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# Modern Slavery and Migrant Smuggling: A Sustainable Development Conundrum

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## Abstract

Modern slavery, denoting acute exploitation of people for personal or commercial gain, is said to affect over 40 million people around the globe at any given time, making it a global issue that requires coordinated cross-sectoral and integrated responses. Some efforts have been made to that effect, including emerging legislative regulation at domestic and regional levels. Migrants, in particular those with unsettled status, are particularly vulnerable to modern forms of slavery due to manifold enabling circumstances, including the lack of or capacity to offer them protection or limited access to legitimate forms of employment or social protection. However, global responses to migrant smuggling and protection offered to irregular migrants are in stark contrast to the commitments made to address modern slavery. The increasing focus on the securitisation of migration obscures the underlying social, economic and political 'push' factors that fuel modern slavery. Thus, a more comprehensive response is needed that examines the issues of migration management, market regulation and development more widely. This paper uses a comparative lens to examine global developments in regulating labour-related forms of modern slavery vis-à-vis migration management in the context of achieving sustainable development goals.

## Keywords

modern slavery; migrant smuggling; irregular migration; migration management; sustainable development

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### I.        Introduction

The term 'modern slavery' (or 'modern-day slavery', 'contemporary slavery' or 'neo-slavery') has been gaining popularity in recent years, with a number of countries passing legislation to address and prevent its different forms. Even though there is no internationally agreed definition of it, modern slavery is widely understood to cover different forms of acute human exploitation, ranging from forced or bonded labour, human trafficking, forced marriage and organ harvesting to orphanage trafficking. More recently, governments have shifted their attention to the private sector recognising the pervasiveness of modern slavery in global supply chains.

Various factors and industry sectors have been identified as increasing risks of modern slavery, with international migrants[2] being considered highly vulnerable, particularly when their legal status is unsettled. Migrant smuggling, whereby the migrant's irregular entry to another country is facilitated usually with their consent for financial or other material gains, heightens the risk of exploitation in the destination country. Modern slavery is also highly profitable, with US$150bn in profits every year being generated from forced labour alone,[3] and migrant smuggling is estimated to bring between US$5 to 7bn worldwide per year.[4] Thus, even though one can take place without the other one, in that, not every smuggled migrant will necessarily become a victim of modern slavery and not every victim of modern slavery is a migrant, these practices are mutually reinforcing by creating conditions conducive to both practices flourishing. Also, in many instances, the same criminal networks operate across the smuggling and acute exploitation channels.[5]

Despite modern slavery and migrant smuggling being mutually reinforcing practices, there is a growing gap in protection in relation to increasing regulatory interventions for modern slavery and that offered to irregular migrants. Many irregular migrants do not fall under the established legal categories for protection, which exposes them to additional hardship or denial of assistance. Yet, most irregular migrants face dangers and human rights infringements, which require inter-state and inter-agency cooperation, including better information and data sharing, as well as improving consistency and compatibility between international, regional and national legislation and law enforcement activities. Therefore, migrant management at the national and regional levels is not separate from or inconsequential to fighting modern slavery and other forms of human exploitation.

This paper provides an overview of the legal developments in relation to modern slavery and its regulation (Chapter 2), followed by a brief examination of the modern practice of people smuggling including in the European Union (EU) context (Chapter 3), to turn then to examining how the sustainable development agenda necessitates better coordination between migration management, market regulation and development (Chapter 4), with the Conclusions summarising the findings.

### II.        Modern slavery: the clandestine nature of human exploitation

Modern slavery is believed to affect some 40.3 million people around the globe at any given time,[6] which makes it a bigger problem today than ever in history. Over half of those in forced labour are believed to be trapped in the private economy, across different sectors and geographical locations.[7] Certain industries, such as agriculture, construction, manufacturing, fishing and domestic services, are considered high risk for modern slavery practices throughout their operations and supply chains, making the private sector an important driver in facilitating as well as addressing modern slavery.

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[2] In this paper, unless otherwise stated, the term migrant follows the definition provided by IOM: any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is; with the term 'international migrant' meaning someone who changes their country of usual residence.

[3] International Labour Office (ILO) 2014.

[4] UN Office on Drugs and Crime (UNODC) 2018a.

[5] Europol 2021.

[6] ILO and Walk Free Foundation 2017.

[7] Ibid.

International migrants are particularly vulnerable to modern slavery,[8] as they are predominantly recruited for industries prone to a higher risk of exploitation, and, consequently, they are targeted by unscrupulous smugglers, traffickers or recruitment agents. In response to what is recognised to be a major global issue, states often counteract by introducing policies aiming at limiting international migration expecting that it will prevent the exploitation of migrants within their national borders. The opposite, however, is often happening in that increased securitisation of migration leads to an escalation in demand for smuggling services. Those who might willingly arrange their passage to another country often became victims of exploitation and abuse, including sexual violence, by the 'facilitators' of migration[9] and fall prey to traffickers en route or when they reach the destination.

Thus, for a long time, governments' prevention policies focused predominantly on raising awareness and educating at-risk groups, including in the countries of origin, of the dangers of irregular migration. However, despite high financial and resource investment in such campaigns, their impact has been limited or at best unknown. For instance, a recent systematic review of anti-human trafficking interventions has revealed that such campaigns have a negligible positive impact but often carry negative consequences, including exacerbating stigmatisation, marginalisation and discrimination of the most vulnerable, in particular migrant women.[10]

### II.A. Regulating Modern Slavery

A number of international and regional programmes have been launched to facilitate inter-state collaboration and partnerships. These include the 2017 *Call to Action to End Forced Labour, Modern Slavery and Human Trafficking*, instigated by Australia, Canada, New Zealand, the United Kingdom (UK), the United States (US) and others, which has resulted in the adoption by these governments of the *Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains,[11]* aiming to eradicate slavery from the economy.

At the regional level, the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, established in 2002 and comprising 49 members including UN agencies, offers a strategic platform for collaboration between governments and businesses to tackle forced labour, human trafficking and modern slavery in the region. In 2018, the *Bali Process Government and Business Forum* focused on developing recommendations for ending these transnational crimes across the Indo-Pacific region, including in public and private supply chains.

By focusing on reducing 'demand', whether in relation to forced labour, exploitative services (including in the sex industry) or 'donors' in the context of the orphanage industry or organ trafficking, and by utilising the corporate social responsibility framework,[12] a number of states have introduced, or are in the process of developing, domestic regulatory frameworks pertaining to modern slavery in business operations and supply chains.

In an attempt to consolidate human trafficking and other slavery offences in its domestic legislation, the UK was the first country to introduce comprehensive modern slavery legislation (Modern Slavery Act 2015), which is modelled on the Californian Transparency in Supply Chains Act 2010, which is sector-specific legislation focusing on retailers and manufactures operating in the state of California. In 2016, the then UK Prime Minister Theresa May stated that "[w]e need a radically new, comprehensive approach to defeating this vile and systematic international business model at its source and in transit",[13] recognising that rather than it being a problem of few exploiters in the industry, modern slavery is a global issue that requires a systemic change to the business models and the wider business culture.

Australia followed suit and passed equivalent legislation at the federal (Cth) and the state of New South Wales (NSW) levels in 2018 (with the latter coming to force on 1 January 2022). The UK and Australian Acts require

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[8] See also Kubacki, Szablewska, Siemieniako and Brennan *forthcoming*.
[9] Mixed Migration Centre 2018.
[10] Szablewska and Kubacki 2018.
[11] US Department of State 2018.
[12] In particular under the UN Global Compact n.d.; UN 2011; Organization for Economic Cooperation and Development (OECD) 2000*;* ILO 2017.
[13] May 2016.

entities with annual turnover above certain thresholds (which differ) to audit their supply chains and report on modern slavery risks, thus they aim to increase transparency in supply chains and corporate reporting. The specific modern slavery legislation operates alongside other mandatory human rights 'due diligence' laws,[14] like the French Duty of Vigilance Act 2017, the Dutch Child Labour Due Diligence Law 2019, the German Act on Corporate Due Diligence in Supply Chains 2021 (commencing on 1 January 2023) and the Norwegian Transparency Act 2021 (commencing on 1 July 2022). Similar legislation has been also considered in a number of other countries, including Hong Kong,[15] Canada,[16] and New Zealand.[17] In 2021, the EU Directive on Mandatory Human Rights, Environmental and Good Governance Due Diligence proposal was adopted,[18] which if passed will require member countries to ensure and supervise corporate human rights as well as environmental responsibility and good governance.

Undeniably, the plight of modern slavery victims has captured public imagination worldwide and galvanised a coordinated global response. This has led to considerable policy and legislative action in regulating modern slavery in operations and supply chains (of the private sector in particular) at the international, regional and domestic levels. With the outbreak of the COVID-19 pandemic in 2020, the most vulnerable and already exploited have been exposed to the heightened risk of modern slavery and there have been disruptions to the response efforts.[19] However, despite the best efforts, dealing with this complex socio-economic problem fuelled by processes of globalisation cannot be separate from migration and its management if we are to find a sustainable solution to the problem of social and economic vulnerability that ensnares people in modern slavery.

## III.　People smuggling in recent times

People (or human or migrant) smuggling is not a new phenomenon, and the practice has existed ever since political borders have been introduced and the territorial sovereignty of states got established allowing them to decide who they permit to enter (or in some circumstances to leave) and on what grounds. Thus, it is the restrictions on transnational mobility that have created a demand for services in people smuggling. For example, before Spain and Italy introduced Schengen Visas for North Africans in the early 1990s, there was a relatively free flow of migration between North Africa and Southern Europe, and the augmentation of regulation increased irregular migration in the Mediterranean region which, as a consequence, amplified border securitisation.[20] These are the criminalisation and penalisation of smuggling that are relatively new, and they have also been increasing worldwide.

The attitudes toward people smuggling have also changed over time. Historically, people smugglers were perceived as 'enablers' and often 'saviours' of those who were escaping the persecution of oppressive regimes, such as Jews escaping Nazi Germany during the Second World War or from East Germany, and elsewhere in the Eastern Block, to West Germany during the Cold War. Today, fairly similar reasons motivate migrant smuggling, that is conflict, economic desperation, poverty and states' restrictions on human mobility, yet "[s]mugglers are nowadays…perceived much more as criminals than before".[21]

### III.A. Regulating Migrant Smuggling

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[14] Requiring companies to account for how they address their adverse human rights impacts.

[15] The Modern Slavery Bill was put for consideration before the Legislative Council in 2018, but due to mass expulsion and resignations of pro-democracy opposition lawmakers since 2020, doubts are cast on whether anti-slavery legislation will go ahead.

[16] See Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff 2021 and Bill C-243, An Act respecting the elimination of the use of forced labour and child labour in supply chains 2022.

[17] At the time of writing, see an MBIE public consultation on modern slavery and worker exploitation in New Zealand supply chains, https://www.mbie.govt.nz/have-your-say/modern-slavery/; see also Szablewska et al. 2022.

[18] European Commission 2022.

[19] See, for example, Cockayne and Smith 2020.

[20] Van Liempt 2016.

[21] Ibid., p 3.

Human trafficking, like many other forms of modern slavery, and human smuggling are part of what is considered to be mixed-migration flows, defined by the International Organization for Migration (IOM) as "[c]omplex migratory population movements…as opposed to migratory population movements that consist entirely of one category of migrants".[22] From a legal perspective, the difference between one and the other got consolidated in 2000 when the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol), supplementing the Convention against Transnational Organised Crime, was enacted. The Trafficking Protocol consolidated the distinction between a trafficking victim (whether transported domestically or internationally) as opposed to when one is smuggled, which requires crossing an international border as prescribed under the Protocol Against the Smuggling of Migrants by Land, Air and Sea (the Smuggling Protocol). Nor the consent of a trafficking person is relevant as one cannot consent to their own exploitation, which is usually assumed in the context of smuggling. Despite neither a smuggled nor trafficked person being criminalised for the fact of being smuggled or trafficked, smuggling is often perceived as a 'victimless crime' (it is a crime against a state), whereas human trafficking, or other forms of modern slavery, never are. In reality, being smuggled often leads to similar consequences in that violence, including sexual violence, kidnapping and robbery against smuggled migrants by smugglers is estimated to account for between 50 and 76 per cent of all incidents.[23]

In Europe, the French government's proposal in 2000 to the European Commission on a 'Framework Decision on Strengthening the Penal Framework for Preventing the Facilitation of Unauthorized Entry and Residence' was the first attempt to regulate smuggling. It was part of an agenda to "combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings" and aimed to supplement "other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children".[24]

In the Asia and Pacific region, the 2015 Bay of Bengal migrant smuggling crisis that involved thousands of migrants from Myanmar and Bangladesh who got stranded at sea or whose bodies were uncovered in mass graves in South Thailand, prompted the Association of Southeast Asian Nations (ASEAN) to focus on combating the crime of migrant smuggling in the region[25] and triggered the ASEAN to consider migrant smuggling as a transnational crime falling under its purview.[26]

At the international level, people smuggling is seen predominantly as a transnational organised crime,[27] which has its consequences for the level of support deemed appropriate for smuggled persons, as well as the assessment of their culpability. The framing of the problem as one of 'organised crime' also affects how the motivations of smugglers are assessed which, consequently, has informed corresponding legal responses.[28]

The increase in land border regulation has prompted a shift in smuggling activities towards sea crossing, in particular since 2009 in Europe.[29] There have been multiple reports in recent years of maritime migrant smuggling ending with boats capsizing never reaching their destinations as well as an increase in the use of 'ghost ships', where the crew abandons the vessel before it reaches its destination, forcing a rescue operation to save those onboard. One example involved a cargo ship Ezadeen, flying under a Sierra Leone flag, with 450 people onboard, mainly Syrian asylum seekers, which was intercepted by the Italian coastguards in 2015.[30]

Another regional example is that of Australia which under its Operation Sovereign Borders[31] intercepts vessels in international waters, justifying it on the grounds of the rise in maritime migrant smuggling, and often pushes

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[22] IOM 2011, p 63.
[23] Mixed Migration Centre 2018, pp 122-123.
[24] At paras (2) and (5) respectively.
[25] For more information see https://asean.org/.
[26] UNODC 2018b.
[27] It needs to be noted, however, that smuggling does not require the involvement of organised crime to be punishable, see UN Convention against Transnational Organised Crime, Art 34(2); Smuggling Protocol, Art 4.
[28] For an overview of the legal framing of people smuggling see Szablewska 2022.
[29] UNODC 2018a.
[30] Hooper 2015.
[31] For more information see http://osb.homeaffairs.gov.au.

or tows boats back to Indonesian's territorial waters.[32] This policy has been widely criticised by the international community for putting the lives of migrants at risk and flouting its international obligations,[33] including under the Smuggling Protocol and the principle of non-refoulement,[34] barring states from returning an alien to a place where they are likely to face persecution or their life would be threatened.[35]

There have been many more examples in recent years where migrant smuggling has resulted in migrants' lives being lost,[36] which is often a result of the absence of rescue or insufficient assistance offered by states, despite international obligations in this regard under different international law regimes, including international human rights law, international refugee law and international maritime law.[37]

The response of states to migrant smuggling and protection offered to irregular migrants is in stark contrast to the pledges and commitments made to address modern slavery. Yet, irregular migrants — facing harsh responses in relation to the lack of compliance with the necessary requirements for legal entry into the receiving state — fuel the supply side of modern slavery, making the crime more difficult to detect, investigate and address.

Migrants in irregular situations should not face or fear repercussions for reporting violence, abuse or exploitation, which is also recognised under pillar three of the EU's action plan against migrant smuggling (2021-2025) on preventing exploitation and ensuring the protection of migrants,[38] which prescribes that a migrant who is a victim of crimes is to be offered support and protection in all circumstances. However, the reality differs, and the increasing securitisation of migration obscures the underlying social, economic and political 'push' factors that fuel the crime of modern slavery. The next section, therefore, looks at how migration management and the regulation of modern slavery cannot be conceptually and practically seen as separate, but are rather part of the wider efforts to achieve sustainable development.


### IV.    Modern slavery and migration in the context of sustainable development

The United Nations (UN) 2030 Agenda for Sustainable Development (2030 Agenda), comprising 17 goals and 169 targets, aims to overcome inequality, poverty and climate crisis among others. It is considered to be based on three core elements that require harmonisation, that is economic growth, social inclusion and environmental protection.[39] The Sustainable Development Agenda builds on the preceding UN Millennium Developments Goals (MDGs) (2000-2015), based on the UN Millennium Declaration,[40] which consisted of eight goals and 21 targets, ranging from reducing extreme poverty and promoting gender equality, to reducing child mortality and ensuring environmental sustainability.[41] As much as MDGs was an important stepping stone in galvanising global commitment to "spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty",[42] none of the goals and its targets referred directly to migrants, or migration, or (modern) slavery as issues that require particular attention to achieving the overarching objective.

In contrast, the UN Sustainable Development Goals (SDGs) focus specifically on ending modern slavery in all its forms, albeit forms of modern slavery are defined narrowly focusing predominantly on children (targets 8.7 and 16.2) and women and girls (target 5.2), whereas in some regions, like the Middle East, it is men who are the

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[32] This also violates Indonesia's territorial sovereignty, see Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions 2017, in particular para 33.

[33] For an overview of Australian refugee and asylum seekers policy see Szablewska 2014; also Szablewska and Ly 2017.

[34] It must be noted that Australia has denied that the principle of non-refoulement has extra-territorial application or that it applies outside the territorial seas, see *CPCF v. Minister for Immigration and Border Protection* (Judgment) 2015.

[35] See, for instance, the Convention on the Status of Refugees (1951) 189 UNTS 150, Article 33(1).

[36] See, for instance, UNODC 2018a.

[37] See Szablewska 2022.

[38] European Commission 2021.

[39] See the Sustainable Development Agenda, https://www.un.org/sustainabledevelopment/development-agenda-retired/#:~:text=For%20sustainable%20development%20to%20be,being%20of%20individuals%20and%20societies.

[40] UN 2000.

[41] For the final report, see UN 2015.

[42] UN 2000.

main victims of forced labour.[43] In the context of migration, achieving SDGs requires addressing the key objectives of the Global Compact for Migration.[44] There are ten indicators that are migration-specific, and the key Goal 10 on reducing inequalities, in particular target 10.7, focuses on facilitating "orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies". In the context of SDGs, promoting international collaboration on the issues requires international governance of migration with partnership among all countries.

Migrants represent 3.5 per cent of the world population, yet it is estimated that they contribute nearly 10 per cent of global gross domestic product (GDP).[45] There have been further studies showing a positive correlation between labour immigration and increasing GDP per capita levels and a further improvement in living standards and welfare.[46] Thus, overall, migration is socio-economically beneficial, and the benefits increase with better integration of migrants in the destination countries. However, despite all the evidence and data, the anti-immigration sentiment has been rising worldwide. There are manifold reasons for it, including perceived economic and cultural competition, racial/ethnic and religious attitudes or fear of crime.[47]

Such attitudes are not only not supported by data but also migration is recognised as a cross-cutting issue across the 2030 Agenda. Thus, it is not only about fulfilling the promise of "leaving no one behind" but, in a more substantive sense, migration contributes to the SDGs implementation across all goals or, putting it differently, effective migration governance is key to achieving the SDGs.[48] Migration and development are closely connected,[49] in that development-related factors, whether conflict, climate change or labour markets, can and do impact migration drivers and patterns. On the flip side, poorly managed migration has its consequences for development gains. The 2030 Agenda adopts a whole-of-government approach to achieve coordinated policy on migration governance. In practical terms, it requires reaching beyond immigration policies and their implementation and ensuring that migration governance is integrated across the different sectors and agendas. Strengthening coherence between migration and development agendas not only can improve development outcomes but also migration outcomes.[50]

As discussed earlier, the link between migration and modern slavery is also widely recognised.[51] The UK appointed its first Migration and Modern Slavery Envoy in 2019, whose aim is to support the Government in coordinating its efforts with other nations to tackle modern slavery, which explicitly acknowledges the connection between the impact that modern slavey has on migrants. There are multifaceted reasons for the heightened vulnerability of (international) migrants to modern slavery, which include restrictive migration policies that increase irregular migration. Thus, tackling migrant smuggling by increasing securitisation and targeting irregular migrants for their illegal entry is not only ineffectual but, in fact, facilities modern slavery. Globalisation of the economy and labour markets and poverty are the root causes of modern slavery. Thus, aiming to diminish poverty and decrease inequality, as aimed by the sustainable development agenda, requires re-thinking approaches to managing migration, including the irregular type.

In 2019 Europe hosted the largest number of international migrants (82 million).[52] Despite the efforts taken by and resources (including an average budget of €900 million per year)[53] provided to the EU border agency Frontex established in 2004,[54] irregular migration to Europe has continued to increase in 2022 (marking a 78 per cent increase from a year before and 23 per cent increase from 2020).[55] Also, the more dangerous routes are more

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[43] UNODC 2020.
[44] See Global Compact for Safe, Orderly and Regular Migration, https://refugeesmigrants.un.org/migration-compact
[45] IOM and McKinsey & Company 2018.
[46] Graţiela et al. 2018; Quak 2019.
[47] See, for example, Gorodzeisky and Semyonov 2019; Valentino et al. 2017.
[48] IOM 2018.
[49] See, for example, UNDP 2019.
[50] See also IOM 2018.
[51] See, for example, Bryant and Larsen 2019.
[52] IOM and McKinsey & Company 2018.
[53] See also European Court of Auditors 2021.
[54] Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349, 25.11.2004, p. 1).
[55] As reported in Lindsay 2022.

frequently utilised now than before, which indicates that the dangers of irregular migration are not a sufficient barrier to those on the move, which is expected when facing acute desperation and insecurity. As climate-induced (irregular) migration will continue to increase, so will the exposure of those escaping the consequences of climate change to modern slavery.[56] It is essential, therefore, that in fulfilling their obligations towards SDGs, countries ensure that migrants and migration are considered across development sectors and that migration governance is the key focus of the international community when pursuing inclusive, integrated and sustainable development.

## V.　　Conclusions

Modern slavery including in global supply chains has been attracting international attention with a number of countries introducing or in the process of developing legislative responses to what is a global problem. However, despite the various domestic, regional and international efforts, the number of modern slavery victims has been claimed to be growing, which has been further exacerbated by global shocks, such as the COVID-19 pandemic and recent conflicts.

Even though global migration rates are considered to have been steady since the 1990s,[57] the number of undocumented or irregular migrants, as well as the forced displacement of people, is on the rise worldwide. Migrant smuggling is often a "stepping stone to human trafficking",[58] when the person cannot pay the smuggler or is trapped in economic exploitation,[59] and often results in people being sold for forced labour. Irregular migration, therefore, needs to be seen in its wider socio-economic context.

There is also a bidirectional relationship between migration and sustainable development. Irrespective of the types of migration contexts in each country or region, SDGs targets are universal and can be achieved only with cooperation by the different sectors and agencies, as well as with coherent partnerships between all countries. Whether in relation to migration management or modern slavery, a more harmonised global approach is needed that would recognise the multi-dimensional nature of migration and the complexity of globalised modern slavery. Moreover, shifting the predominant focus from the downstream approaches targeting the individual onto the wider systemic problems, including by making global businesses accountable for directly or indirectly contributing to modern slavery, is instrumental if we are to get any closer to achieving the SDGs by 2030. Consequently, policies and approaches to addressing modern slavery need to take into consideration (irregular) migration across governance sectors as critical for achieving sustainable development.

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[56] See, for example, Anti-Slavery International and Institute for Environment and Development 2021.
[57] See, for example, Azose and Raftery 2019.
[58] UN Security Council Counter-Terrorism Committee Executive Directorate 2016, p 12.
[59] CARITAS 2015, p 6.

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