

## Impact case study (REF3)

<b>Institution:</b> King's College London		
<b>Unit of Assessment:</b> 18 Law		
<b>Title of case study:</b> Reshaping the approaches of governments and international organisations to Modern Slavery		
<b>Period when the underpinning research was undertaken:</b> 2006 – 2019		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Satvinder Juss	Professor of Law	From 01/01/2001
Philippa Webb	Professor of Public International Law	From 01/09/2012
Rosana Garcandia	Research Associate	From 19/02/2018
Prabha Kotiswaran	Professor of Law & Social Justice	From 01/09/2012
<b>Period when the claimed impact occurred:</b> Aug 2013 – Dec 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		

**1. Summary of the impact**

Modern slavery is a major, multi-faceted, yet largely hidden, global problem. King's College London research has made a significant contribution to how this issue is conceptualised and tackled. Through their advocacy, pro-bono work and participation in key policy debates, the King's researchers have had three main areas of impact. In the UK, they contributed to the implementation of a victim-centred approach in the Modern Slavery Act 2015. [Text removed for publication]. They also influenced International Labour Organisation (ILO) policy to fight human trafficking in Asia and the Middle East, and sparked a debate at the United Nations (UN) on State responsibility for modern slavery, leading to a ground-breaking judicial decision on diplomatic immunity.

**2. Underpinning research**

King's College London research tackled modern slavery and human trafficking using three distinct approaches. These address shortcomings in the responses of a developed country (the UK), of a developing country (India) and in international law.

**Advancing a victim-centred approach to modern slavery in the UK**

Professor Satvinder Juss is a human rights expert focusing on policy-oriented work. He has been active for over a decade in the area of modern slavery. Initially, he highlighted the absence of a victim-centred approach to migration in UK law [1]. Most recently, he examined how the criminal justice system deals with the organised criminal gangs who sell human beings and trafficked people who have breached UK immigration laws [2].

His research is critical of many UK policies, revealing shortcomings and advocating new approaches. His research has criticised the English legal system for failing to deliver a victim-centred approach due to the incoherence of the legal framework concerning different forms of exploitation [3]. Juss also found a consistent trend in the government's focus on law enforcement rather than victim protection [2, p. 305]. Consequently, he put forward several recommendations, including the need to have a monitoring mechanism in supply chains, reform of the National Referral Mechanism (NRM) used to identify potential victims and ensure they receive appropriate support, and to provide domestic workers from overseas with a more secure visa status [2]. His research also pointed out that human trafficking laws in the UK were limited because they tracked international law developments that were themselves flawed. Juss was critical of the lack of conceptual clarity in Article 3 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. His analysis found that this was problematic within

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the national context, as the ambiguity was being replicated in judicial pronouncements. Therefore, Juss emphasised the importance of clearly defining concepts such as ‘consent’ in the context of human trafficking [3].

#### **Elaborating a development approach to human trafficking and modern slavery**

Professor Prabha Kotiswaran has written about anti-trafficking law and policy in the UK and India for the past two decades. Anchored in her initial interest in the sexual politics of anti-trafficking discourse, she researched and wrote on the transnational legal order to emerge around trafficking. She proposed a development approach to trafficking that elaborates on how countries of the Global South understand the UN sustainable development goal (SDG) 8.7, devoted to the elimination of trafficking [4,5]. Her research suggested that SDG 8 – to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all – cannot be achieved by reworking older debates on development in the context of trafficking. Instead, the expanding welfare functions of the postcolonial developmental state must be considered.

More recently, Kotiswaran focused on Indian anti-trafficking law and policy. Her research built on the critique of the developmental project to elaborate on the key elements of a development-based approach to trafficking. Such an approach is rooted in the realities of the developing world and recognises the fundamentally different configurations of the State, market, civil society and legal system in the Global South. Using the example of India, she argued that conventional regulatory responses to ‘trafficking’ and ‘modern slavery’ must be fundamentally rethought. An uncritical reliance on a criminal law approach to trafficking (as embodied in the Indian government’s Trafficking of Persons (Prevention, Protection and Prosecution) Bill 2018) must be replaced by efforts to implement domestic labour and social welfare laws that are themselves the result of long-term struggles for decent work and against extreme exploitation [4].

#### **Analysing international law and State responsibility for modern slavery**

Although mainstream discourse has focused on States’ positive obligations to ‘prevent, protect and punish’ modern slavery committed by non-state actors, the role of States in perpetuating modern slavery has been largely overlooked. According to the Global Estimates of Modern Slavery, of the 24.9 million victims of forced labour in 2016, 4.1 million were in forced labour imposed by State authorities; evidence also showed State involvement in other forms of slavery. Professor Philippa Webb and Dr Rosana Garciandia examined the extent of States’ involvement in modern slavery with the aim of uncovering and bridging the responsibility gap [6].

By taking the perspective of the international law of State responsibility, the researchers identified five scenarios of State involvement in modern slavery. These range from the most direct (scenario 1, involvement arising directly from state policy) through intermediary levels (including scenario 3, which includes individual diplomats treating their domestic servants as slaves) to the least direct forms of involvement (scenario 5, such as States funding projects tainted by modern slavery through the loans, insurance and guarantees executed by national export credit agencies). This approach helped them identify areas where legislative initiatives would prevent vulnerability to modern slavery. Through their research, they presented an innovative use of the international law of State responsibility, which can contribute to tackling modern slavery more effectively [6].

### **3. References to the research**

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[1,2,3] have been cited widely, with [2] becoming the leading text in the area. [4,5] have been funded by prestigious awards, including a GCRF Networking grant and a Philip Leverhulme Prize. [6] was funded by a British Academy grant and was awarded the prize for best article published by the *International & Comparative Law Quarterly* (the most-cited international law journal in the UK) in 2019.

[1] Juss, S. (2006). *International Migration and Global Justice*. Routledge, London. DOI:10.4324/9781315589459

[2] Juss, S. (2013). Human Trafficking, Asylum and the Problem of Protection, in S. Juss (ed.), *The Ashgate Research Companion to Migration Law, Theory and Policy*. Routledge, London, pp. 281-320. DOI:10.4324/9781315613239.ch13

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- [3] Juss, S. (2015). Recognizing Refugee Status for Victims of Trafficking and the Myth of Progress, *Refugee Survey Quarterly*, vol. 34, no. 2, pp. 107-123. DOI:10.1093/rsq/hdv003
- [4] Kotiswaran, P. (2019). Trafficking: A Development Approach, *Current Legal Problems*, vol. 72, no. 1, pp. 375-416. DOI:10.1093/clp/cuz012
- [5] Kotiswaran, P. (2017). From Sex Panic to Extreme Exploitation: Revisiting the Law and Governance of Human Trafficking, in P. Kotiswaran (ed.) *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge Studies in Law and Society. Cambridge University Press, Cambridge, pp. 1-56. DOI:10.1017/9781316675809
- [6] Webb, P. & Garcandia, R. (2019). State Responsibility for Modern Slavery: Uncovering and Bridging the Gap, *International & Comparative Law Quarterly*, vol. 68, no. 3, pp. 539-571. DOI:10.1017/S0020589319000277

### 4. Details of the impact

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The ILO estimates that, by its definition, over 40 million people are in some form of slavery today. The lack of a universally agreed definition of modern slavery makes it challenging for policymakers to prevent and address this problem. King's research has helped policymakers to interpret and develop legislation that protects victims and holds the perpetrators of modern slavery accountable. Addressing major existing issues within the UK legal system, in developing countries in Asia and the Middle East, and in international law, the research has contributed to the fight against modern slavery and human trafficking.

#### Implementing a victim-centred approach in the UK's Modern Slavery Act

Juss' research-based recommendations contributed to the passing of the Modern Slavery Act 2015 (MSA), which incorporates the victim-centred approach advanced at King's [A]. This was enabled by his participation as the sole human rights expert in the Slavery Working Group of the Centre for Social Justice (CSJ). This highly influential political think tank reviewed modern slavery in the UK. The group's findings resulted in the 2013 seminal report *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery* [B1]. Lucy Maule, senior researcher at the CSJ, gave evidence during the first sitting of the Public Bill Committee on the Modern Slavery Bill, citing some of the report's recommendations based on Juss' research [C, p.2]. For example, she identified the NRM's lack of transparency as a concern: Juss had similarly questioned whether the NRM was sufficiently independent and to what extent its decision-making processes were influenced by elements of immigration control [2]. Consequently, legislators repeatedly selected Juss' victim-centred recommendations included in the CSJ report throughout the enactment process of the MSA [C]. The CSJ acknowledged Juss' contributions, saying it was "*extremely grateful for the valuable insights and expertise provided by Professor Satvinder Juss in the drafting of the CSJ report, as they have contributed to the passing of the Modern Slavery Act, which has played, and will continue to play, an immensely important role in the UK's fight against slavery and human trafficking*" [B2].

The MSA not only included a commitment to protect victims of modern slavery in its preamble, but also implemented many other research-based recommendations [1,2,3] put forward by Juss in the CSJ report. For example, it defined the meaning of 'consent', emphasising that in the context of human trafficking, where a person has arranged or facilitated the travel of another person to exploit them, the consent of the victim is irrelevant [A]. The MSA also addressed Juss' concern about the State's excessive focus on prosecuting victims for immigration or criminal infractions rather than protecting them [A]. Provisions for the protection of victims of slavery through their non-prosecution were ultimately adopted under s45 of the MSA [A]. Other recommendations implemented by the Act include increased rights for overseas domestic workers, a reform of the NRM [D1] and the requirement for large UK companies with a turnover of more than GBP36,000,000 to report measures taken to ensure that their supply chain is free of modern slavery [D2, p.5].

#### Influencing the ILO's policy and fighting human trafficking in Asia and the Middle East

Since 2013, Kotiswaran has been a member of the advisory board of the ILO's Work in Freedom (WIF) Programme (funded by the UK Department for International Development). Its aim is to reduce vulnerability to trafficking and forced labour for women undertaking garment and domestic

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work in Bangladesh, India, Jordan, Kuwait, Lebanon and Nepal. Kotiswaran's work has directed the policy component of WIF away from criminal justice approaches to trafficking, to a labour law and development approach. Igor Bosc, Chief Technical Adviser of the WIF, said that "*Kotiswaran's paper [4] grounded the rationale for our policy work.*" It prompted several policy changes, including ending its support for anti-trafficking vigilance committees, which were creating problems for women seeking employment abroad [E].

Kotiswaran's critical analysis of policy responses to sex work led the WIF programme to include sex workers when engaging with women workers and forced it to review its perspectives on gender and informality. Bosc stated that "*the WIF shifted from a service delivery approach to a self-empowerment approach informed by an adaptive learning strategy advised by Prof Kotiswaran*" [E]. The UK's Independent Commission for Aid Impact praised the WIF, mentioning that "*it had made individuals better placed to make informed choices about whether or not to migrate and, if they chose to proceed, equipped them to make safer choices*" [F, p.37].

[text removed for publication]

### **Influencing the UN debate on State responsibility and shaping legal change in the UK**

King's research on State responsibility for modern slavery [6] contributed to a shift in the narrative of the international public discourse on modern slavery from non-state actors to States. This led to a ground-breaking judicial decision in this field [K]. Following the publication of the policy paper based on their research [6], Webb and Garciandia launched their legal recommendations at the UN Headquarters in New York to representatives of States, international organisations and civil society organisations [I1]. Urmila Bhoola, the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, was enthusiastic about their novel approach. She referred to their research in her report to the Human Rights Council [I2]. During the 42nd Session of the Human Rights Council, she based her recommendations on their research, stressing the need for states to hold each other to account in relation to modern slavery [I3]. [Text removed for publication].

The UN report was read widely, including by Nusrat Uddin, the legal aid solicitor working on a case in front of the UK Employment Tribunal in which a Saudi diplomat was arguing that diplomatic immunity protected him against claims of human trafficking and modern slavery in a case of domestic servitude [K1]. The solicitor asked Webb and Garciandia to work on the case pro bono as she found "*their research innovative and unique*" and believed "*it could help shape strategic litigation in this field*" [L]. Uddin's legal strategy was informed by their research recommendations [6] and led to the ground-breaking Tribunal ruling that diplomatic immunity does not protect against claims of human trafficking and modern slavery [K1]. The decision was widely shared among civil society organisations engaged in strategic litigation in the UK, USA and continental Europe. Uddin stated that Webb and Garciandia's research "*directly influenced and helped shape crucial legal change in this field, contributing to developments in courts concerning a new interpretation of the commercial exception to diplomatic immunity*" [L]. The decision was appealed to the Employment Appeal Tribunal and Webb appeared for the respondent [K2]. Although her arguments were rejected and the appeal was allowed, the judge decided to issue a 'leapfrog' certificate pursuant to section 37ZA(1) of the Employment Tribunals Act 1996 because of the importance of the issues raised by the case [K3]. This meant that a further appeal could proceed directly to the UK Supreme Court. The Supreme Court on 9 November 2020 granted permission to appeal, recognising that the case raised a point of law of general public importance. The case was one of only two cases featured in the Senior President of Tribunals' *Annual Report 2020*, again highlighting its public significance. The case will be heard by the Supreme Court in the autumn of 2021 and the legal submissions will likely draw heavily on the arguments made by Webb in the Employment Appeal Tribunal. The Supreme Court's decision will be critical to diplomats in the UK, who bring to the country an estimated 200-300 migrant domestic workers each year.

### **5. Sources to corroborate the impact**

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[A] Modern Slavery Act 2015, UK Parliament.

[B] Report of collaborative work between Juss and the Centre for Social Justice [B1] The Centre for Social Justice (2013) *It Happens Here: Equipping the United Kingdom to Fight Modern*

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*Slavery: A policy report by the Slavery Working Group*; [B2] Testimonial from: Head of the modern slavery unit and Policy Director, Centre for Social Justice, 30 March 2020.

[C] Report of Parliamentary debates including references to the CSJ report by legislators during the enactment process of the Modern Slavery Act [collated in document].

[D] Guidance issued by the UK Government following the passing of the MSA, including: [D1] UK Home Office (2019) *Victims of modern slavery – Competent Authority guidance*, version 7.0; and [D2] Home Office (2015) *Transparency in Supply Chains: A practical Guide*

[E] Testimonial from: Chief Technical Adviser, Work in Freedom Programme, 11 Nov 2020.

[F] Independent Commission for Aid Impact (ICAI) (Oct 2020) *The UK's approach to tackling modern slavery through the aid programme: A review*.

[G] [Text removed for publication]

[H] [Text removed for publication]

[I] Report of evidence corroborating the impact of Webb and Garciandia's work at the UN, including: [I1] [video](#) of the State Responsibility and Modern Slavery Workshop – United Nations University, 31 January 2019; [I2] *Current and emerging forms of slavery: Report of the Special Rapporteur on contemporary forms of slavery*, UN Doc A/HRC/42/44, 25 July 2019; [I3] [video](#) of the 42nd Session of the Human Rights Council, 9 September 2019. See: 1:29:00.

[J] [Text removed for publication]

[K] Report evidencing impact on *JW v Basfar*, [K1] *JW v Basfar*, UKEAT/0223/19, Case No. 2206477/2018, 13 June 2019; [K2] *Basfar v Wong* UKEAT/223/19, 31 January 2020; [K3] Certificate pursuant to section 37ZA(1) of the Employment Tribunals Act 1996.

[L] Testimonial from: Legal Aid Solicitor, Wilson Solicitors LLP, 11 November 2020.