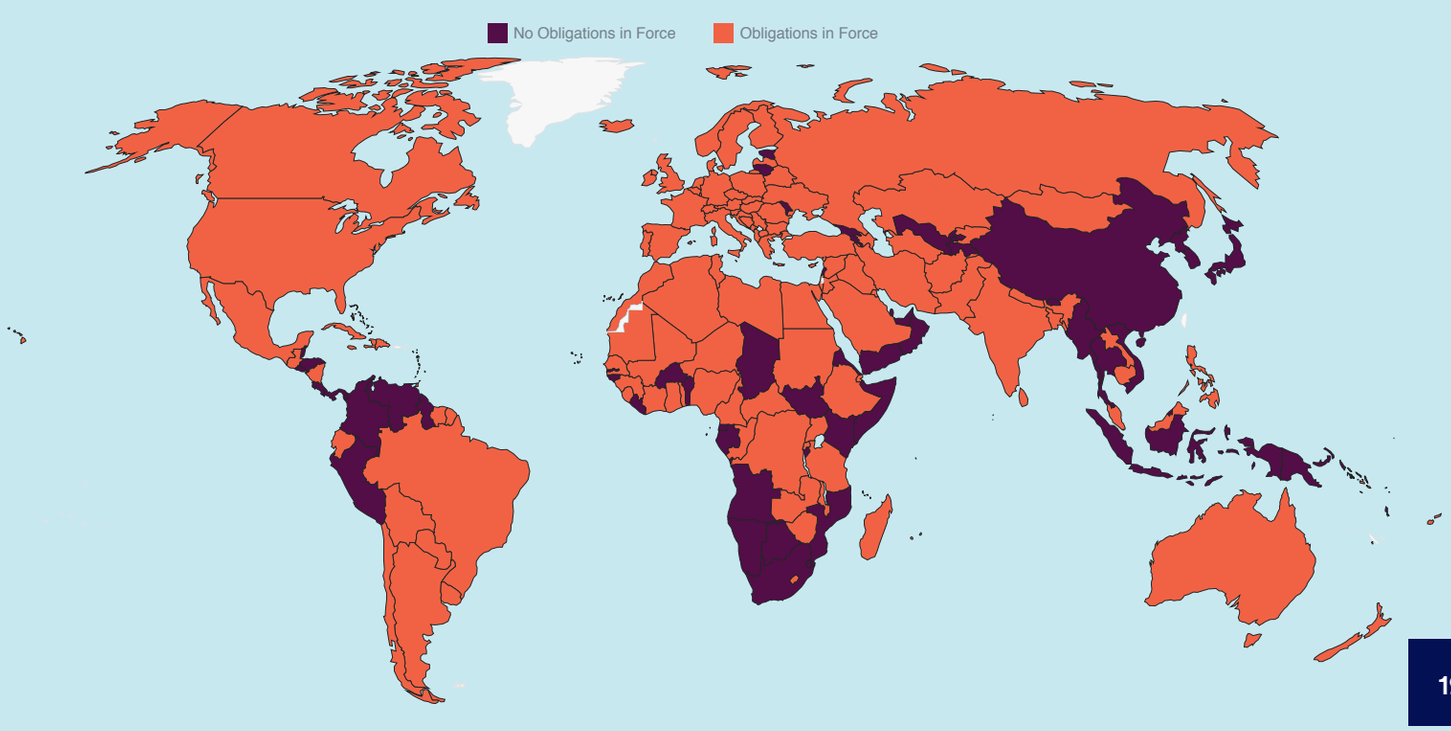
a. Debt bondage

b. Serfdom

c. Practices involving the transfer of women in the context of marriage, namely giving of a women in marriage in exchange for material benefit without her consent, transfer of a wife to another person, and inheritance of a widow

d. Delivery of children by their parent or guardian, for the purpose of exploitation

Figure 10: States with international obligations to prohibit institutions and practices similar to slavery



It should be noted that the prohibition of the fourth of these practices—delivery of children—is given further content by the provisions of the Palermo Protocol (in its prohibition of trafficking), the 1999 Worst Forms of Child Labour Convention, and the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Both the Worst Forms of Child Labour Convention and the Palermo Protocol have a more universal membership than the Supplementary Convention, and all States Party to the latter convention have also ratified one of these additional instruments. For this reason, the domestic implementation of this final practice similar to slavery has been assumed within this analysis for all States with provisions addressing child trafficking.

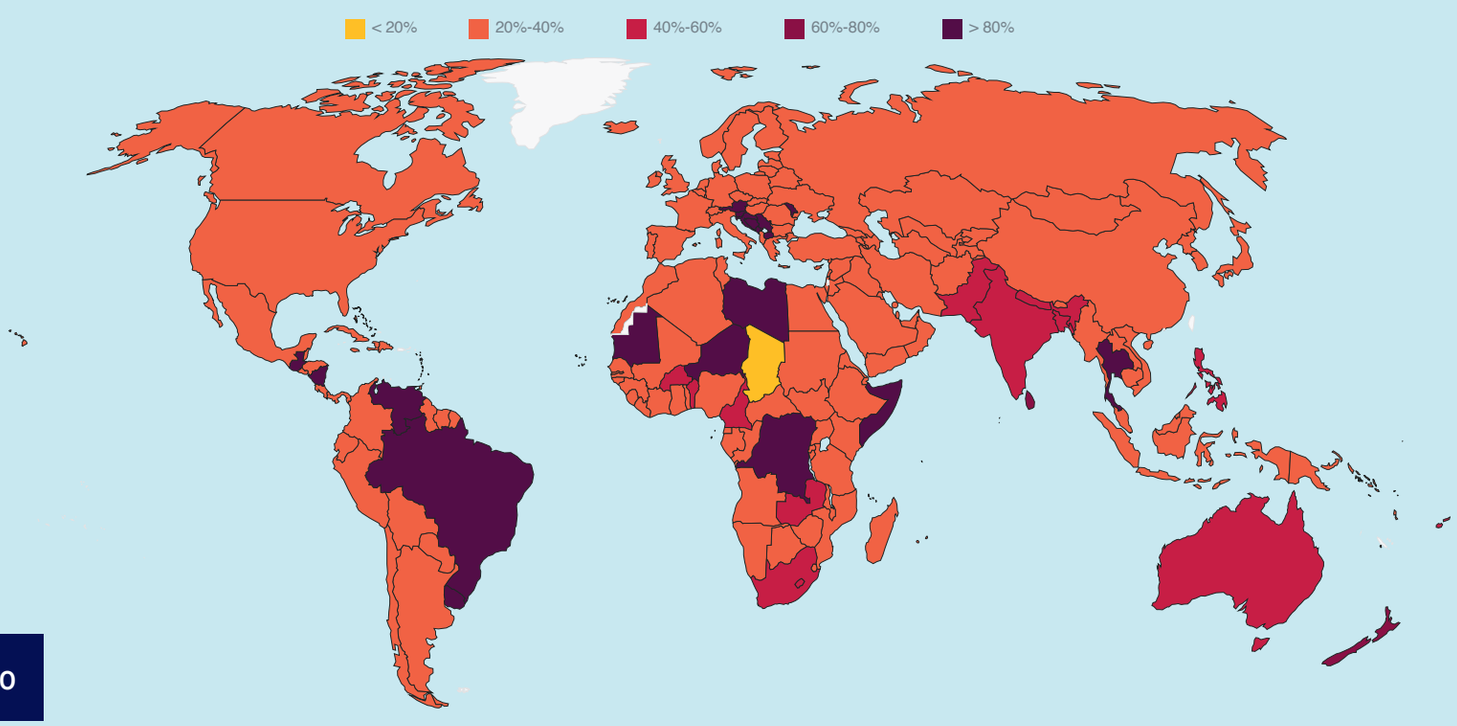
States' domestic legislation

The institutions and practice similar to slavery have, to date, experienced a similarly low rate of domestic implementation globally. The *Antislavery Legislation Database* reveals a near wholesale failure on the part of States to fulfil their international obligations to prohibit these practices.

While the prohibition against delivery of children has been captured in trafficking provisions, and therefore enjoys near universal implementation in domestic law as a transnational crime, in some form, the inclusion of the remaining three practices in national legislation has been limited. Overall, only 90 States (47%) have enacted domestic legislative provisions addressing even one of the remaining three practices, or practices similar to slavery broadly. Only 86 (45%) have enacted criminal sanctions. Notably, only 20 States (10%) appear to have created a penal provision capturing practices similar to slavery broadly, while only 8 (4%) criminalise serfdom, 28 (15%) have penal sanctions for debt bondage, and 9 specifically address the marriage practices similar to slavery in their criminal law. This adds to widespread failures on the part of States to legislate against forced marriage more broadly, with only 53 States (27%) having penal provisions for any form of forced or exploitative marriage.

Only a handful of States have addressed the marriage practices similar to slavery, adding to widespread failures on the part of States to legislate against forced marriage.

Figure 11: Alignment of domestic law with international definition of practices similar to slavery amongst States party to the Supplementary Convention



Servitude

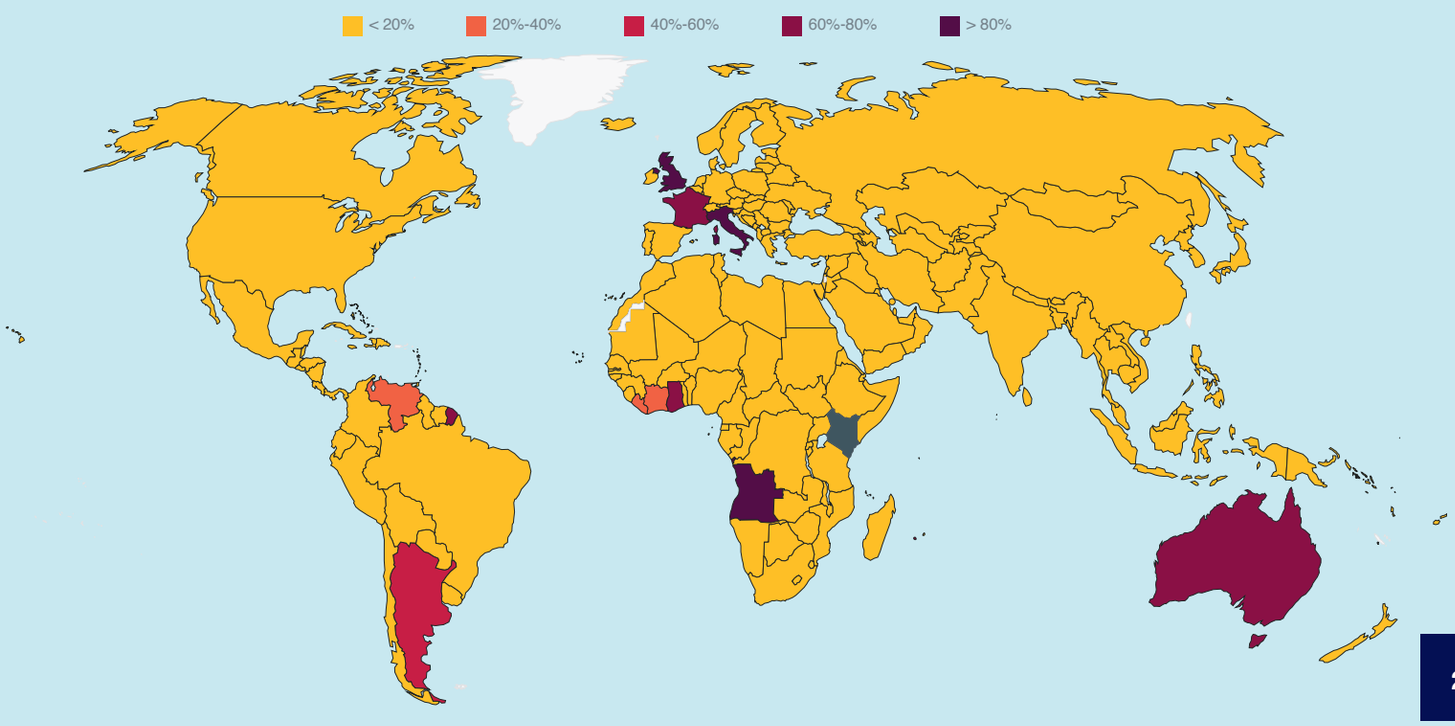
States' international obligations

Servitude as a distinct international legal concept was introduced in the 1966 ICCPR, which calls for the prohibition of servitude within the same terms as apply to slavery and forced labour (thus requiring domestic crimialisation). With 172 States (89%) party to this instrument (as well as relevant regional human rights instruments in some cases), only 21 States (11%) do not have specific obligations to criminalise servitude in their domestic law.

States' domestic legislation

Despite being enshrined in a treaty with near universal membership, servitude has failed to find purchase in States' domestic law. Confusion around the concept of servitude in particular has persisted beyond resolution over the definition of slavery. In the case of *Siliadin v France,* for instance, the European Court of Human Rights declared servitude to mean an obligation to provide one's services imposed through coercion, and linked to the concept of slavery.[9] The Court considers servitude an aggravated form of forced labour and 'particularly serious denial of freedom', and highlights a link to the obligation for the victim to live with their exploiter. This interpretation was affirmed by the Inter-American Court of Human Rights in *Brasil Verde.* However, the European Court had not, in that case, recognised the potential for slavery to exist in any other circumstances than traditional chattel slavery, leaving their interpretation of servitude potentially coloured by their limited recognition of the concept of slavery. How this reacts (or does not react) to the now established recognition that slavery may exist as a legal status or factual condition remains to be seen. Perhaps in part a result of this conceptual confusion, only 14 States (7%) have enacted criminal provisions addressing servitude specifically, although 59 States (31%) have established Constitutional prohibitions. This leaves 179 States without criminal sanctions, and 124 States (64%) without any kind of legislative prohibition.

Figure 12: Alignment of States' domestic law with the international definition of servitude



Trafficking in persons

States' international obligations

A more recent feature of international law than the practices discussed above, trafficking in persons is primarily prohibited through the 2000 Palermo Protocol, supplementing the United Nations Convention against Transnational Organised Crime. The Protocol applies specifically to offences that are transnational in nature (i.e. with a cross-border element) that involve an organised criminal group (article 4). Trafficking in persons consists of three elements:

- **An act**—the recruitment, transportation, transfer, harbouring, or receipt of persons
- **A means by which the person is compelled to undertake that movement**—threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- **An objective, ultimately, to exploit that person**—exploitation can take on a number of forms, including forced labour, practices similar to slavery, servitude or slavery, but also encompassing exploitation of prostitution or other sexual exploitation, and the removal of organs.

In Europe, obligations also flow from the 2005 Council of Europe Convention on Action against Trafficking in Human Beings and the 2011 European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. In South East Asia, obligations also stem from the 2015 ASEAN Convention against Trafficking in Persons, especially Women and Children. The American Convention on Human Rights also makes explicit reference to trafficking, albeit only in relation to 'traffic in women'. Regional human rights courts have engaged with the concept of trafficking, both as a result of direct reference to trafficking in their founding instrument (article 6 of the American Convention on Human Rights) and as an extension of the prohibition against slavery, servitude, and forced labour (the European Court of Human Rights' approach to article 4 of the European Convention on Human Rights). In these instruments, trafficking is conceived more broadly than in the context of Palermo, eschewing the requirements for a transnational dimension and involvement of an organised criminal group to encompass domestic trafficking by any perpetrator.

173 States (90%) are party to the Palermo Protocol and thus have specific obligations to criminalise trafficking. 13 of the remaining 20 States have obligations to address child trafficking specifically as a result of membership of the 1999 Worst Forms of Child Labour Convention. 79 States (41%) also have obligations to criminalise domestic trafficking as parties to relevant regional conventions.

States' domestic legislation

At the domestic level, legislation implementing States' obligation to criminalise trafficking varies in different contexts. Although many States have only committed to address trafficking within the Palermo framework, only 6 States (3%) have limited their domestic trafficking offences to transnational crime, while 168 (87%) have criminalised both domestic and transnational trafficking.

Despite the general trend to extend protections against trafficking beyond the scope of Palermo with regard to the transnational dimension, the alignment of the remaining elements of the offence with international definitions leaves many countries with trafficking offences that do not fully capture the phenomenon as developed in international law. It appears that only 8 of the 175 States that have undertaken legally-binding obligations to criminalise human trafficking have effectively implemented those obligations domestically. This is so, as they have narrowly interpreted what constitutes human trafficking, creating only partial criminalisation of the practice outlined in the Palermo Protocol. Significant trends in this regard include:

- **73 States** criminalise only trafficking in children
- **14 States** have focused exclusively on suppressing trafficking for the purposes of sexual exploitation, and thereby failed to outlaw trafficking for the purposes of slavery, servitude, forced labour, institutions and practices similar to slavery, or organ harvesting
- **31 States** have not captured the full range of acts set out in the Palermo Protocol
- **86 States** have not captured the full range of means set out in the Palermo Protocol
- **127 States** have failed to explicitly recognise that consent is irrelevant to a finding of trafficking
- **121 States** have failed to recognise that trafficking in children requires only the specified act and purpose, and does not require coercive means.

Thus, although the vast majority of States have enacted domestic criminal sanctions to address trafficking in persons, very few have done so in a way that fulfils their international commitments and responds to the full range of trafficking situations protected under international law.

Only 8 of the 175 States that have legally binding obligations to criminalise trafficking have fully aligned their domestic definitions with the Palermo Protocol.

Why is criminalising trafficking not enough?

Many commentators suggest that implementing legislation to address trafficking in persons sufficiently meets the need to create criminal offences relating to the other forms of human exploitation considered in this study. However, the specific definition of trafficking as enshrined in both international law and domestic legislation runs contrary to its use as a 'catch-all' offence for various exploitative practices. Unlike terms such as 'modern slavery' and 'contemporary forms of slavery', human trafficking has a specific meaning in international law, which is translated (albeit imperfectly) in States' domestic definitions of the practice.

The crime of trafficking requires all three of its elements to be present. Prosecuting the exploitative practices themselves — be it, for instance, forced labour or slavery — would require specific domestic legislation beyond provisions addressing trafficking.

As a result, having domestic human trafficking legislation in place, does not enable prosecution of forced labour, practices similar to slavery, servitude, slavery, or the slave trade as offences in domestic law. For this reason alone, the use of the term 'human trafficking' as an umbrella term is unhelpful, and can obscure the gaps in domestic legislation addressing human exploitation. This is particularly true given that the vast majority of States have enacted domestic criminal provisions prohibiting trafficking, but have not yet looked beyond the trafficking framework to legislate against the full range of exploitation practices they have committed to prohibit.

The future of the database

The **Antislavery Legislation Database** is another step in the development of a rich global evidence base for combatting slavery and related forms of human exploitation. In releasing this first phase of the research, we invite States and other relevant actors to engage with the database, enriching the information available to all by submitting legislation not yet considered in the analysis. The platform will undergo continuous and ongoing developments, in the hope of presenting the most accurate and up-to-date legislative information possible to a global audience. The scope of provisions will also expand, as we look beyond the prohibition of these specific forms of human exploitation to consider other practices, and other obligations associated with States' commitments in this space.

Although the database will continue to grow, current findings present a catalyst for action at all levels. The widespread gaps in States' domestic implementation of their international obligations in this area cannot be overlooked. Not only because they represent serious breaches of international law, but also because they leave millions of victims and survivors without adequate legal protection or redress.

Recognising that the legal frameworks in place in States around the world are far less developed than was previously assumed provides a foundation for better anti-slavery governance—governance that responds to evidence over assumptions, and benefits from learning from all the world's States. Enabling analysis of the ways in which the full variety of States have sought to give voice to their legal obligations in this area makes the design of future legislation easier. It supports reform that responds to the demands of different contexts by analysing how other States sharing similar characteristics have responded to shared challenges. It enriches the information available for making assessments of the strengths and weaknesses of different choices in context, and makes responding to new and old challenges a more rigorous scientific exercise.

To this end, the authors of this report are developing **model legislation and guidelines** meant to assist States in adapting their domestic legal frameworks to meet their international obligations in an effective manner.

A clearer picture of the current state of domestic legislation—which the database provides—invites concerted, evidence-based advocacy and reform to make the claim that 'slavery is illegal in every country in the world' a reality.

The role of the United Nations Secretary-General

Under the 1926 Slavery Convention (as amended by the 1953 Protocol) and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the United Nations Secretary-General is tasked with gathering all legislation of the type developed in our dataset and making it available to all States. The Secretary-General's role in this context is to act as a clearinghouse for laws enacted to give effect to these treaties, receiving any newly enacted domestic legislation and bringing it to the attention of the other States party to these Conventions.

In 1954, the Secretary-General acted upon the provisions of these Conventions, tasking Hans Engen to gather such information. United Nations Members were invited to respond to a questionnaire regarding their national laws, which was then compiled in the 1955 Engen Report. Ten years later, Mohamed Awad, essentially carried out this same task. The 1966 Awad Report was the last time UN Secretaries General carried out their obligations under the 1926 and 1956 Slavery Conventions and systematically brought to the attention of UN Members States each State's domestic legislation related to slavery and practices similar to slavery. Since 1966 – that is, for more than 50 years – no systematic gathering of States' domestic legislation has been undertaken by the UN Secretary-General.

As a result, there has been a more than 50-year gap in knowledge as to what domestic legislation States have put in place to fulfil obligations they have undertaken as parties to the 1926 and 1956 Slavery Conventions. This makes the legislation database the first review of domestic legislation in place meant to address the prohibition of slavery across all States in over 50 years. In truth, however, our study goes much further, filling significant gaps in modern slavery research.

This Project seeks to assist the UN Secretary-General in renewing his role as a clearinghouse for domestic legislation relating to slavery and other forms of exploitation. We welcome the possible use of our database by the Secretary-General as a basis for once again inquiring with States as to whether the material gathered is accurate and up-to-date. Noting the mandate of the United Nations Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences to 'compile and analyse examples of national legislation relating to the prohibition of slavery', we further call upon the mandate holder to cooperate with the Secretary-General in fulfilling this function. We also invite States to share relevant laws that may have been overlooked, as required by the slavery conventions.

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