



University of
Nottingham
Rights Lab

Modern slavery, human trafficking, and the law

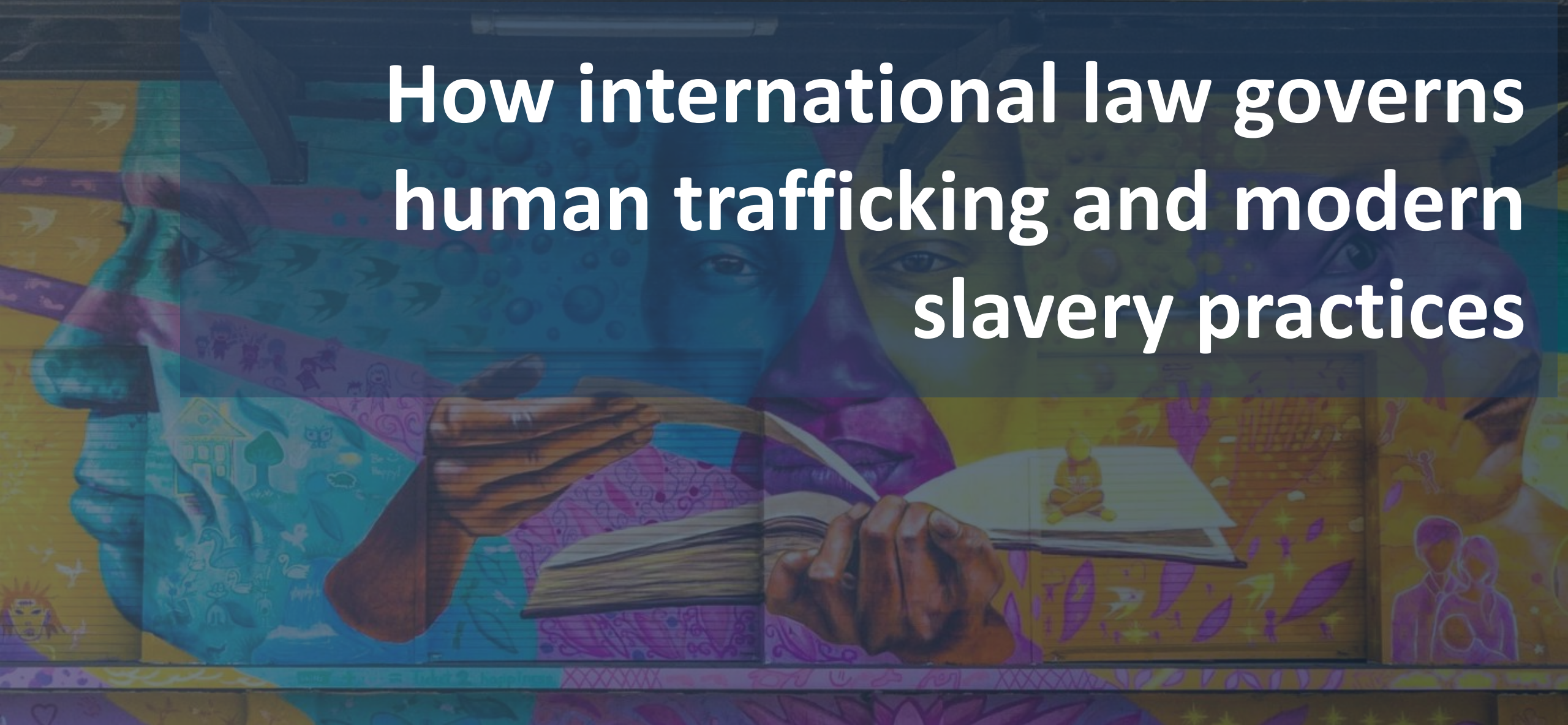
Dr Katarina Schwarz, Rights Lab Associate Director (Law & Policy)
Associate Professor of Antislavery Law and Policy, School of Law



- UNDERSTAND how international law governs human trafficking and modern slavery practices (HT/MS)
- REVIEW fundamental definitions of HT/MS
- EXAMINE domestic legislation prohibiting HT/MS
- ASSESS supporting governance infrastructure for anti-HT/MS efforts
- IDENTIFY intersecting areas of law and policy and how these can threaten or improve anti-HT/MS efforts
- EXPLORE victim protection and assistance frameworks



How international law governs human trafficking and modern slavery practices



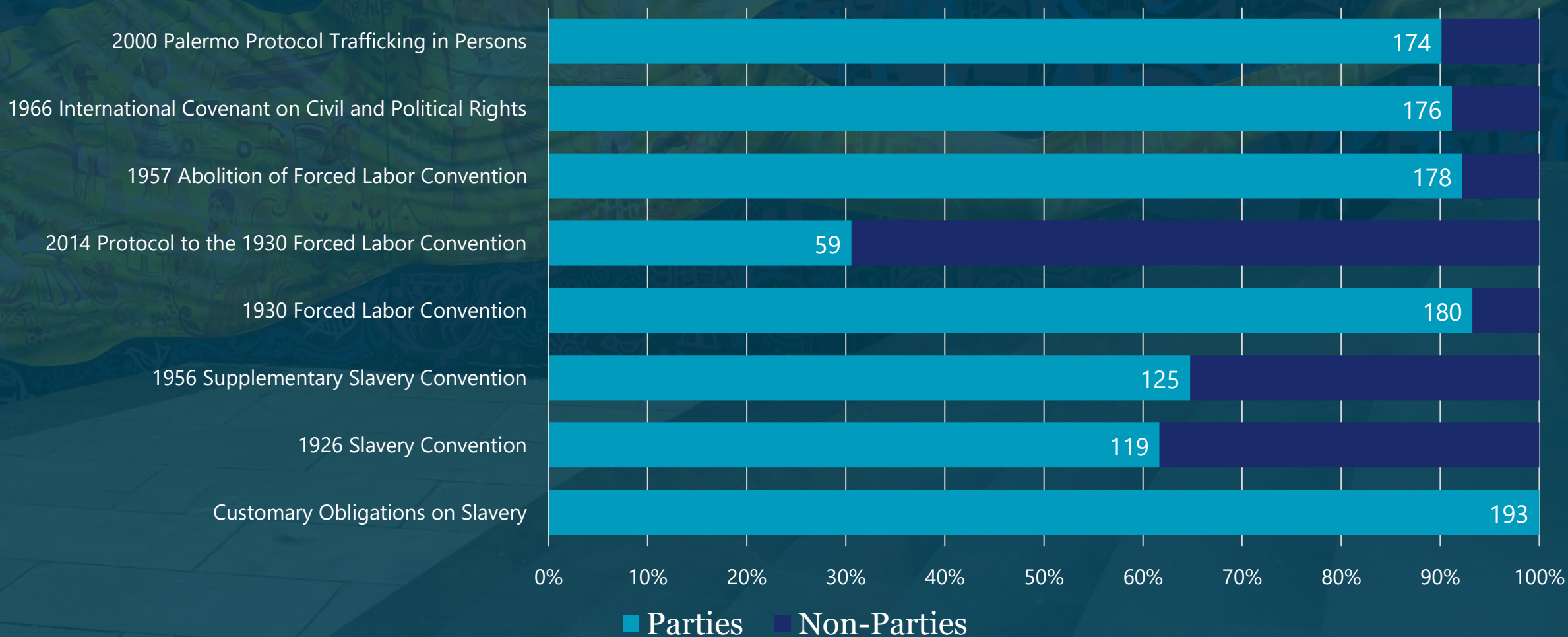


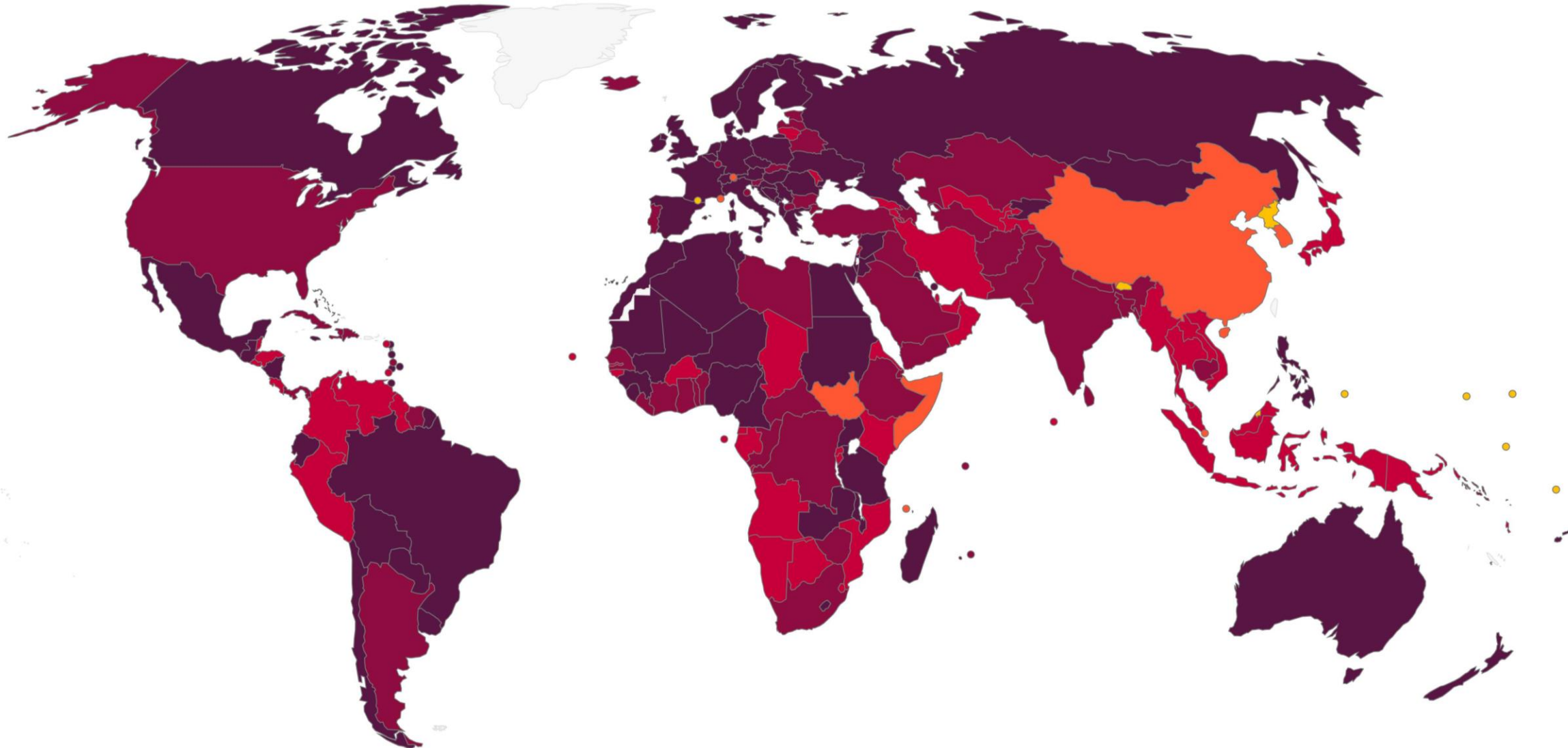
Modern slavery practices

Institutions and practices similar to slavery	Slave trade	Slavery	Forced or compulsory labour	Servitude	Trafficking in persons
	1926 Slavery Convention				2000 Palermo
1956 Supplementary Convention			1930 FLC		2011 EU ATD
		1966 International Covenant on Civil and Political Rights			2005 CoE ECAT
	1981 African Charter		1957 AFLC		
	1969 American Convention on Human Rights				
	1950 European Convention on Human Rights				
1999 Worst Forms of Child Labour Convention					
		1998 Rome Statute (CaH)			1998 Rome Statute (CaH)



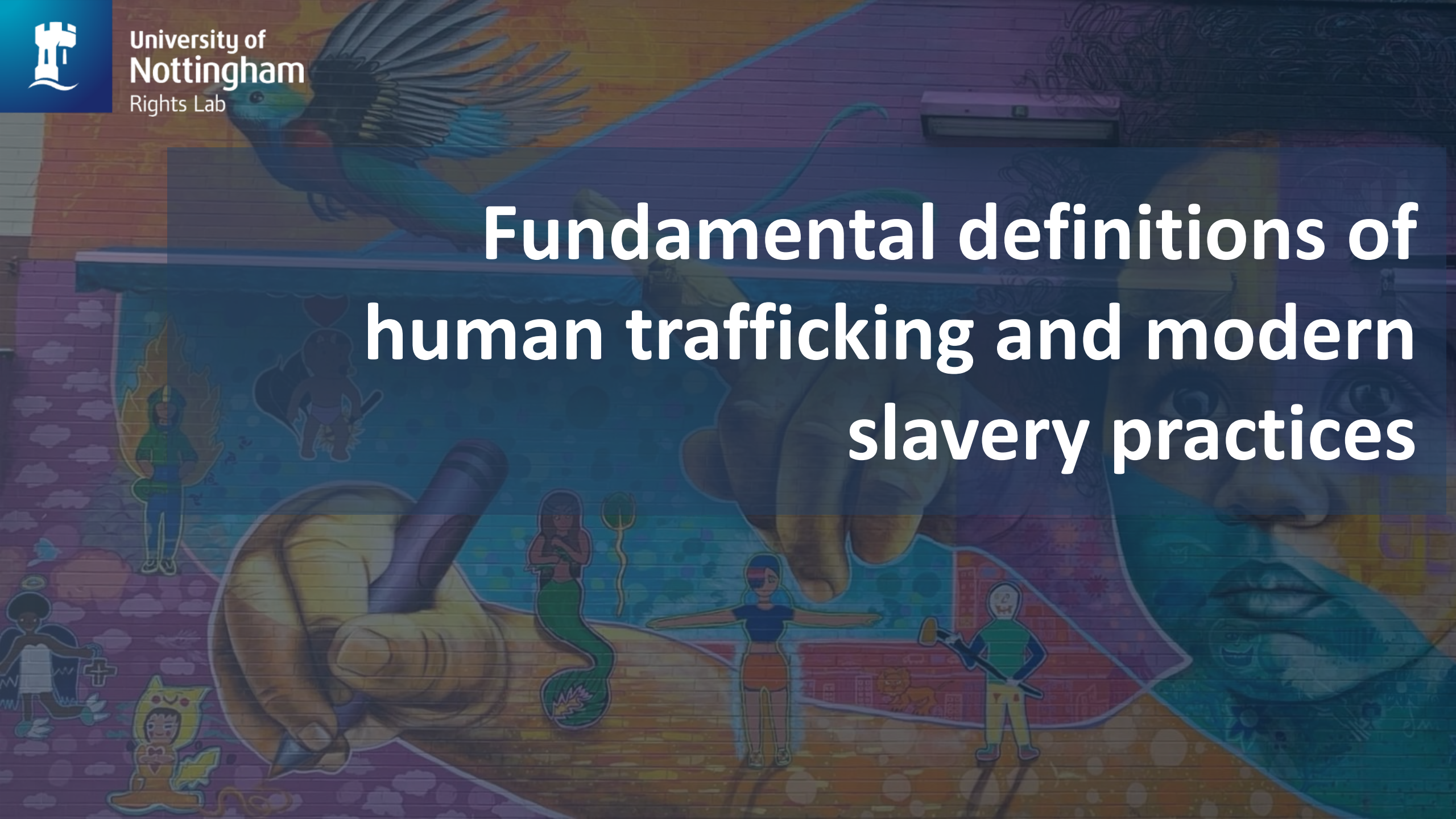
International Commitments of UN Member States to Core Instruments





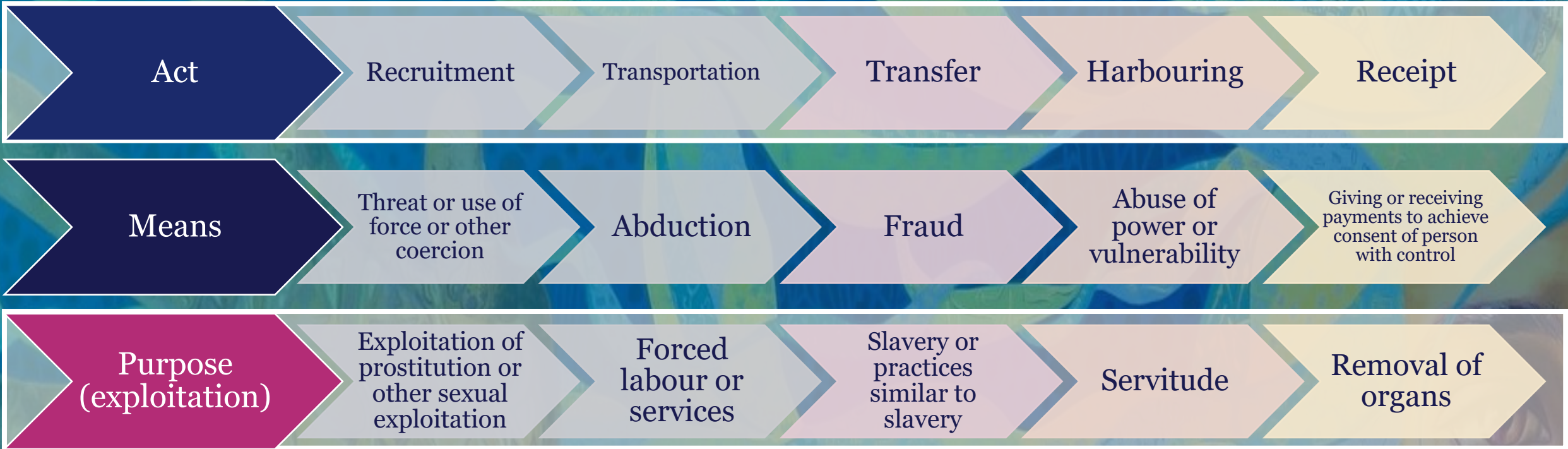


Fundamental definitions of human trafficking and modern slavery practices





Trafficking in persons



+ Consent of the victim to the intended exploitation irrelevant

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

**CHILD
TRAFFICKING**



The international definition of slavery

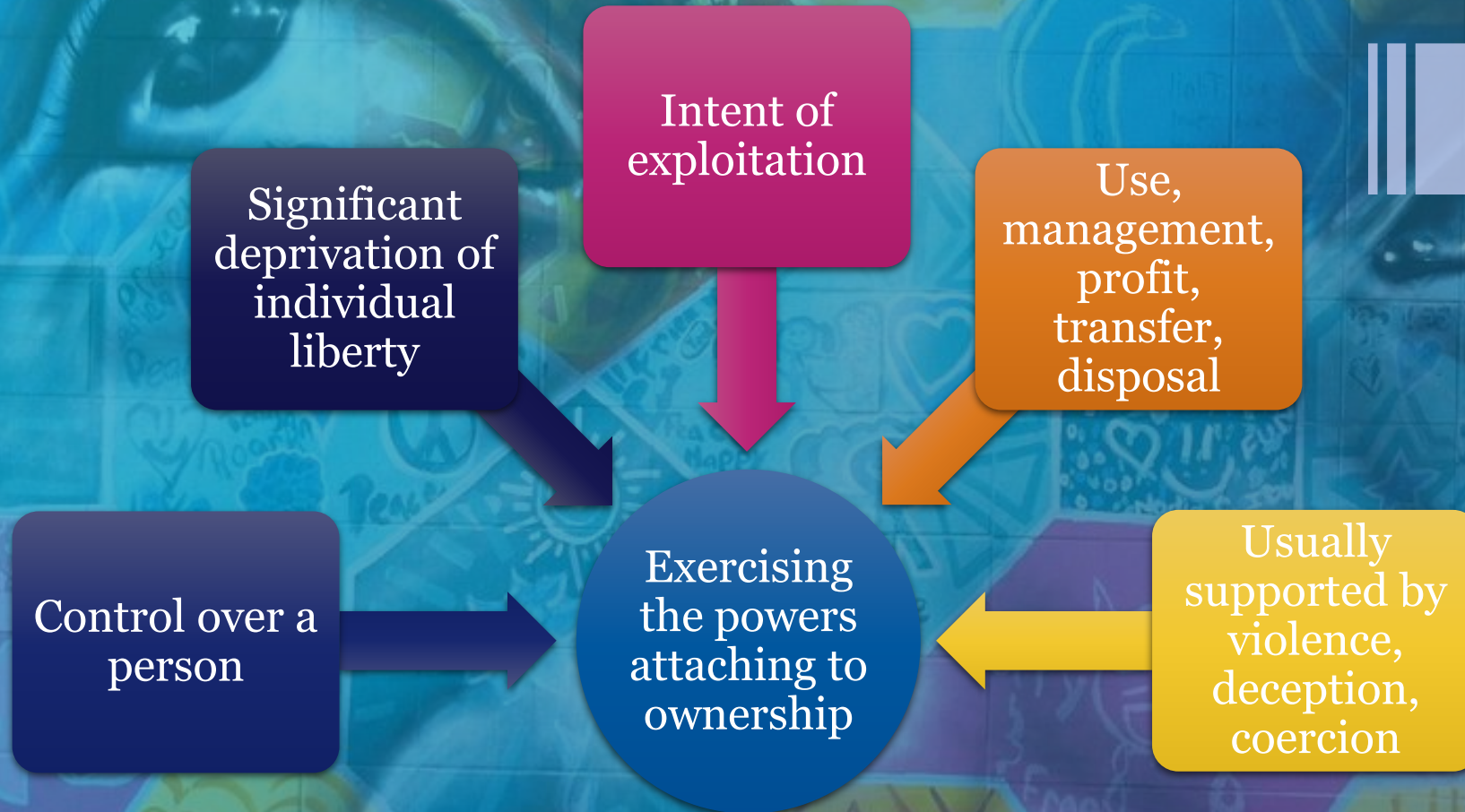


Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised





Understanding the definition of slavery



**CONTROL
TANTAMOUNT TO
POSSESSION**

“
*Possession is
foundational to
slavery*
”



Indicators of enslavement

Elements of control
and ownership

Restriction or control of individual autonomy, freedom of choice,
or freedom of movement

Perpetrator
obtaining some gain

Absence of consent or free will of the victim

Exploitation

Often made impossible or irrelevant through the threat or use of
force or other forms of coercion, fear of violence, deception or
false promises, abuse of power, the victim's position of
vulnerability, detention or captivity, psychological oppression or
socio-economic conditions

Exaction of forced or
compulsory labour
or service

Often without remuneration and often, though not necessarily,
involving physical hardship, sex, prostitution, and human
trafficking

International Criminal Tribunal for the Former Yugoslavia, *Kunarac* [2001]

Affirmed by the ICTY in *Krnjelac* [2002]

International Criminal Tribunal for Sierra Leone, *Charles Taylor* [2003]; *RUF (Sesay, Kallon, Gbao)* [2004]

European Court of Human Rights, *Rantsev v Cyprus & Russia* [2010]

Inter-American Court of Human Rights, *Brasil Verde* [2016]



Institutions and practices similar to slavery

Transfer of a wife or widow

Promising or giving woman in marriage for payment without right to refuse

Transfer of wife for value or other by husband, his family or clan

Inheritance of a widow

1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

Debt bondage

Status or condition

Pledge by a debtor

Of their own personal services or those of another under their control

As security for a debt

Value of services reasonable assessed not applied to debt

OR length and nature of services not limited and defined

Serfdom

Condition or status of a tenant

Bound by law, custom or agreement

To live and labour on land of another

To render determinate service

Not free to change status

Whether for reward or not

Delivery of children for exploitation

Institution or practice

Child or young person under the age of 18

Delivered by parent or guardian

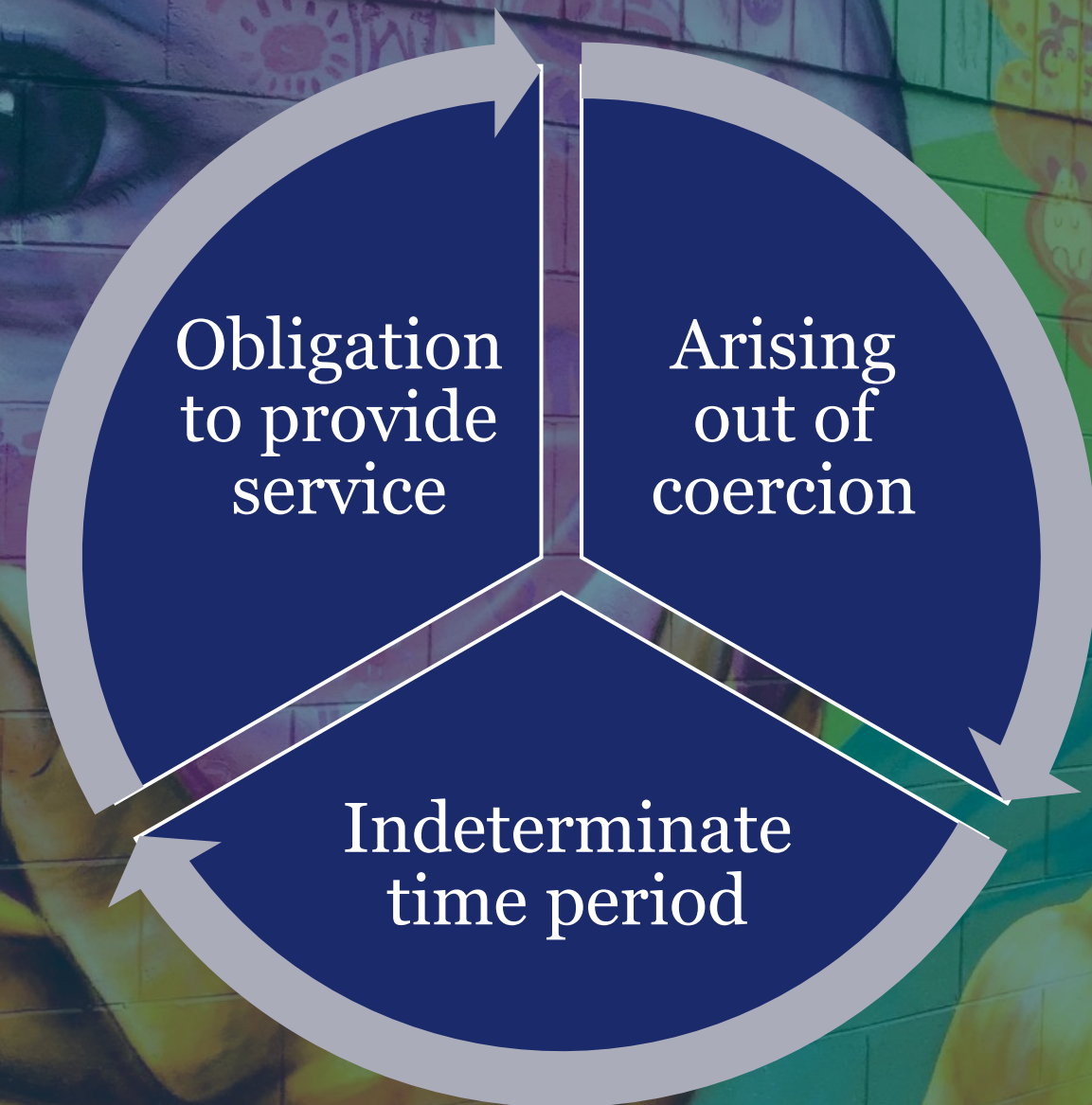
With a view to exploitation of the child or their labour

Whether for reward or not



European Court
of Human Rights
Siliadin v France [2005]

Affirmed by the IACtHR in *Brasil Verde*





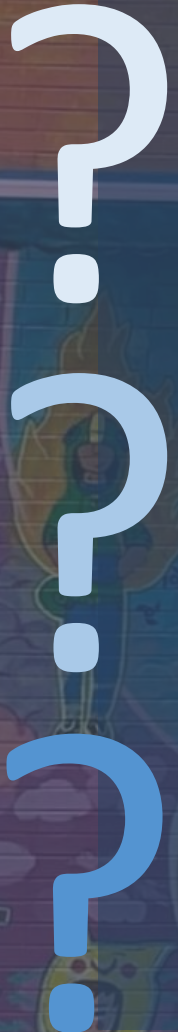
Forced or compulsory labour



Except:

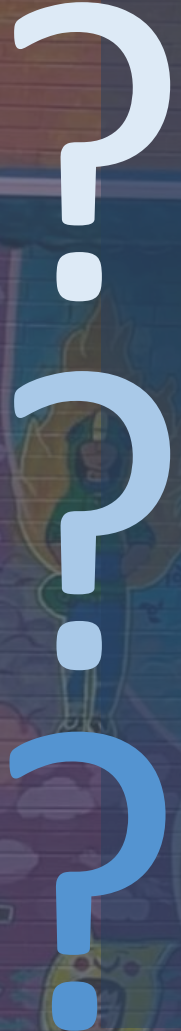
-  Compulsory military service
-  Normal civic obligation
-  Labour exacted as a result of a conviction by a court of law
-  Work exacted in times of emergency

1930 Forced Labour Convention & 1966 International Covenant on Civil and Political Rights



Questions for discussion:

- Should all modern slavery practices should be addressed together under a single umbrella?
- What are the strengths and weaknesses of this approach?



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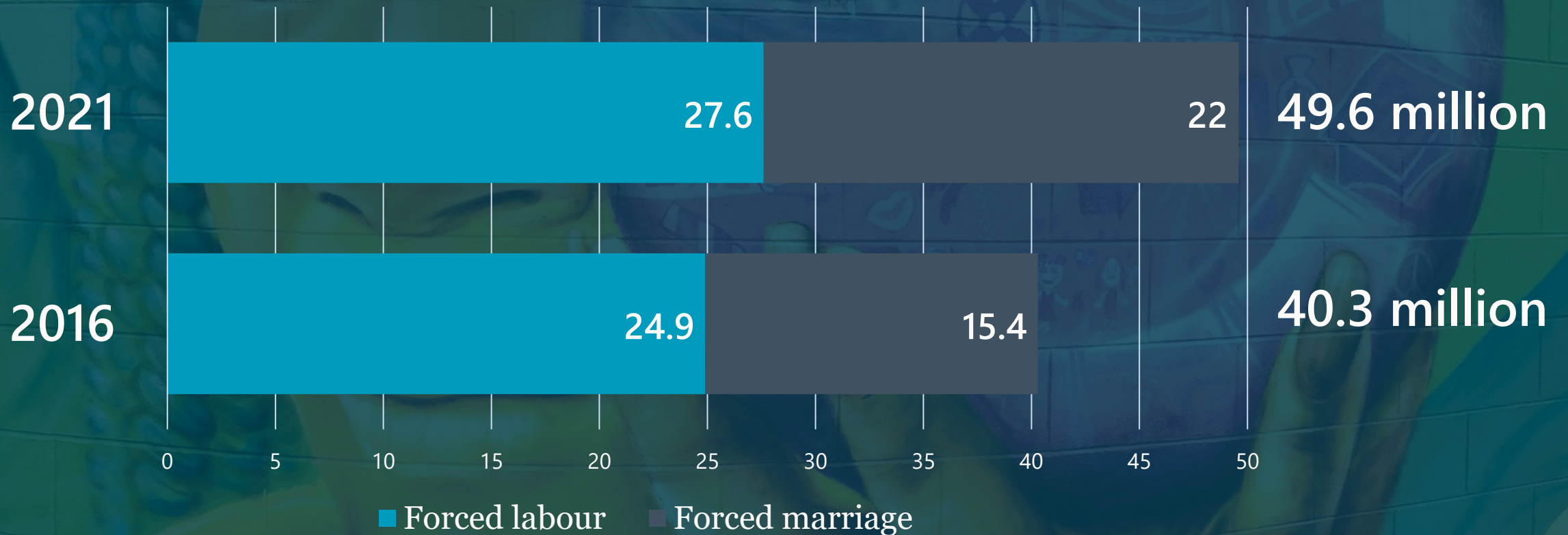


Domestic legislation prohibiting human trafficking and modern slavery practices



Global Estimates of Modern Slavery

Forced labour and forced marriage



International Labour Organisation, Walk Free, and International Organisation for Migration, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage' (September 2022)



‘SLAVERY is illegal in every country,
all around the world’

ENTER MAP

ENTER COUNTRIES

COUNTRIES

MAP CONTROLS

SELECT MAP DATA ?

International Instruments ▾

International Instruments (all) ▾

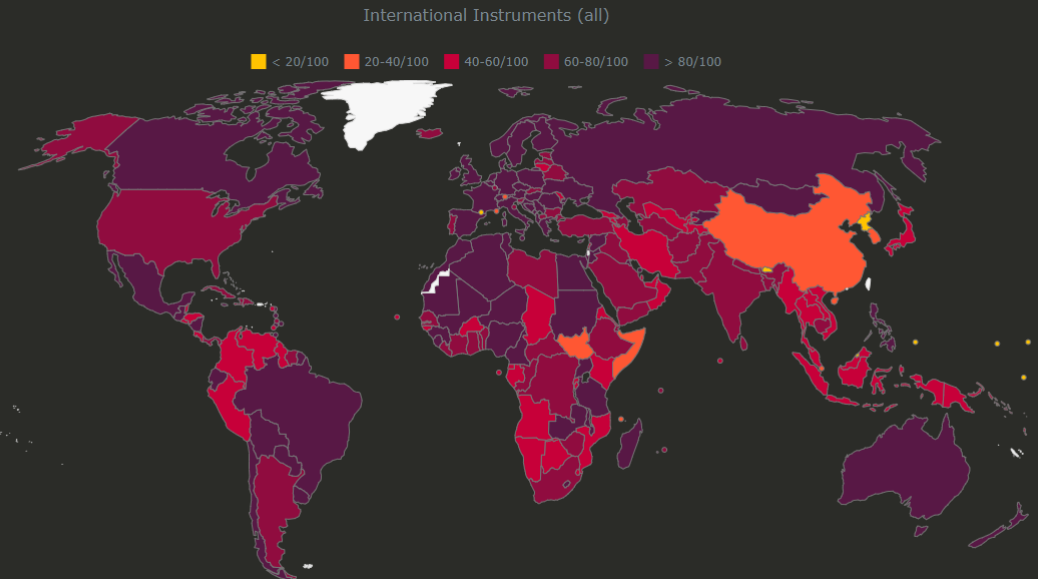
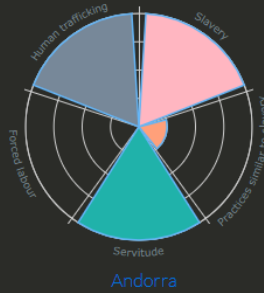
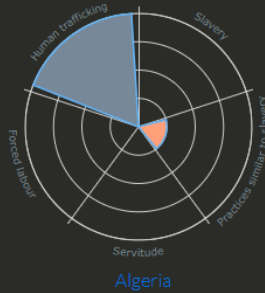
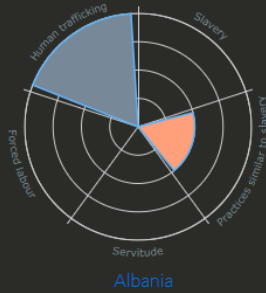
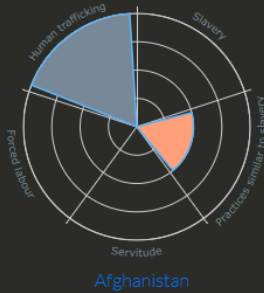
FILTER COUNTRIES ?

APPLY FILTERS ?

Go to country details. ▾

Sort by Country ▾

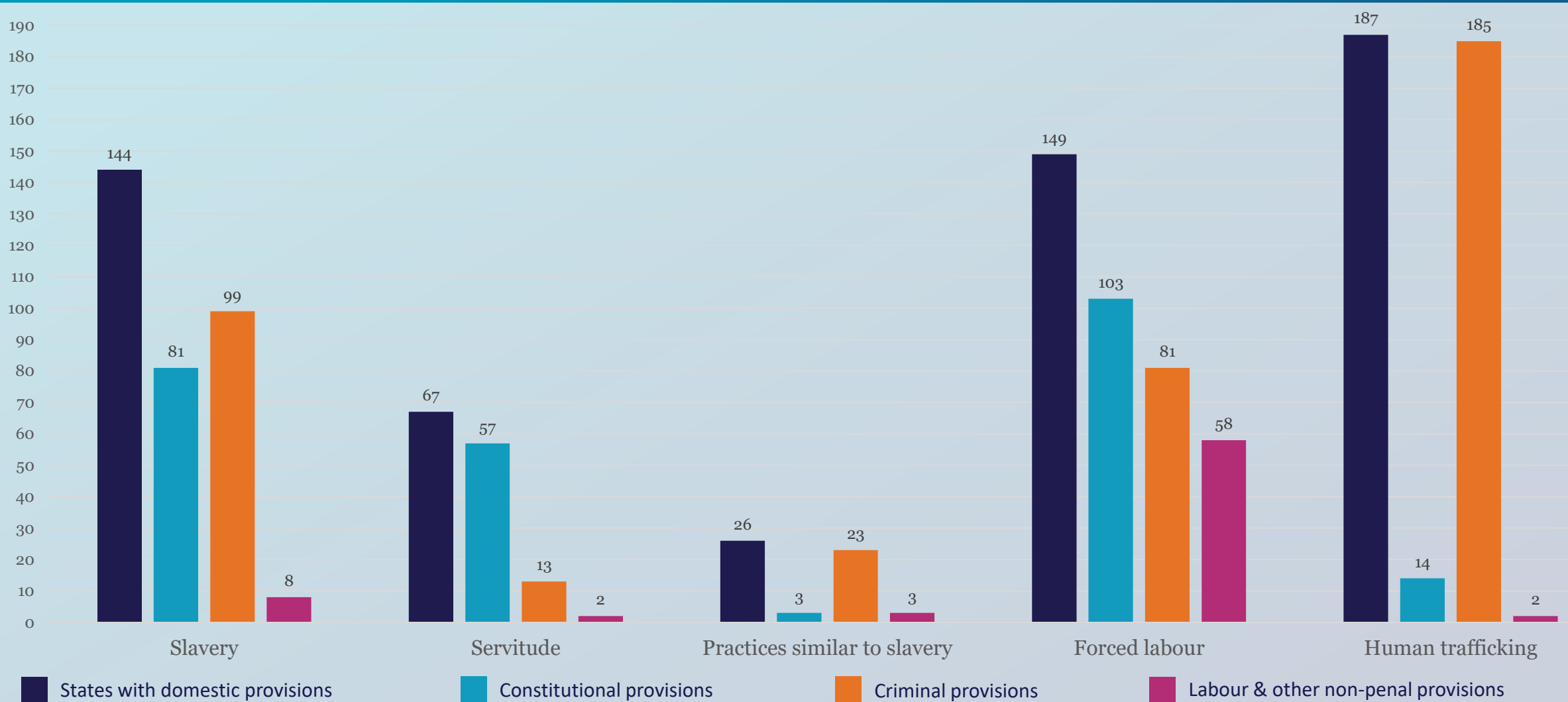
Ascending ▾



Available at: antislaverylaw.ac.uk



The real picture of domestic laws



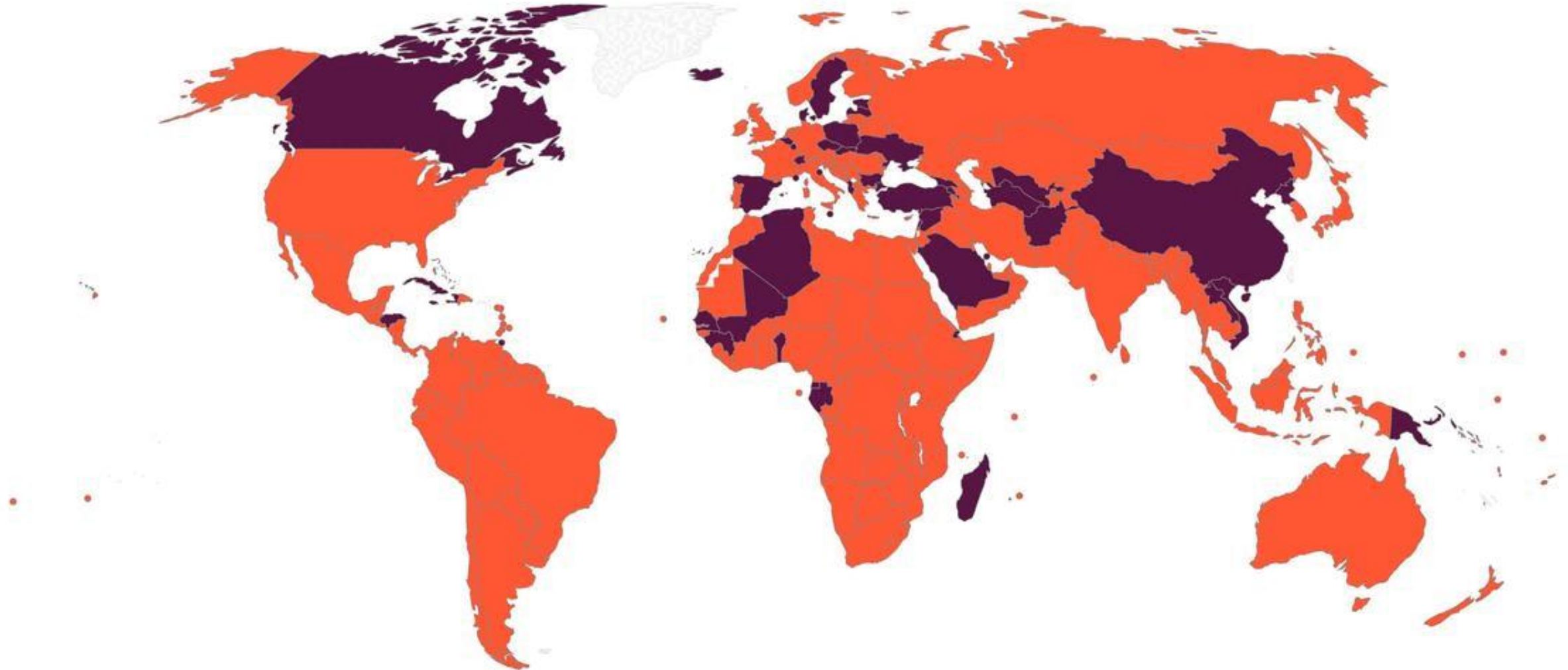
States' domestic legislation prohibiting human exploitation



Domestic laws globally

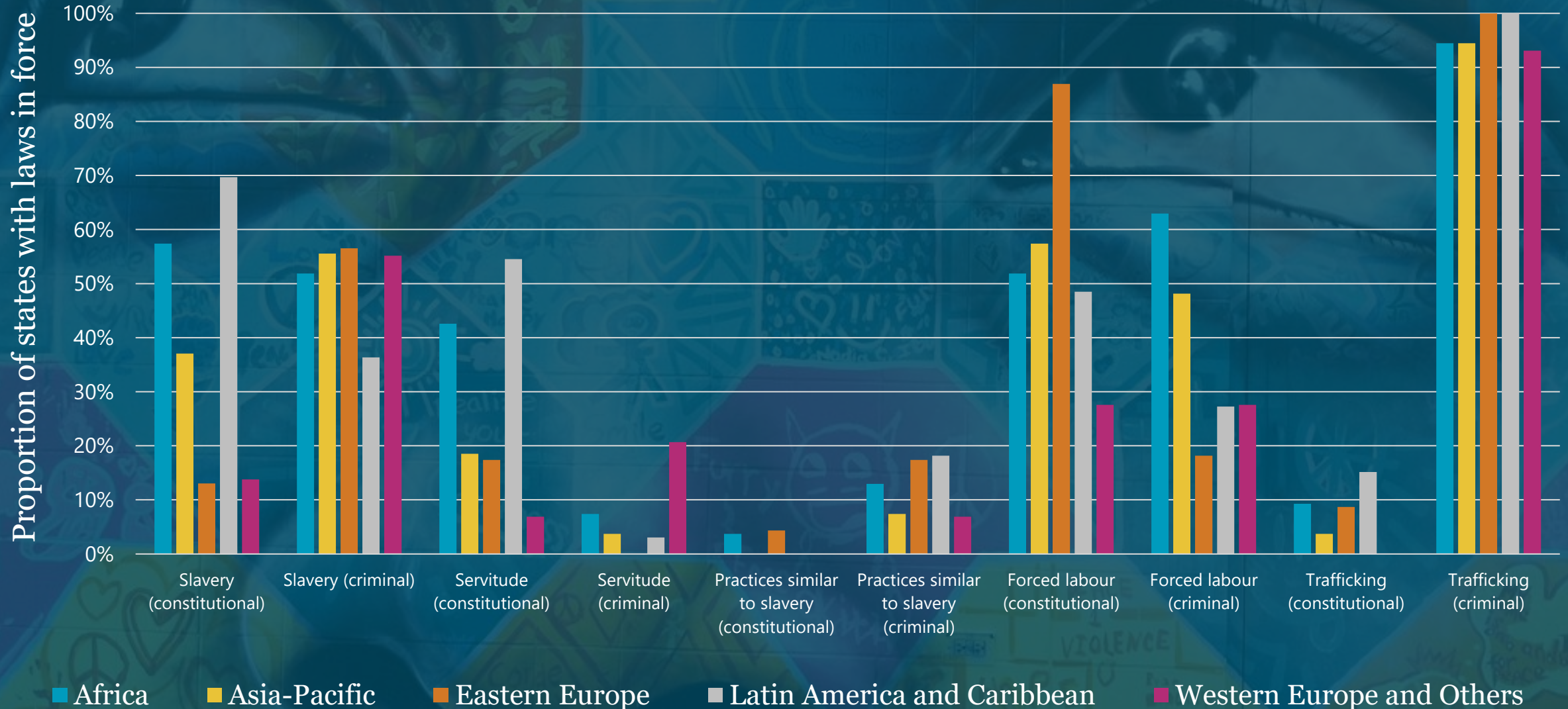
Domestic Law: Slavery and the Slave Trade

■ Provisions do not Exist ■ Provisions Exist





Domestic laws by region





Questions for discussion:

- › Is it important for each of the different modern slavery practices to be prohibited under domestic law?
- › Why or why not?



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- › Why or why not?





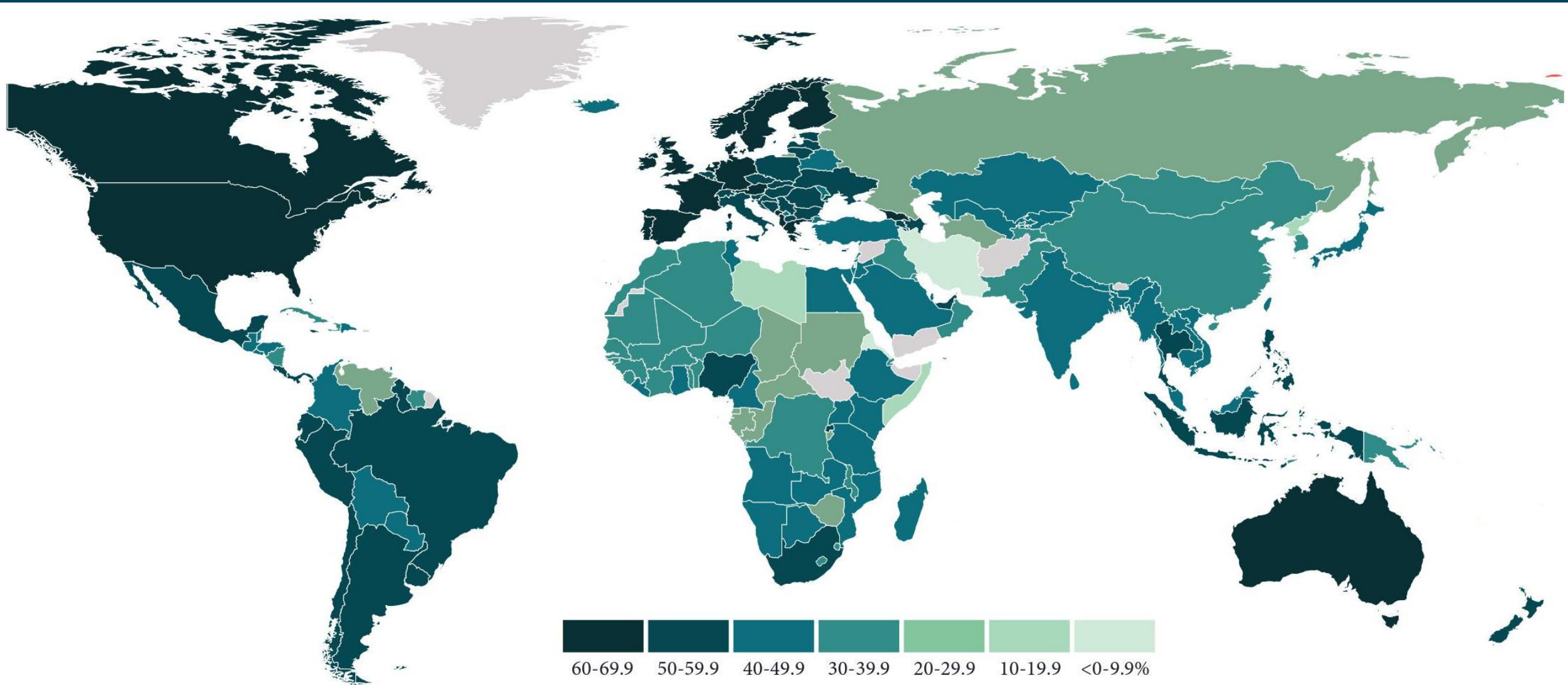
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Governance infrastructure for anti-trafficking and anti-slavery efforts





Government responses to modern slavery





Five Government Response milestones

1 Survivors of slavery are identified and supported to exit and remain out of modern slavery.

2 Criminal justice mechanisms function effectively to prevent modern slavery.

3 Coordination occurs at the national and regional level and across borders, and governments are held to account for their response.

4 Risk factors, such as attitudes, social systems, and institutions that enable modern slavery are addressed.

5 Government and business stop sourcing goods and services produced by forced labour.

42
activities

141
indicators

176
countries

Walk Free, 'Global Slavery Index' (Minderoo Foundation, 2023)



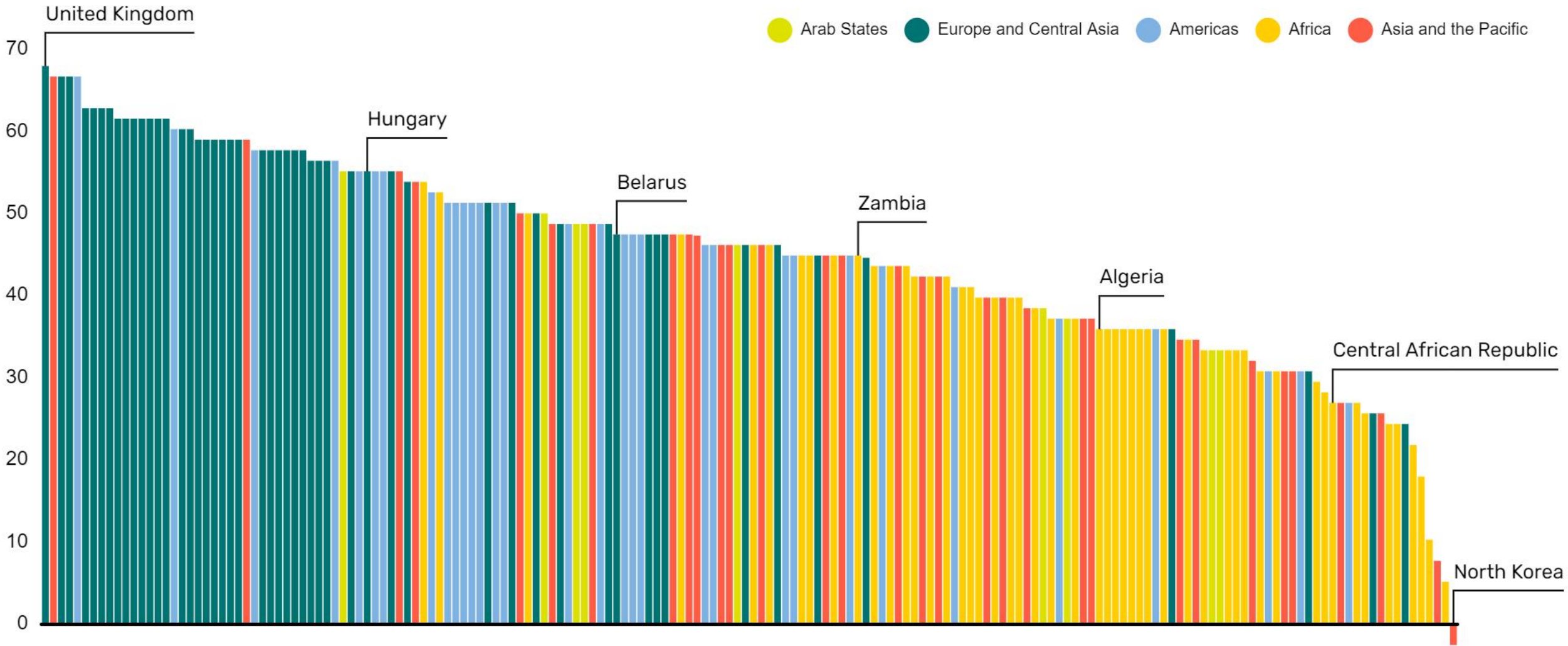
Survivor priorities for government responses

	Milestone 1: Survivors identified and supported	Milestone 2: Criminal Justice Mechanisms	Milestone 3: National and regional level coordination	Milestone 4: Risk factors are addressed	Milestone 5: Government and business supply chains
UK	1	3	2	3	4
India	4	3	5	2	1
Kenya	3	4	2	1	5
Ghana	1	5	2	3	4
Aggregate score	9	15	11	9	14
GSI implicit weighting	28%	34%	10%	18%	10%

Walk Free, 'Global Slavery Index' (Minderoo Foundation, 2023)



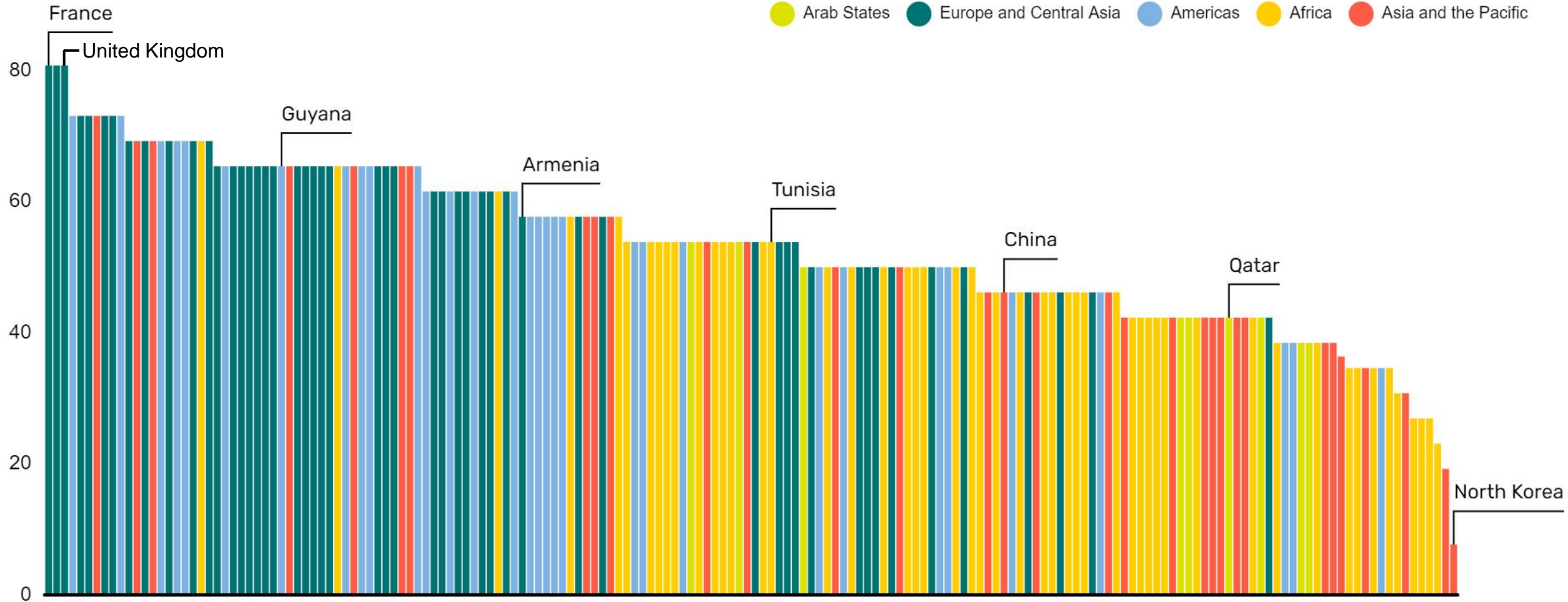
Government Response to modern slavery



Walk Free, 'Global Slavery Index' (Minderoo Foundation, 2023)



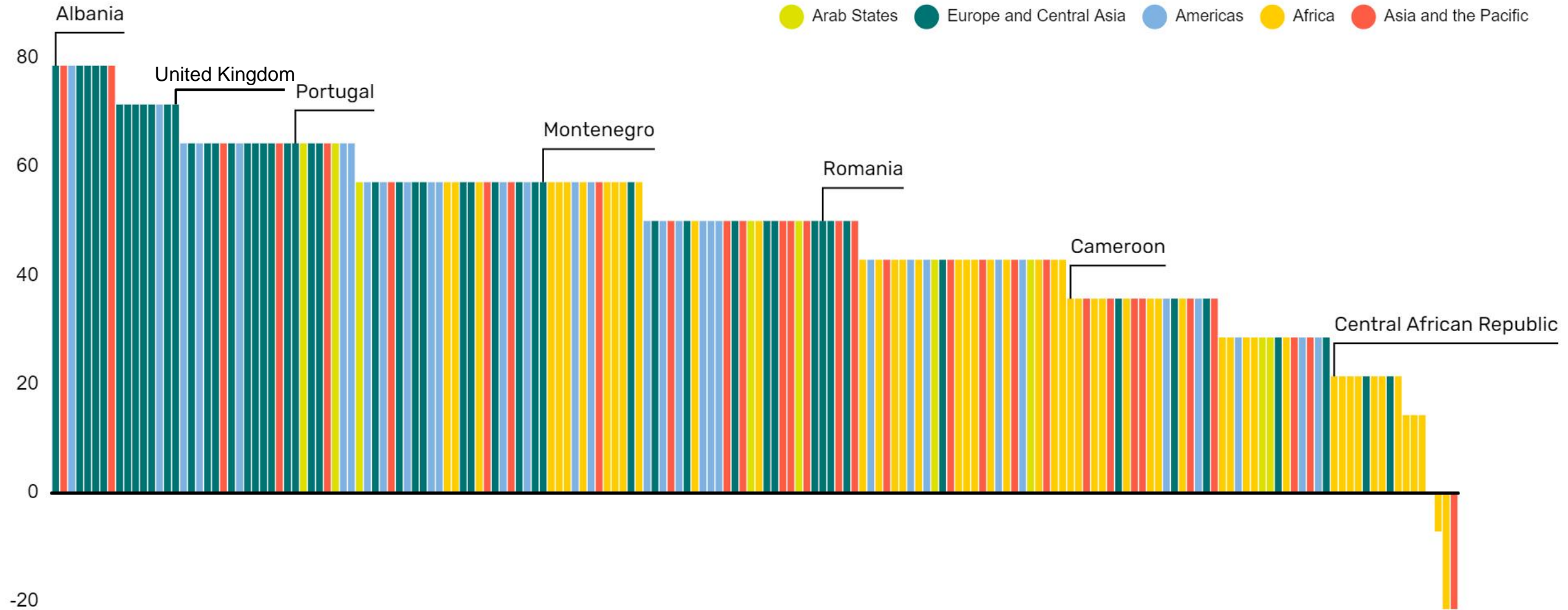
Criminal justice mechanisms function effectively to prevent modern slavery



Walk Free, 'Global Slavery Index' (Minderoo Foundation, 2023)



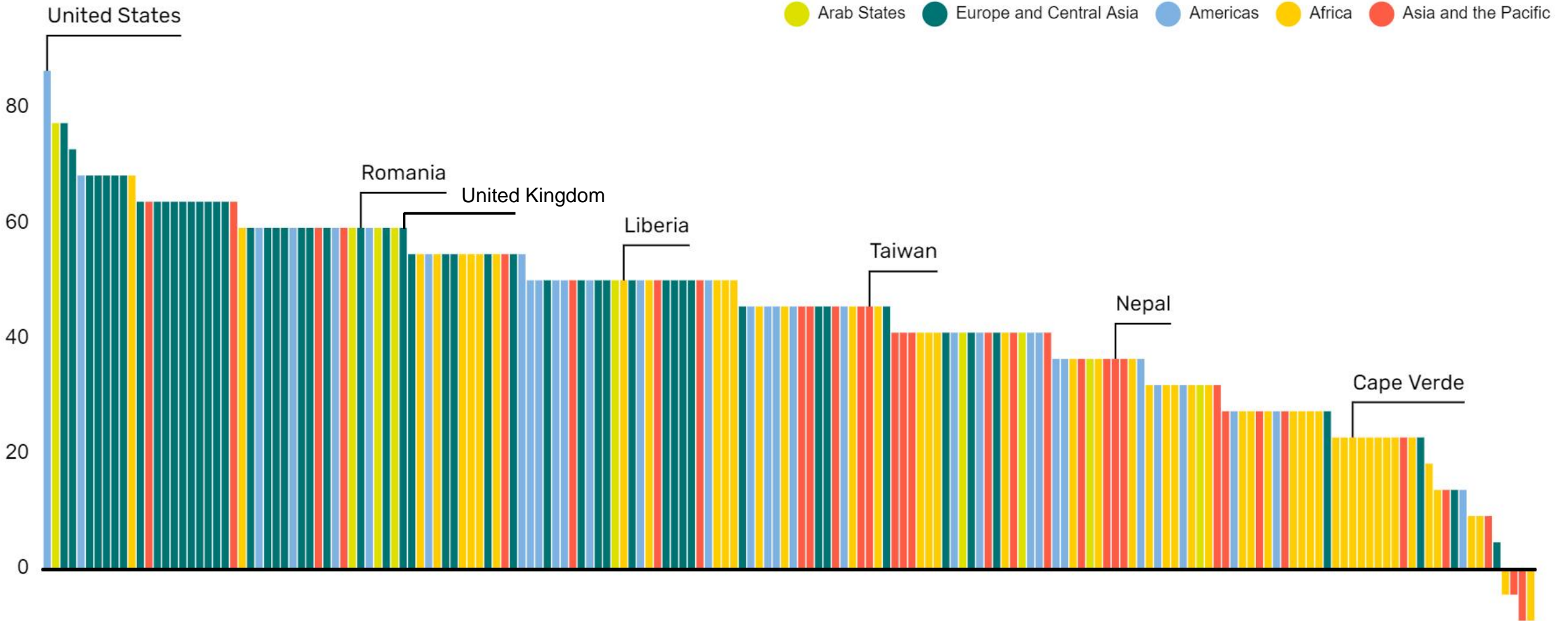
Risk factors – such as attitudes, social systems, and institutions – that enable modern slavery are addressed



Walk Free, 'Global Slavery Index' (Minderoo Foundation, 2023)



Survivors of slavery are identified and supported to exit and remain out of modern slavery



Walk Free, 'Global Slavery Index' (Minderoo Foundation, 2023)



Questions for discussion:

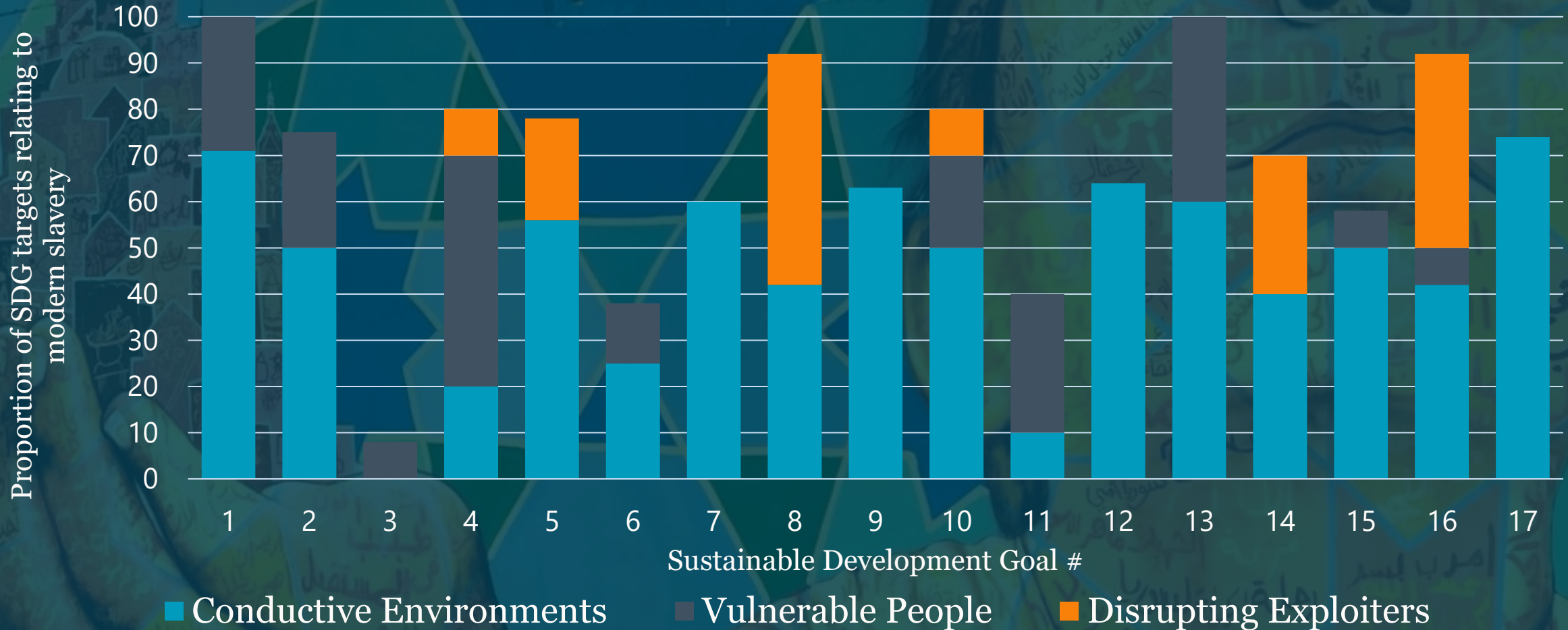
- What should be the main priorities for anti-trafficking efforts in the context(s) in which you work?
- Why are these the most important areas of concern?



Intersectional law and policy relevant to human trafficking and modern slavery practices



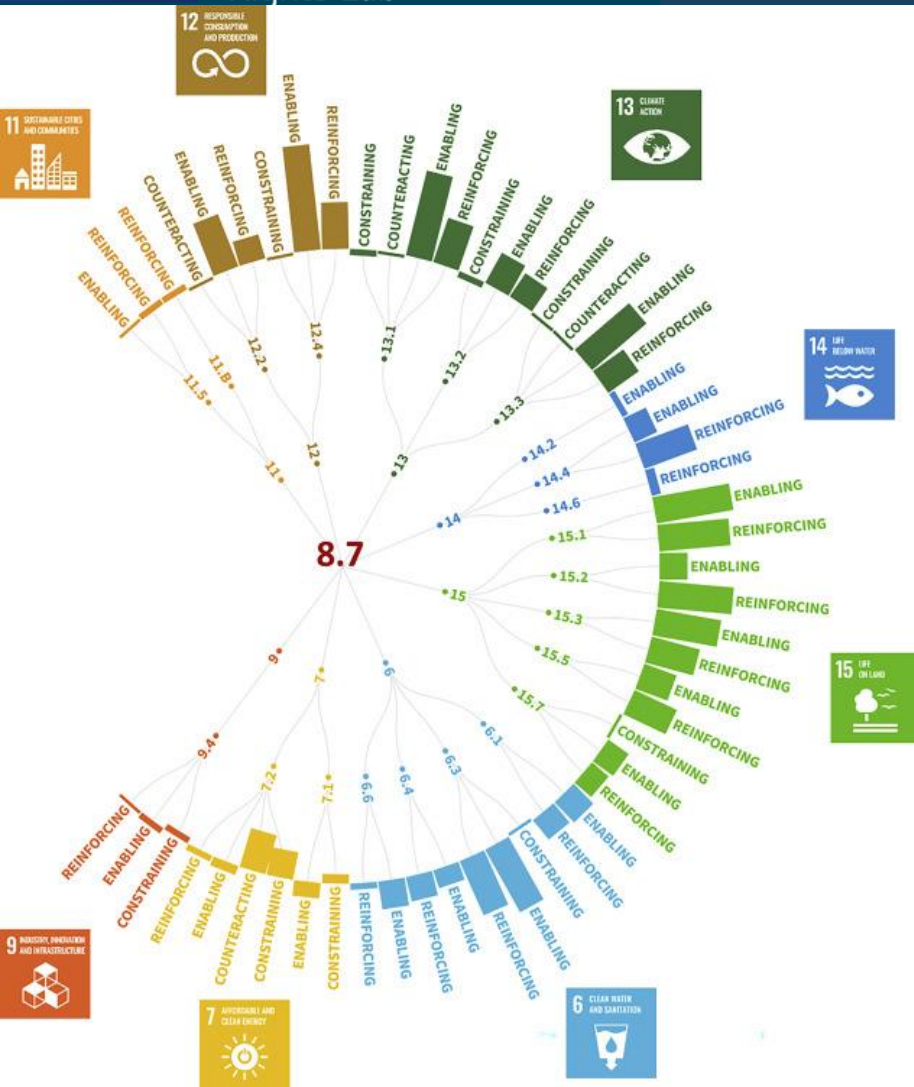
Intersectional modern slavery



James Cockayne et al, 'Developing Freedom: Proportion of SDG Targets that, if achieved, would contribute to ending modern slavery' (UNU-CPR, 2021)



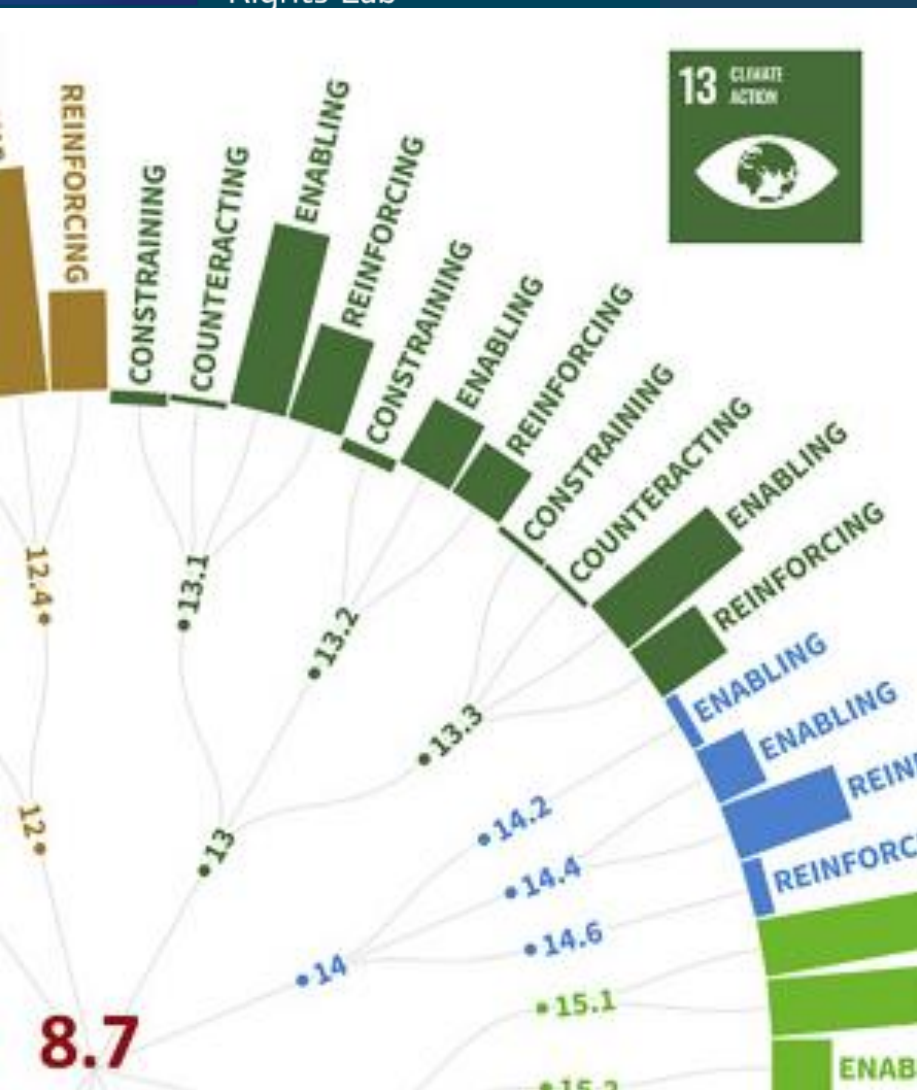
Interactions between SDG8.7 and environmental targets



J Decker-Sparks et al, 'Growing evidence of the interconnections between modern slavery, environmental degradation, and climate change' (2021) 4(2) *One Earth* 181.



Interactions between SDG8.7 and environmental targets



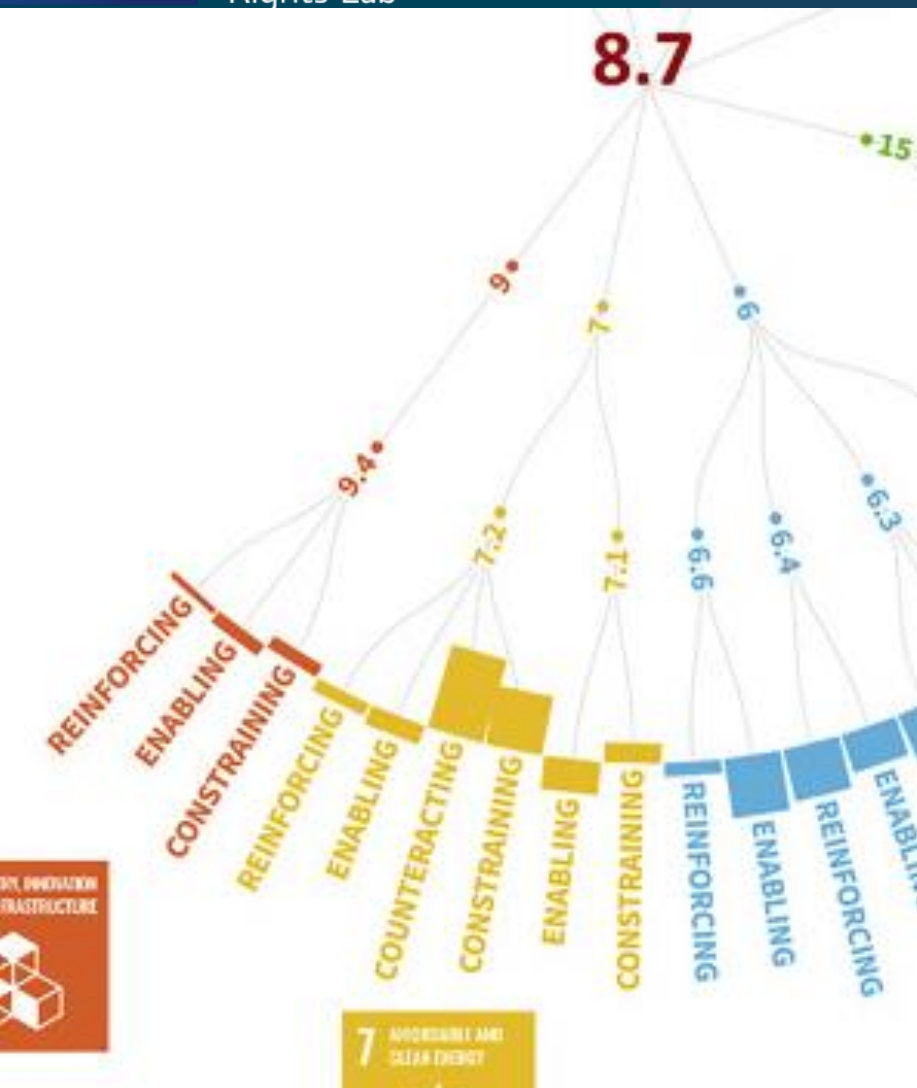
SDG13: Climate action

- › Climate change and natural hazards exacerbate and intensify vulnerability, including through displacement and survival migration
- › Existing socioeconomic and environmental inequities also inhibit adaptive strategies
- › Displacement and survival migration create vulnerability to modern slavery practices
- › Modern slavery is a maladaptive strategy to climate change
- › Mitigating effects of climate change could enable elimination of some forms of modern slavery

J Decker-Sparks et al, 'Growing evidence of the interconnections between modern slavery, environmental degradation, and climate change' (2021) 4(2) *One Earth* 181.



Interactions between SDG8.7 and environmental targets



SDG7: Affordable and clean energy

- › Clean and renewable energies are necessary to reduce CO2 emissions and mitigate global warming
- › Increasing renewable energy relies on cobalt
- › Cobalt reserves are limited, and the majority is mined in the Democratic Republic of the Congo
- › Worst forms of child labour, debt bondage, and forced labour are reported to be prevalent in the DRC
- › Lack of access to energy exacerbates poverty, economic vulnerability, social exclusion, and decreases education
- › Energy access can mitigate modern slavery risks

J Decker-Sparks et al, 'Growing evidence of the interconnections between modern slavery, environmental degradation, and climate change' (2021) 4(2) *One Earth* 181.



Questions for discussion:

- What are the most critical intersecting areas of law and policy for anti-trafficking in the context(s) in which you work?
- Do you think this will change in the next 10 years? Why or why not?



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Immigration policy and human trafficking

The literature in bulk focuses on both the inappropriateness of migration policy and the attendant legal frameworks to combat trafficking and the negative impacts of the approaches on individuals themselves...

The literature is overwhelmingly critical of the use of migration policy to address human trafficking.

A Lumley-Sapanski & K Schwarz, 'Interrogating the effects of immigration policy on human trafficking: an analysis of the evidence base' (forthcoming)



Immigration policy and human trafficking

Criminalisation and securitisation absorb time, attention, and resources disproportionately

- Migration / immigration policies often adopt and ‘crimmigration’ and securitisation-based approaches
- These approaches redirect the state lens from underlying structural factors to indiscriminate policing of irregular or ‘illegal’ migration
- This overlooks the ways in which structural factors—for instance, demand for labour or displacement—are often created by states
- States fail to collect sufficient data and track interventions

2 core critiques

A Lumley-Sapanski & K Schwarz, ‘Interrogating the effects of immigration policy on human trafficking: an analysis of the evidence base’ (forthcoming)



Immigration policy and human trafficking

Criminalisation and securitisation increase trafficking risks and harm anti-trafficking

- › Visa and regularisation processes create a hierarchy of rights and entitlements, with attendant precarity
- › Gatekeepers lack training and capacity to both police irregularity and identify trafficking victims
- › Hostile immigration systems result in migrants being less likely to identify as victims, seek help from authorities, challenge exploiters, or gain recognition as a victim
- › Hostile immigration systems result in the criminalisation of victims of trafficking and further harmful impacts

2 core critiques

A Lumley-Sapanski & K Schwarz, 'Interrogating the effects of immigration policy on human trafficking: an analysis of the evidence base' (forthcoming)



Migrant vulnerability

- 1) Which migrant populations in your context do you think are most at risk of human trafficking or modern slavery practices?
- 2) What factors make these populations more vulnerable?

Migration policy & practice

- 1) How does migration policy & practice in your context increase vulnerability of migrants to human trafficking?
- 2) How is migration policy & practice in your context trying to address human trafficking?
- 3) What changes could be made to migration policy & practice in your context to better address human trafficking?



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Protection and support for victims and survivors





States' obligations to protect and support victims of human trafficking / modern slavery

**International & regional
human rights law**

Prevention

Identification

Protection

Remedy

Palermo Protocol

Prevention

Identification

Protection

Support



- › *Parties obligated to provide assistance & support to victims of trafficking, although generally the form of support is at the discretion of the State*
- › *Parties are required to consider specified protection & safeguarding measures:*
 - › *Appropriate housing*
 - › *Counselling & information—particularly on legal rights—in a language they understand*
 - › *Medical, psychological, & material assistance*
 - › *Employment educational, & training opportunities*
 - › *Permission to remain in the country accounting for humanitarian & compassionate factors*
- › *States must protect the privacy & identity of victims in line with domestic law*
- › *Information on proceedings & assistance to enable views to be heard*
- › *Due regard for safety & legal proceedings in repatriation, preferably voluntary*
- › *Processes to enable compensation*



States' obligations to protect and support victims of human trafficking / modern slavery

International & regional human rights law

Prevention

Identification

Protection

Remedy

Palermo Protocol

Prevention

Identification

Protection

Support

European Convention on Action against Trafficking

Prevention

Identification

Protection

Support



- › *Restriction on removal during identification process*
- › *Legislative & other measures to assist physical, psychological, and social recovery*
 - › *Standards of living through secure accommodation, psychological & material assistance*
 - › *Access to emergency medical treatment*
 - › *Translation & interpretation services*
 - › *Counselling and information, particularly on legal rights, in understandable language*
 - › *Assistance to enable rights & interests to be presented in criminal proceedings*
 - › *Access to education for children*
- › *Access to the labour market, vocational training, & education for lawful residents*
- › *Recovery & reflection period (minimum 30 days) without removal*
- › *Residence permits where necessary due to personal situation or cooperation*
- › *Compensation and legal redress, with free legal aid*
- › *Repatriation with due regard for rights, safety, dignity & proceedings, preferably voluntary*



States' obligations to protect and support victims of human trafficking / modern slavery

International & regional human rights law	Prevention	Protection	
	Identification	Remedy	
Palermo Protocol	Prevention	Protection	Support
	Identification	Remedy	
European Convention on Action against Trafficking	Prevention	Protection	Support
	Identification	Remedy	Non-punishment
EU Anti-Trafficking Directive	Prevention	Protection	Support
	Identification	Remedy	Non-prosecution

- + Recommended Principles and Guidelines on Human Rights and Human Trafficking
- + UNICEF Guidelines on Protection of Child Victims of Trafficking



Questions for discussion:

- To what extent are the rights and entitlements of victims and survivors currently being met in the context(s) in which you work?
- What are the biggest threats to the realisation of victims' / survivors' rights?
- What changes need to be implemented to ensure the realisation of victims' / survivors' rights?



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Thank you