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## Public consultation paper on the International Strategy on Human Trafficking and Modern Slavery

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide this submission in response to the public consultation paper (**Consultation Paper**) on the International Strategy on Human Trafficking and Modern Slavery (**2020 Strategy**).

ALHR welcomes the 2020 Strategy as an ongoing commitment of the Australian Government in supporting international efforts to help eradicate human trafficking and modern slavery. The 2020 Strategy will build on the 2016 International Strategy on Human Trafficking and Slavery (**2016 Strategy**) and complement the proposed Goal 11 of the National Action Plan to Combat Modern Slavery 2020-24 (**2020-24 Plan**).

ALHR has previously made a submission regarding the 2020-24 Plan, and continues to support and advocate for the introduction and effective implementation of the 2020-24 Plan as a means of strengthening Australia's domestic response to modern slavery.<sup>1</sup>

Further, ALHR welcomes the Government's commitment to ensuring that the 2020 Strategy reflects current and emerging priorities for Australia's international engagement over the next five years. It is vital that the 2020 Strategy addresses the complex drivers for human trafficking and modern slavery, with a focus on the specific issues facing the Indo-Pacific region countries.

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<sup>1</sup> Australian Lawyers for Human Rights, Submission on the National Action Plan to Combat Modern Slavery 2020-2024, 31 January 2020, available at <https://alhr.org.au/national-action-plan-to-combat-slavery-2020-2024/>.

## 1 Recommendations

- 1.1 ALHR welcomes the opportunity to provide this submission on the Consultation Paper and makes the following recommendations:
  - 1.1.1 **Objective 1 be expanded to account for diverse drivers of human trafficking and modern slavery including structural conditions generated by both policies of the Australian Government and practices of Australian businesses.**
  - 1.1.2 **The Australian Government's strategy on human trafficking and modern slavery form part of Australia's serious and organised crime and counter terrorism strategies.**
  - 1.1.3 **Objective 3 be expanded to include another action calling for the Government to promote understanding within the Australian business sector about relevant UNGPs and human rights laws and standards, about how to identify risks of modern slavery and how to effectively complete a modern slavery statement which complies with the *Modern Slavery Act 2018* (Cth).**
  - 1.1.4 **That the 2020 Strategy include an additional objective which addresses the need for cross-sectoral collaboration in responding to national and regional emergencies or disasters (such as the COVID-19 pandemic) and to ensure that the most vulnerable, including those working in supply chains, are not disproportionately affected.**
  - 1.1.5 **That the 2020 Strategy include an objective which addresses the nexus between the impacts of climate change on vulnerable groups, including marginalised rural populations, which increases their risk to human trafficking and modern slavery.**
  - 1.1.6 **The proposed objectives in the 2020 Strategy be expanded to adequately support actions by the Government to ensure survivor support.**
  - 1.1.7 **That child survivors of human trafficking and modern slavery be included and participate in the design, implementation and monitoring processes of the 2020 Strategy.**
  - 1.1.8 **Information sharing and collaboration between the Australian Government and other relevant national and inter-governmental bodies in order to assist in developing effective consultation criteria or minimum standards when incorporating or reviewing survivors' testimonies.**
  - 1.1.9 **That the Australian Government encourages other countries, including in the Indo-Pacific region, to work towards developing a shared comprehensive database compiling of available national statistics or, at a minimum, fosters collaboration in producing comparable statistical data on human trafficking and modern slavery.**
  - 1.1.10 **That the Australian Government encourage other countries in the Indo-Pacific region to set up collaborative mechanisms between governmental authorities, civil society, the business sector and international organisations, to assist in data-sharing to facilitate the proper identification and provision of services and assistance to survivors of human trafficking and modern slavery.**
  - 1.1.11 **The Australian Government should include the offence of organ trafficking in its policy documents, including the 2020 Strategy, whenever a definition of modern slavery is provided, particularly where such documents are made publicly available.**

## 2 Consultation Question One: Do the proposed objectives of the 2020 Strategy capture the priorities for Australia’s international engagement on human trafficking and modern slavery in the Indo-Pacific region?

2.1 ALHR supports the five proposed objectives in addressing the drivers of human trafficking and modern slavery, including poverty and gender inequalities, and is encouraged by the Government’s commitment in adopting multi-level efforts to support sustainable development.

2.2 The Department of Foreign Affairs and Trade in *Amplifying Our Impact: Australia’s International Strategy to Combat Human Trafficking and Slavery* has prioritised international engagement in the Indo-Pacific region on human trafficking and modern slavery.<sup>2</sup> This international engagement is premised on four central pillars: “prevention and deterrence; detection and investigation; prosecution and compliance; and victim support and protection”.<sup>3</sup> The stated rationale behind these priorities is that the Australian Government is striving to be a leader within the region in regard to “deterring and combating human trafficking and slavery” by working cooperatively with other governments within the region and more broadly.<sup>4</sup>

2.3 ALHR finds the proposed objectives in the 2020 Strategy to be largely consistent with Australia’s priorities for international engagement on human trafficking and modern slavery in the Indo-Pacific region. Notwithstanding this, ALHR makes the following submissions and recommendations in relation to some of the objectives in the Consultation Paper.

### ***Objective 1 - Addressing the drivers to human trafficking and modern slavery***

2.4 Objective 1 of the Consultation Paper focuses on the drivers of human trafficking and modern slavery, identifying poverty and gender inequalities as ‘push’ factors. ALHR welcomes this policy shift from focusing predominantly on individual level behaviours and risks to addressing the structural conditions that contribute to exploitation.

2.5 ALHR is of the view that the Government’s prevention policies should not solely focus on raising awareness and educating at-risk groups in Australia and in the countries of origin. The impact of such prevention policies has often resulted in negative consequences, including exacerbating stigmatisation, marginalisation and discrimination of the most vulnerable.<sup>5</sup> Instead, ALHR submits that the Australian Government needs to expand this objective to identify and address the diverse and deeper underlying drivers of human trafficking and modern slavery, which is the key to preventing and eradicating complex social problems.

2.6 To that end, the 2020 Strategy should look beyond drivers which can be found in the Global South, such as poverty and corruption, to drivers generated specifically by Australian policies and business practices. ALHR notes that there is evidence that a hostile immigration environment and the rigid

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<sup>2</sup> Department of Foreign Affairs and Trade, ‘Amplifying Our Impact: Australia’s International Strategy to Combat Human Trafficking and Slavery’ (23 March 2016), p. 3.

<sup>3</sup> Ibid.

<sup>4</sup> Attorney-General’s Department, National Action Plan to Combat Human Trafficking and Slavery 2015-19 (1 December 2014); Department of Foreign Affairs and Trade, ‘Amplifying Our Impact: Australia’s International Strategy to Combat Human Trafficking and Slavery’ (23 March 2016).

<sup>5</sup> See an evidence-based systematic review of anti-human trafficking campaigns, N Szablewska and K Kubacki (2018) ‘Anti-human trafficking campaigns: a systematic review’. *Social Marketing Quarterly* 24(2): 104-112.

application of a criminal justice lens to human trafficking exacerbates exploitation risks.<sup>6</sup> In addition, irresponsible business practices can be an important factor in the use of exploitative and slave labour by suppliers, and therefore have a direct impact on the working conditions and labour standards in the most vulnerable countries, including in the Indo-Pacific region.

**2.7 ALHR recommends that Objective 1 be expanded to account for diverse drivers of human trafficking and modern slavery, including the structural conditions generated by both policies of the Australian Government and practices of Australian businesses.**

2.8 ALHR welcomes the Government's commitment to a "gender analysis" as a possible action under Objective 1 that would ensure accounting for the differences in the experiences of human trafficking and modern slavery. However, and as raised in ALHR's previous submission to the Department of Home Affairs,<sup>7</sup> to achieve this action, further education and guidance will need to be given to Australian businesses on how to implement and adopt a gender lens in their identification of, and responses to, modern slavery risks.

***Objective 2 - Securing justice by strengthening governance, legal systems and redress mechanisms***

2.9 Objective 2 supports the need for increasing efforts to tackle corruption and illicit finances, which enable human trafficking and modern slavery. ALHR submits that in order to achieve Objective 2, the Government needs to recognise the nexus between human trafficking and terrorism.

2.10 Ms Maria Grazia Giammarinaro, Special Rapporteur on trafficked persons, especially women and children, has observed that egregious patterns of trafficking, forced labour and slavery have been a strategy for terrorist groups.<sup>8</sup> The then Executive Director of the United Nations Office on Drugs and Crime, Mr Yury Fedotov, highlighted the use of human trafficking by certain terrorist and non-State groups as an incentive for new recruits.<sup>9</sup>

2.11 The United Nations Security Council Resolutions 2331 (2016) and 2388 (2017) focus on targeting financial flows associated with human trafficking, with Resolution 2388 (2017) calling on Members States to "collect, analyse and share" data relating to such financial flows and to what extent this crime finances terrorist activities.<sup>10</sup> At the national level, the UK acknowledged this nexus in its Modern Slavery Strategy (2014),<sup>11</sup> which builds on and adapts the UK's framework for organised crime and counter terrorism strategies.

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<sup>6</sup> The Anti Trafficking Monitoring Group (2018) 'Before the harm is done: Examining the UK's response to the prevention of trafficking', available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

<sup>7</sup> ALHR (2020) Submission on the National Action Plan to Combat Modern Slavery 2020-2024, para 2.11.

<sup>8</sup> UN Special Rapporteur on Trafficking in Persons (2017) 'Statement to the Security Council Open Debate on Maintenance of international peace and security: trafficking in persons in conflict situations', available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22431&LangID=E>.

<sup>9</sup> Cited in UNODC (2019) 'More action needed to stop human trafficking, exploitation in armed conflict: UNODC launches latest Global Report on Trafficking in Persons', available at: [https://www.unodc.org/unodc/en/frontpage/2019/January/more-action-needed-to-stop-human-trafficking--exploitation-in-armed-conflict\\_-unodc-launches-latest-global-report-on-trafficking-in-persons.html](https://www.unodc.org/unodc/en/frontpage/2019/January/more-action-needed-to-stop-human-trafficking--exploitation-in-armed-conflict_-unodc-launches-latest-global-report-on-trafficking-in-persons.html)

<sup>10</sup> UN Security Council Resolution 2388 (2017), S/RES/2388 (2017), para. 9.

<sup>11</sup> UK Home Office (2014) Modern Slavery Strategy. UK Government. <https://www.gov.uk/government/publications/modern-slavery-strategy>.

- 2.12 **ALHR recommends that the Australian Government’s strategy on human trafficking and modern slavery form part of Australia’s serious and organised crime and counter terrorism strategies.** This will enable the Australian Government to coordinate work between its various departments, which will better utilise limited resources, and increase intelligence and data sharing.

***Objective 3 - Promoting integration of human rights and labour standards in responses to human trafficking and modern slavery***

- 2.13 ALHR notes that the Consultation Paper does not include any reference to the United Nations Guiding Principles for Business and Human Rights 2011 (**UNGPs**). ALHR submits that the 2020 Strategy Paper should be founded on, and reflect, the UNGPs including an express reference in Objective 3 to the UNGPs.
- 2.14 ALHR has previously and continues to call on the Australian Government to introduce a National Action Plan on Business and Human Rights to ensure the effective implementation of the UNGPs.<sup>12</sup>
- 2.15 **ALHR recommends that in order to achieve Objective 3, the 2020 Strategy Paper should also include another action calling for the Government to promote an understanding by Australian businesses about relevant UNGPs and human rights laws and standards, about how to identify risks of modern slavery and how to effectively complete a modern slavery statement which complies with the *Modern Slavery Act 2018* (Cth).**

### **3 Consultation Question Two: Should there be additional objectives included in the scope of the 2020 Strategy? What are they?**

- 3.1 ALHR submits that there needs to be two additional objectives. Firstly, ALHR is of the view that there needs to be an objective which addresses the need for cross-sectoral collaboration in responding to national and regional emergencies or disasters to ensure the most vulnerable, including those working in supply chains, are not disproportionately affected.
- 3.2 The International Labour Organization (**ILO**) has observed that the COVID-19 pandemic has increased the risk of human trafficking and modern slavery, in particular among marginalised communities, and has also created conditions for amplified exploitation due to large-scale losses of employment or under-employment.<sup>13</sup> ALHR welcomes the Government’s initiative to establish a National COVID-19 Coordination Commission, which will contribute to addressing the various impacts of the current global crisis, as well as create a basis for any future responses to national and regional emergencies or disasters.
- 3.3 In light of the current situation, and when facing a global crisis, ALHR encourages the Australian Government to lead “coordinated and decisive responses” to ensure that the most vulnerable, including those working in supply chains, are not disproportionately affected.<sup>14</sup> ALHR submits that this requires close cooperation between the Government and the business sector to ensure businesses continue to undertake their human rights due diligence across their employment practices and supply chains.

<sup>12</sup> ALHR (2016), available at: <https://alhr.org.au/national-action-plan-business-human-rights/>

<sup>13</sup> International Labour Organization (2020) ‘Almost 25 million jobs could be lost worldwide as a result of COVID-19’, available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_738742/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_738742/lang--en/index.htm)

<sup>14</sup> ALHR, ‘Australian Government must protect most vulnerable in supply chains during COVID-19 pandemic’ (9 April 2020), available at: <https://alhr.org.au/supply-chains-covid-19/>

- 3.3 **ALHR recommends that the 2020 Strategy includes an additional objective which addresses the need for cross-sectoral collaboration in responding to national and regional emergencies or disasters (such as the COVID-19 pandemic) to ensure that the most vulnerable, including those working in supply chains, are not disproportionately affected.**
- 3.4 Secondly, ALHR submits that there needs to be a further objective in the 2020 Strategy which addresses the nexus between modern slavery, environmental degradation and climate change. ALHR notes that many of the drivers of human trafficking and modern slavery are also the drivers of climate-induced displacement,<sup>15</sup> and that this is becoming a particularly pressing issue in the Indo-Pacific region.
- 3.5 **ALHR recommends that the 2020 Strategy include an objective which addresses the nexus between the impacts of climate change on vulnerable groups, including marginalised rural populations, which increases their risk to human trafficking and modern slavery.**

#### 4 Consultation Question Three: Do the proposed objectives adequately support action on human trafficking and modern slavery prevention, enforcement/prosecution, victim support and partnerships?

- 4.1 ALHR submits that the proposed objectives need to be expanded to adequately support action on survivor support. ALHR notes that there are no express references to the importance of using a survivor-centered approach.
- 4.2 ALHR is of the view that the Australian Government needs to commit to more direct and positive measures to prevent victimisation as well as minimising (re-)traumatisation as a result of the criminal justice system and processes. Specifically, the Australian Government should provide support to survivors by empowering them, and ensuring they are not penalised for offences they were compelled to commit as a direct consequence of being trafficked (the ‘non-punishment’ principle).<sup>16</sup>
- 4.3 ALHR notes that although the proposed Objective 2 mentions survivor protection and redress, there is no express reference to redress mechanisms in accordance with the UNGPs. ALHR notes, for example, the 2020 Strategy could refer to principle 27 which provides for state-based non-judicial grievance mechanisms which ensures survivor empowerment.
- 4.4 **ALHR recommends that the proposed objectives in the 2020 Strategy are expanded to adequately support actions by the Government to ensure survivor support.**

#### 5 Consultation Paper Question Four: How can the 2020 Strategy, including its design, implementation and monitoring, best be informed by the voices of survivors of human trafficking and modern slavery?

<sup>15</sup> See, eg, Environmental Justice Foundation (EJF) (2015) ‘Pirates and slaves: How overfishing in Thailand fuels human trafficking and the plundering of our oceans’, available at: [https://ejfoundation.org/resources/downloads/EJF\\_Pirates\\_and\\_Slaves\\_2015\\_0.pdf](https://ejfoundation.org/resources/downloads/EJF_Pirates_and_Slaves_2015_0.pdf); International Labour Organization (2017) ‘Global estimates of modern slavery: Forced labour and forced marriage’. Switzerland: ILO.

<sup>16</sup> See EU Directive 2011/36/EU (5 April 2011) on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 8.

- 5.1 ALHR encourages support for survivors and the continual education of the public, business and governmental sector on human rights risks, as a means of greater empowerment and social inclusion of survivors, in addition to increasing transparency in supply chains. ALHR recently recommended that the Government should ensure survivors of modern slavery are empowered through their meaningful participation in the consultation process.<sup>17</sup>
- 5.2 ALHR also recognises the diverse identities and backgrounds of survivors of human trafficking and modern slavery, including, but not limited to, gender, age, disability, language, religious and spiritual beliefs. ALHR submits that the 2020 Strategy be informed by the voices of survivors, and centered on diversity and intersectionality of survivor experiences.
- 5.3 The ILO has stated that a significant proportion of survivors of human trafficking and modern slavery are children.<sup>18</sup> ALHR submits that taking into account the lived experience of child survivors is necessary in strengthening accountability mechanisms and bolstering the effectiveness of the 2020 Strategy.
- 5.4 ALHR recommends that child survivors of human trafficking and modern slavery be included and participate in the design, implementation and monitoring processes of the 2020 Strategy.**
- 5.5 ALHR supports participation of child survivors of human trafficking and modern slavery in the design, implementation and monitoring processes. The *United Nations Convention of the Rights of the Child* clearly articulates a child's right to be heard, including the development of prevention strategies in national and international settings.<sup>19</sup> ALHR is of the view that the child's fundamental right to be heard should be observed and adhered to in this strategy.<sup>20</sup>
- 5.6 ALHR recommends information sharing and collaboration between the Australian Government and other relevant national and inter-governmental bodies in order to assist in developing effective consultation criteria or minimum standards when incorporating or reviewing survivors' testimonies.**
- 5.7 ALHR submits this could be achieved by collaborating with key civil society stakeholders, and gaining access to practical experiences and survivors' voices through databases. For example, in October 2019 the Rights Lab at the University of Nottingham released a body of work called *Voices: Narratives of Survivors of Modern Slavery*, which is a publicly available database of over 1,000+ testimonies collected from survivors around the world.<sup>21</sup>
- 5.8 ALHR also suggests that plain language is used in all communications regarding survivors' experiences as this will lead to greater dissemination of knowledge and understanding of survivors' experience.

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<sup>17</sup> ALHR (2020) Submission on the Public Consultation Paper on the National Action Plan to Combat Modern Slavery 2020-2024, para. 4.9.

<sup>18</sup> See, eg, International Labour Organisation, Organisation for Economic Co-operation and Development, International Organization for Migration, and United Nations Children's Fund (2019) 'Ending child labour, forced labour and human trafficking in global supply chains', available at: [https://www.ilo.org/wcmsp5/groups/public/-/ed\\_norm/---ipec/documents/publication/wcms\\_716930.pdf](https://www.ilo.org/wcmsp5/groups/public/-/ed_norm/---ipec/documents/publication/wcms_716930.pdf)

<sup>19</sup> UN Committee on the Rights of the Child (2009) 'General comment No. 12 (2009): The right of the child to be heard', CRC/C/GC/12, paras. 122 and 127 – 131.

<sup>20</sup> Ibid, paras. 132 – 134.

<sup>21</sup> Voices Database, the Rights Lab, University of Nottingham, available at: <http://www.antislavery.ac.uk/solr-search?facet=collection:%22VOICES:+Narratives+by+Survivors+of+Modern+Slavery%22>

## 6 Consultation Paper Question Five: How can the 2020 Strategy support a stronger emphasis on evidence and research to tackle human trafficking and modern slavery in the Indo-Pacific region?

- 6.1 As highlighted in ALHR's submission in response to the Public Consultation Paper on the 2020-24 Plan, the quality of in-depth research and analysis depends on available data.<sup>22</sup> ALHR continues to encourage the Australian Government to share information and data with other relevant bodies and governments to foster the existing collaborations, including through the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*.
- 6.2 The International Organization for Migration and the World Health Organization have both identified the lack of sufficient and reliable data as a major impediment in guiding the development and implementation of national, regional and international programmes addressing human trafficking.<sup>23</sup> ALHR notes that the data collected nationally poses difficulties when comparing various jurisdictions due to different definitions and recording practices.
- 6.3 ALHR recommends that the Australian Government encourages other countries, including in the Indo-Pacific region, to work towards developing a shared comprehensive database compiling of available national statistics or, at a minimum, fosters collaboration in producing comparable statistical data on human trafficking and modern slavery.**
- 6.4 ALHR notes that using multi-source data on identifying survivors through establishing a National Referral Mechanism, such as those in the United States of America, the United Kingdom and the Netherlands, allows for various government agencies and non-governmental organisations to collate data in a more systematic manner. ALHR submits that the benefits of such multi-agency databases are multifold, including better identification of victims as well as assistance in estimating the prevalence of human trafficking and modern slavery. ALHR acknowledges the Australian National Roundtable on Human Trafficking and Slavery, established in 2008, and welcomes the establishment of the Modern Slavery Act Expert Advisory Group in early 2020, as important mechanisms in providing stronger evidential footing in the global action against human trafficking and modern slavery.
- 6.5 Based on the experience in Australia and elsewhere, **ALHR recommends that the Australian Government encourages other countries in the Indo-Pacific region to set up collaborative mechanisms between governmental authorities, civil society, the business sector and international organisations to assist in data-sharing to facilitate the proper identification and provision of services and assistance to survivors of human trafficking and modern slavery.**

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<sup>22</sup> ALHR (2020) Submission on the Public Consultation Paper on the National Action Plan to Combat Modern Slavery 2020-2024, sec. 5.

<sup>23</sup> See, eg, International Organization for Migration (2008) 'Human Trafficking: New Directions for Research'. Geneva: IOM; World Health Organization (2012) 'Understanding and addressing violence against women. Human Trafficking'. WHO/RHR/12.42, available at: [apps.who.int/iris/bitstream/10665/77394/1/WHO\\_RHR\\_12.42\\_eng.pdf](https://apps.who.int/iris/bitstream/10665/77394/1/WHO_RHR_12.42_eng.pdf).



## 7 Other Matters

- 7.1 ALHR notes that the offence of organ trafficking is a modern slavery offence pursuant to section 4 of the *Modern Slavery Act 2018* (Cth). This is an important inclusion in Australia’s modern slavery legislation.
- 7.2 Despite organ trafficking being a modern slavery offence, ALHR notes that organ trafficking is not included in the definition of modern slavery offences in the *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities*, and on the Department of Home Affairs’ website where it defines “modern slavery”. Nor is organ trafficking mentioned in the 2016 Strategy.
- 7.3 Given organ trafficking occurs in the Indo-Pacific region, including the heinous crime of forced organ harvesting of prisoners of conscience in China,<sup>24</sup> **ALHR recommends that the Australian Government should include the offence of organ trafficking in its policy documents, including the 2020 Strategy, whenever a definition of modern slavery is provided, particularly where such documents are made publicly available.**

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If you would like to discuss any aspect of this submission, please email me at: [president@alhr.org.au](mailto:president@alhr.org.au)

Yours faithfully

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### ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

*Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.*

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<sup>24</sup> See the findings of the China Tribunal (2019), available at: <https://chinatribunal.com/>.