



Submission No 7

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Slavery Links Australia Inc

Submission

on

Slavery and slavery like conditions: Slavery policy

to the

Joint Standing Committee on Foreign Affairs, Defence and
Trade, Human Rights Sub-Committee

from

Policy Working Group

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The discourse around modern slavery has been framed around the Atlantic slave trade and emancipation in the Americas. Australia needs to think through these issues afresh. Supposed ‘international practice’ based on the Atlantic’s past will not work in Australia’s region in the present.

- We live in a region where *systems* of slavery persist, systems that trap whole groups or classes of people
- Slavery is about *ownership*. Australia needs to bring anti-slavery work ‘up to speed’; to match the investment that has been made over the past decade against trafficking scams. Trafficking is exploitation, not ownership.

Slavery Links has done that re-thinking and published the result in Australians and modern slavery (300 pp). This submission draws on that work.

Recommendation (Section 3)

We recommend principles to guide best practice action

Recommendation (Section 5)

To address slave-making systems, we recommend best practice that would be systemic, targeted, holistic and bottom-up

Recommendation 3

We respectfully request the Joint Committee to consider how the slave-making systems of child trading, forced marriage and peonage might be included in the Bill

Recommendation 4

We ask the Joint Committee to consider how consent can be framed so that the parties to marriage give consent which expresses their own interests as individuals

Recommendation 5

We ask the Committee to consider how the Bill can make explicit that a married person may not be transferred to another or inherited

Recommendation 6

We ask the Committee to establish a framework for program development to facilitate processes for change to assist communities to differentiate arranged marriage from forced marriage and servile marriage

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There are two essential points.

1. Slavery is not trafficking.

Consulting about *trafficking* will not illumine *slavery*. The issues are different. The solutions are different. The stakeholders are different. In this submission we spell out several reasons why policy needs to be relevant to *slavery*

2. It is necessary to implement the Supplementary Convention 1956.

Australia acquired an obligation to implement upon signing the Convention. Moreover, the Supplementary Convention identifies that *systems* of slavery persist. in the Asia Pacific. This ‘systems’ insight offers a real chance to get to the heart of the matter and develop solutions that will likely be effective

We request an opportunity to give oral evidence to the Committee in relation to slavery and the **policy issues** covered in this submission.

1. Preamble

1.1. Scope of this submission

This submission is about slavery policy. It refers to the Supplementary Convention 1956; to the slavery offences in Division 268 and Section 270 of the Commonwealth Criminal Code Act 1995 (Criminal Code); and to slavery as it is being contemplated.

1.2. General endorsement of the intent of the draft legislation

Slavery Links endorses action which will bring Australian laws into harmony with our obligations under the anti-slavery Conventions. The Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012 is one more step along the way and we support the continuation of such steps.

However, some aspects of the Convention are not covered in the Bill. Also, program development and other changes will be required to develop policy around the Bill, when passed. Because slavery is a distinct phenomenon, distinct slavery-oriented policies will be needed, to guide how Australia’s anti-slavery work will evolve.

1.3. Sources: Australians and modern slavery

This submission has been drawn from information compiled for the book Australians and modern slavery which was published by Slavery Links Australia Inc in 2011.

1.4. The core message

The submission has one core message: that slavery is to be recognised as a distinct phenomenon to be discerned, understood and dealt with as *slavery*, not as something else. Being realistic in that way offers the prospect of effective responses.

2. What is the problem to be solved?

Slave-making systems allow slave-making to persist

There are *systems* of slavery in our region which have persisted for generations. These slave-making systems were identified by (at least) the British in South Asia during the late 1800s and defined (in part) in the Supplementary Convention 1956 (see below). We discuss each system in Section 6 of this submission.

There are a number of slave-making systems in the world. Some are not talked about much (temple slavery, for example). Four systems are defined in the Convention:

- Child trading
- Debt bondage
- Forced marriage
- Peonage (a form of serfdom)

Slave-making systems harvest persons from whole *groups or classes* of people who have been made vulnerable; groups who have been excluded, marginalised or set aside on the basis of caste, disability, gender, race, religion or other condition.

How have these systems been able to persist? They have been driven by persistent forces or 'engines': poverty, powerlessness, crime / corruption and conflict:¹

- The engine of **poverty** refers to an economic system that allows *groups or classes* of people to be trapped in cycles of poverty that are passed from parent to child
- The engine of **powerlessness** refers to a social system that consigns whole *groups or classes* of people to be subordinate, subject to whim, marginalised, set apart from the 'rules' that supposedly govern people in mainstream society
- The engine of **crime-and-corruption** refers to a justice system that is not accountable in the sense of being remote and aloof from the needs and interests of whole *groups or classes* of people. Where policing and business systems are corrupted then crimes against excluded groups likely go unreported and or unpunished. These conditions allow vulnerable people to be trapped
- **Conflict** might be overt and war-like; or obscure and operating through distortions in the market (crony capitalism) or distortions in decision-making systems (elite capture of resources). Some people benefit by virtue of belonging to a particular *group or class*; other *groups or classes* lose out or pay the price

Each and all of these forces need to be challenged, to make it possible to suppress slave-making systems (see Section 3.3 and Section 5). Systemic **poverty** is rooted in the economic system. **Powerlessness** is rooted in the social system. **Crime / corruption** can become rooted in the justice system. Cronyism is one form which distorts **conflict** management. Such conflict can occur in any of a society's systems for decision making.

3. We recommend principles to guide ‘best practice’ action

It is not sufficient to assert that slavery is “evil”; or to express moral outrage about slavery. What guidelines do we have; and what basis is there for someone to act?

3.1. The human rights principle is paramount

The Australian Human Rights Commission provides a succinct basis for acting in accord with a universal principle of human rights. Ten words say it all:

“Every person has equal rights, just by being born human”

3.2. Use the international definition

Slavery is a global problem. The Supplementary Convention is the relevant treaty framework for addressing slavery. The Convention allows us to comprehend and interpret the forms of slavery that are referred to in other international treaties.

3.3. Develop programs that address the real *systems* problem

To be effective, an anti-slavery program would need to address each and all four of the ‘engines’ that drive slave-making *systems* (see Point 5), that is:

- Poverty, *and*
- Powerlessness, *and*
- Crime / corruption, *and*
- Conflict

3.4. Rely on *evidence of people’s experience*

Start by developing an understanding of the people who have been subject to or have experience of slave-making systems. Gather evidence about that experience, from the people themselves. In particular, avoid an overlay of western ideas. For example:

- The ancient system of child trading (see Section 5 below) is not the same as the recently-defined phenomenon that we call trafficking
- Large numbers of people in the Asia Pacific who are child labourers or child soldiers or debt slaves or forced labourers are in effect not moved across a border. They are enslaved in a particular place, often quite close to home

3.5. Make action relevant to people’s *experience*

Do start by understanding the forces that have trapped people (the forces we call the ‘engines of slavery’). Do develop legal instruments and management structures to encapsulate the experience of slavery. Existing management structures may need to change (see the Submission from Slavery Links Implementation Working Group).

3.6. Who benefits? Measure success according to experience of the people who are affected

Donor countries and NGOs want to be accountable for funds spent. Where slavery is concerned the principal accountability should be to the affected community. The essential test is the old Roman test: '*cui bono*' (i.e. who benefits: See Section 5 and the Chart that refers to measures of success at SEWA).

3.7. Community development principles are essential guides

People in the at-risk groups have been excluded, they have been **disempowered**. So it makes sense to work (mostly) from the bottom-up, to change power relations. In [Australians and modern slavery](#) we address the key questions as follows:²

- Who discerns? Who decides? Who acts?
Ensure that former slaves have agency in their process of emancipation
- Who benefits? Whose interests are being served? Who measures that? Express the interests of communities. Enable donors to be accountable to communities
- Whose values are being expressed?
Respect the right of people to feel their way, to decide, to be heard; to take time
- Spirals of change
There are ways to connect human rights at local, national and international level

3.8. Build capability through (special) economic development

Generalist programs benefit the social and economic mainstream. Slaves are excluded from the mainstream and so anti-slavery programs need to specialise

3.9. Principles of integrity and transparency also apply

The engines of slavery include **crime / corruption**. The obverse may be integrity and transparency. Principles of human rights and integrity relevant to slavery include:

- Judicial integrity (The Bangalore Principles)
- Public trust in business (the United Nations Global Compact)
- The UN Convention against Corruption (UNCAC)
- The OECD Anti-Bribery Convention
- The standards and principles re bribery as used by Transparency International

While good governance is important, an effective anti-slavery program would need to deal also with **poverty** and **powerlessness** and **conflict management**, each of them and all together. Why? Because the engines of slavery work in a summative way. Addressing one aspect won't change the other three engines.

4. What are the legal bases for action?

Slavery has its own legal definition because it is a distinct phenomenon. Slavery has certain causes and processes which are to be addressed by slavery policy (Point 5).

4.1. Slavery is a crime against humanity

Slavery is about *ownership*. Ownership sets slavery apart from violence, abuse and exploitation. There is no ‘continuum’ of exploitation. Ownership is a change of state, from free to unfree. Ownership is what makes slavery a crime against humanity.

4.2. Where is slavery defined, internationally?

Freedom from slavery is embedded in the Universal Declaration of Human Rights (UDHR).³ It is also mentioned in Article 8 of the International Convention of Civil and Political Rights (ICCPR).⁴ Yet it is only by reading the Supplementary Convention 1956 that any meaningful understanding can be given to Article 8 of the ICCPR. The Supplementary Convention⁵ defines slave and slavery in terms of *ownership*.⁶

4.3. Where is slavery defined, in Australia?

In Australia, slavery is defined in terms of ownership. Slavery in war is described by Division 268 of the Criminal Code; other slavery offences are described in Section 270. There are some changes in the wind, as expressed in the Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012.^{7,8,9}

Slavery Links believes that Australia is obliged to implement the Supplementary Convention through Section 270 of the Criminal Code.

4.4. “All Forms of Slavery”: What are they?

The so-called Contemporary Forms of Slavery^{10,11} are identified in treaties made by the International Labour Organisation and the United Nations. If we add slavery in war to the list of Contemporary Forms (as it stands today) we get eleven forms of modern slavery.¹² Some treaties refer to slavery only by implication. It is necessary to tease out what refers to violence, abuse and exploitation and what refers to slavery.¹³

So there are two lists – *systems* of slavery in the Supplementary Convention and Contemporary *Forms* at the Human Rights Council. We can reconcile the lists thus:

- All persons who have been trapped by a *system* of slavery (as defined in the Supplementary Convention) are owned, they are slaves¹⁴
- Persons in one of the Contemporary Forms are oppressed or exploited, but not necessarily owned. For example, not all child workers are slaves

5. What is a policy for “International best practice to address all forms of slavery (and) slavery like conditions?”

5.1. To address slave-making, we recommend best practice that would be systemic, targeted, holistic and bottom-up

The Contemporary Forms of Slavery are symptoms or expressions of the underlying condition of *ownership*. Where slave-making *systems* exist, vulnerable people can be harvested into slavery. The ‘context’ for harvesting may be debt or marriage or child trading or peonage (serfdom). Slaves may be found in any sort of work or workplace. The form of work or exploitation does not signify. Slavery is defined in terms of *ownership* and the essential challenge is to address the slave-making *systems* that enable *ownership* to persist.

Best practice needs to address what really happens in slave-making systems.¹⁵

- Best-practice action needs to be taken at system level
Where slave systems are operating, whole groups or classes of people are excluded from benefits of the economic system, the social system, the justice system and systems for conflict management. Best-practice action should bring change for these groups
- Specialist programs are required
Generalist programs won’t reach excluded groups, the people who have been trapped by slavery or who are vulnerable
- Action should be holistic
The four engines of slavery operate in a summative way. So best practice action would be *holistic*: it would deal with each and all four of the ‘engines’ that drive slave-making systems, that is:
 - **Poverty, and**
 - **Powerlessness, and**
 - **Crime / corruption, and**
 - **Conflict**

Programs that have only one aspect (such as **poverty** or **crime**) should be put into harness with projects that deal with the remaining engines of slavery

- Uphold the ‘agency’ of slave-vulnerable people
Best practice would uphold the ‘agency’ of slave-vulnerable people: forget top down expert models and slogans such as ‘engagement’. Work bottom-up with complementary change in social structures and process.
- Measure what is valued by affected people
Monitoring and evaluation would measure how best practice is affirming the

development of 'agency' by the people who have been exposed to slavery. The chart below describes steps taken in a program for women in India.

These recommendations are not theory. They derive from case examples in south Asia, where international funding has supported bottom-up work. The examples are given in Australians and modern slavery (Section 5 and Section 6 of the book).

In south Asia, practitioners rather than academics have done the work in relation to empowerment and 'agency' in the process of emancipation from systems of slavery. However there is a tried-and-tested approach that was developed, by the late Professor Connie Benn in Australia in the 1980s, in the context of poverty.

Professor Benn's program proposed a sequence of empowerment commencing with access to resources: people who have control over their access to resources can proceed to develop control over their relationships. Relationships are the context in which people acquire information and work out what is relevant or useful to them. Having developed control over resources, relationships and the information they need to manage their lives, people are better able to learn how to take control over the decisions that affect them and their communities.

Such a sequence of emancipation and agency was used by SEWA, the Self Employed Women's Association in northern India. For the present Submission, the important point to note is that measures used to evaluate the SEWA program reflected the needs and interests of the women themselves. The chart is below:

The Eleven Questions of SEWA :

1. Have more members obtained more employment ?
2. Has their income increased ?
3. Have they obtained food and nutrition ?
4. Has their health been safeguarded ?
5. Have they obtained child-care?
6. Have they obtained or improved their housing ?
7. Have their assets increased ? (e.g. their own savings, land, house, work-space, tools or work, licenses, identity cards, cattle and share in cooperatives; and all in their own name.
8. Have the worker's organisational strength increased ?
9. Has worker's leadership increased ?
10. Have they become self-reliant both collectively and individually ?
11. Have they become literate?

Questions 1 to 7 are linked to the goal of full employment while 8 to 11 are those concerned with SEWA's goal of self reliance. However each of these are interconnected to each other.

The web page Goals of SEWA can be found at:
<http://www.sewa.org/>

© Chart from:
Australians
and modern
slavery, P 141

6. How would ‘best practice’ address systems of slavery

Obviously there is no ‘one-size-fits-all’ policy. Slavery can express itself differently in each country and culture. Yet there are some basic steps to be taken.

6.1. All four slave-making systems should be included in the Bill

The draft Bill does not cover child trading or peonage – systems of slavery that are defined in the Supplementary Convention. The draft Bill does refer to the slave-making system of forced marriage, but covers it only partially. Slavery Links asks the Committee to consider that Australia is obliged to address these systems.

Recommendation 3

We respectfully request the Joint Committee to consider how the slave-making systems of child trading, forced marriage and peonage might be included in the Bill

To be specific, the apparent gaps are as follows:

6.2. Child trading

Child trading is known to occur in our region. As the UN Office of High Commissioner for Human Rights points out, profits are to be made by the illicit transfer of children from poor homes to rich.¹⁶

Child trading is not the same as trafficking. Child trading is an ancient system whereby poor families placed children in the hope of keeping them fed and housed.

Child trading is defined in terms of a child being placed by a parent or guardian. If a child is removed or relocated, a parent does not necessarily have knowledge of actions taken by a guardian. Further, a guardian may be remote or relatively powerful and able to obscure or obfuscate the child’s situation. Stories of child trading are not limited to China, India and poorer Asian countries. A recent case in Pennsylvania (USA) showed that even a Court-based position of guardian *in loco parentis* can be abused for financial gain.¹⁷ Australia, too, may be involved.¹⁸

While children are notionally protected from movement between countries, several countries in Australia’s region have not signed the Hague Conventions. There have been news reports of children brought to Australia and adopted apparently in good faith but where a child appears to have been traded before being entered into the inter-country adoption process. In Slavery Links’ submission, child trading should not be ignored. Australia is required to implement the Convention it signed.

6.3. Peonage (or serfdom)

Peonage amounts to serfdom. It is a condition of being tied to the land. In modern times peonage can be seen as a relict part of Spanish colonial administrations. It is to be found, in effect, in countries such as the Philippines.

In *R v Wei Tang*,¹⁹ comments from the Bench in May 2008 indicated that the High Court was not disposed to consider peonage as an issue in that case.

However in 2012, four years after *Wei Tang*, Australia imports numbers of so-called skilled labourers from the Philippines; and we need to come to grips with the forces that may be applied to these workers by interests from their home country.

It appears likely that the forces attached to serfdom can express ownership at a distance, just as the forces attached to a debt bond can do. Australian law needs to take account of these forces.

6.4. Forced marriage: Three limbs need to be recognised

Unlike child trading and peonage, forced marriage is mentioned in the Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012. While the Bill uses the term 'forced marriage' it may not be clear to a reader just what part(s) of the Supplementary Convention are and are not being covered.

Forced marriage is defined in the Supplementary Convention. It is not defined in any of the instruments listed in Section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. It is therefore essential to have regard to the Supplementary Convention if Australians are going to meet our international obligations as regards slavery.

6.4.1 A three-limb definition in the Supplementary Convention

In our submission the 1956 UN Convention against slavery should be the reference point for Australian law in relation to forced marriage. The Supplementary Convention has three limbs. It requires states to ban any practice where:

- ➔ A woman without right to refuse is promised or given in marriage
- ➔ (Others) have the right to transfer her to another person
- ➔ A woman on the death of her husband is liable to be inherited by another

These limbs refer to real-life customary or cultural practices that have developed in circumstances where there is no access to what Australians would regard as social security for women, wives, mothers or widows; where polygamy and temporary marriage are accepted forms; where men are deemed to have paramount custody and property rights in the event of separation or divorce.

These practices need to be addressed. They occur in cultures and communities that are established in Australia / coming to Australia. We submit that cultural ceremonies are likely taking place where women (and men and families) believe they are subject to cultural practices, that cultural rules are paramount.

Forced marriage is upheld by systems of belief that a woman is subordinate, that her identity is not personal but familial. As Justice Spigelman pointed out, there are cultures where women are regarded as property, treated as if owned.²⁰ Moreover, some important countries that represent those cultures have reservations as to international law, on the basis of a belief that women are not equal.²¹

This is not what is required by Australian civil and family law. In our submission, 'women-as-property' is not a situation where cultural relativism can be allowed. We believe that criminal sanction, injunctive relief, protection and community-based change all have a part to play in bringing change in Australia.

6.4.2 The first limb: Consent

The draft legislation deals with the first limb. [Appropriately, the draft Bill does not use genderised language.²²] We ask the Committee to consider spelling out what is meant by 'consent'. In Australia we expect to frame consent in an individual way; we assume that the parties to marriage do consent in the sense of expressing their own individual interests. We can no longer make that assumption.

In a cultural ceremony, 'consent' may take account of the other or wider needs and interests of family or clan. If we intend to protect the parties to marriage we need to ensure that parties understand they are giving consent as individuals, without regard to the needs or interests of family or clan. Further we need to ensure that the role of celebrants supports this (see below). How?

Recommendation 4

We ask the Joint Committee to consider how consent can be framed so that the parties to marriage give consent which expresses their own interests as individuals

6.4.3 The second and third limbs

Regrettably the draft Bill is silent on the question of transfer and inheritance of a party to marriage. The Explanatory Memorandum mentions this, but not the Bill.

The Attorney General's Department has taken the position that the second and third limbs would be covered by the Bill's treatment of servile marriage. We submit that does not address the reality of cultural practices which lead women and families to give a form of 'consent' which admits that that cultural practices will be paramount in the marriage (see below).

Recommendation 5

We ask the Committee to consider how the Bill can make explicit that a married person may not be transferred to another or inherited

Whilst we have made these points to the Legal and Constitutional Committee, perhaps the advice offered by the Attorney Generals Department has not taken account of the real-life encounters that FaHCSIA and other Departments have had.

The notion of a cultural ceremony that displaces civil law is not a hypothetical: At the time that this submission was being finalised on 24 September 2012, The Age newspaper carried a report of a self-appointed religious leader who “began to select spouses for people and recommend divorces”.

6.4.4 Marriage celebrants and parties to the marriage

In order to uphold the primacy of Australian marriage law and family law, we submit that the Committee needs to consider whether a civil or faith-based celebrant authorised under Australian law should be required to give explicit guidance as to three things that may not be apparent to the parties in a cultural ceremony:

- The individualised meaning of consent,
- The application of civil law to the marriage; and
- The application of family law in the event of separation.

6.4.5 Community engagement and community-based change in relation to forced marriage

When we seek community based change, we need to address ourselves to the community. Lawyers are not the primary audience.

Recommendation 6

We ask the Committee to establish a framework for program development to facilitate processes for change to assist communities to differentiate arranged marriage from forced marriage and servile marriage

As we indicated above, program development will be required to implement the Bill, after it has passed. Criminal sanctions, individual case-finding and victim support are important actions to take on an individual scale.

These need to be complemented and supported by community-based change.

Members of the Committee might refer to examples and case studies in Australians and modern slavery (see Note 5); or we can give oral evidence on this point if that is preferred.

It needs to be made clear to Australians generally and to cultural communities that cultural marriage is not marriage within Australian civil law, it is unlawful under the Conventions to which Australia is a signatory; and that Australia’s treaty obligations require this to be dealt with for all in Australia. These points need to be developed as well with potential and actual individual victims.

In our view, the current Bill could be strengthened with respect to forced marriage; and should be extended to include child trading and peonage (serfdom).

¹ This summary draws on Australians and modern slavery Pp 88 – 107 where we discuss the engines of slavery; and the means of control which may be used to harvest slaves and to keep them trapped

² In Section 5 of Australians and modern slavery we consider case-study examples and then set out the community development principles to be applied in anti slavery work (see the case studies, Pp 115 – 137; and the principles Pp 138 – 145 in the book)

3 GA Resolution 217A (III), UN Doc A/810 (1948)

4 Article 8 of the ICCPR states:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited
2. No one shall be held in servitude

5 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September, 1956

6 The Supplementary Convention on (see Note 9) Article 7 reads:

For the purposes of the present Convention:

(a) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status

7 The text of the Bill can be found at:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4840_first-reps/toc_pdf/12110b01.pdf;fileType=application%2Fpdf

8 The text of the Memorandum used for this Submission was found at:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4840_ems_e18ea7e8-91f4-4c8d-958c-bddb635b505a/upload_pdf/369090.pdf;fileType=application%2Fpdf

9 Chamber, 30 May 2012, Hansard Pp 6225-6227. The text can be found at:

http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/4a17e30d-c43b-48b9-83ed-4280fc00314c/0041/hansard_frag.pdf;fileType=application%2Fpdf

10 Weissbrodt, David (2002) Abolishing Slavery and its contemporary forms, Report from Anti-Slavery International and David Weissbrodt to UN High Commission for Human Rights, HR/PUB/02/4

11 United Nations, Office of High Commissioner for Human Rights (n.d.) Contemporary forms of slavery, Fact Sheet 14. Go to: www.ohchr.org/documents/publications/Fact-Sheeten.pdf

12 Eleven forms of contemporary slavery are:

- Born into slavery
- Child labour
- Child soldiery
- Child trading
- Debt bondage
- Forced labour
- Forced marriage
- Human trafficking
- Labour trafficking

-
- Organ trafficking
 - Slavery in war.

13 Some 43 pages of Australians and modern slavery are devoted to untangling the gaps and overlaps between the conditions covered or not covered by these treaties

14 The systems of slavery identified in the Supplementary Convention 1956 are:

- Child trading
- Debt bondage
- Forced marriage
- Peonage (a form of serfdom)

15 What really happens is set out in the book Australians and modern slavery by Roscoe Howell (Slavery Links, Brighton). Section 4, Section 5 and Section 6 of the book include case studies from South Asia which demonstrate what we mean by effective community based anti-slavery work.

¹⁶ To quote the UN Office of the High Commissioner for Human Rights, Fact Sheet No. 14 Contemporary Forms of Slavery:

“Unscrupulous go-betweens have found that large profits can be made by arranging the transfer of children from poverty-stricken homes to people with means ...[it] takes on the character of trading in children.”

Go to: www.ohchr.org/Documents/Publications/Factsheet14en.pdf

¹⁷ David Stout (2011) Pennsylvania Judge in “Cash for Kids” Scandal Sentenced to 28 Years, Main Justice, August 11, 2011, Go to: <http://www.mainjustice.com/2011/08/11/pennsylvania-judgein-cash-for-kids-scandalsentenced-to-28-years/> Cited in Australians and modern slavery, Page 49. Extract in the book used with permission from Mary Jacoby of Main Justice

¹⁸ On 22 and 29 August 2008 the Herald Sun reported that “30 children kidnapped in India were sold to an adoption agency which farmed them out to parents. 13 are in Australia.” Indian sources commented too. See http://bharatsite.com/australia/2008_08_01_archive.html

¹⁹ R v Wei Tang can be found at [2008] HCA 39; 82 ALJR 1334. Go to: <http://www.austlii.edu.au/au/cases/cth/HCA/2008/39.html>

R v Wei Tang is often referred to as a trafficking matter or (mis)used as a case that bolsters arguments for an anti-trafficking frame of action. In fact Wei Tang was about slavery. Slavery is about ownership. Trafficking is about exploitation, where so much deception is used that no meaningful consent can be given. It is Slavery Links’ policy not to conflate slavery (ownership) with trafficking (exploitation).

In Australians and modern slavery we show that many slaves are enslaved ‘in place’ but not trafficked

²⁰ Hon J J Spigelman AC (2010) Violence Against Women: The Dimensions Of Fear and Culture, Inaugural Address to the Law, Governance And Social Justice Forum, Faculty Of Law, University Of New South Wales, Sydney, 15 April 2010

Also: Spigelman (2010b) continued the theme of relationship in his article ‘The forgotten freedom: Freedom from fear’ in International and Comparative Law Quarterly, Vol 59, July pp 543-570

²¹ Spigelman points out two flaws in CEDAW, as follows:

- A). CEDAW makes no reference to violence. Nor to acute forms of violence such as honour killings.
- B). Bangladesh, Egypt and Libya opt out in part: “The Government ... of Bangladesh does not consider as binding upon itself the provisions of Articles II ... as they conflict with Sharia Law based on the Holy Quran and Sunna”

²² Appropriate because in Britain some 15-17 per cent of persons seeking refuge from forced marriage were men. Both parties suffer and families are diminished when forced marriage occurs

Submission

on

Slavery and Slavery-like Conditions: Implementation issues

to the

Joint Standing Committee on Foreign Affairs, Defence and
Trade, Human Rights Sub-Committee

from

Implementation Working Group

Slavery Links Australia Inc

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September 2012

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EXECUTIVE SUMMARY AND RECOMMENDATION

Recommendation

We ask the Joint Committee to consider how best practice anti-slavery policy can overcome the barriers to implementation that we identify in this submission. We commend twelve action steps in particular, as follows:

Action 1

We ask the Joint Standing Committee to consider that Australia could provide the resources required to strengthen action by the Special Rapporteur for slavery

Action 2

We respectfully request the Joint Standing Committee to encourage the Joint Committee on Human Rights to develop expertise, early in its life, with regard to slavery and the Supplementary Convention

Action 3

We ask the Joint Committee to consider that the Attorney General does have discretion; and that what is to be included in Australia's report to the Universal Periodic Review is a matter for the Attorney General. We ask for slavery to be included in the 2015 Universal Periodic Review.

Action 4

We ask the Committee to consider which of these proposals (and other necessary changes) could be funded within the stricture of 'no new funds' announced by the Attorney General; and to identify where new funds would be required and or where there may be opportunities to re-deploy 'victim of crime' funds

Action 5

We ask the Joint Committee to consider how priorities of the Australian Research Council and the Australian Institute of Criminology can take account of slavery in Australia; and how resources can be found to fund evidence-based and rigorous research by community associations, academics, PhD projects and government

Action 6

We ask the Joint Committee to consider how evidence-based research programs of community associations can be encouraged, supported and utilised by government

Action 7

We ask the Joint Committee to consider ways to develop and strengthen the academic component of Australia's slavery research capacity

Action 8

We ask the Joint Committee to consider the benefits of continuing the human rights education grants framework, to be funded at a level sufficient to support ongoing, evidence-based education and change-making

Action 9

We ask the Joint Committee to consider the benefits of community-based responses to slave-making systems; and to encourage government in supporting community-based change

Action 10

We ask the Joint Committee to consider the scope and resources for academic research and formal courses of education and training in relation to slavery, including graduate and post-graduate studies

Action 11

We ask the Joint Committee to consider ways in which prosecutors and court officer can be informed about the sometimes obscure ways in which slavery cases may arise

Action 12

When considering what might constitute best practice beyond Australia, we ask the Joint Committee to take account of the formal and informal relationships, processes and structures shown in Chart 2 of this submission

We refer the Committee to the submission from the Slavery Links Web Portal Working Group; whose proposal would address these coordination problems

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There are two essential points.

1. Slavery is not trafficking.
Consulting about *trafficking* will not illumine *slavery*. The issues are different. The solutions are different. The stakeholders are different. In this submission we spell out several ways in which processes for implementation need to be different
2. It is necessary to implement the Supplementary Convention 1956.
Australia acquired an obligation to implement upon signing the Convention. Moreover, the Supplementary Convention identifies that *systems* of slavery persist. in the Asia Pacific. This insight offers a real chance to get to the heart of the matter and develop solutions that will likely be effective

We request an opportunity to give oral evidence to the Committee in relation to slavery and the **implementation issues** covered in this submission.

1. Preamble

1.1 Scope of this submission

This submission is about implementation. It refers to the Supplementary Convention 1956; to the slavery offences in Division 268 and Section 270 of the Commonwealth Criminal Code Act 1995 (Criminal Code); and to slavery as it is being contemplated.

1.2 General endorsement of the intent of the draft legislation

Slavery Links endorses action which will bring Australian laws into harmony with our obligations under the anti-slavery Conventions. The Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012 is one more step along the way and we support the continuation of such steps. However, some aspects of the Convention are not covered in the Bill. Also, program development and other changes will be required to implement the Bill, when passed.

1.3 Sources: Australians and modern slavery

This submission has been drawn from information compiled for the book Australians and modern slavery which was published by Slavery Links Australia Inc in 2011.

1.4 The message

The submission has only one message: that slavery is to be recognised as a distinct phenomenon to be discerned, understood and dealt with as slavery, not as something else. What we implement and how we do it are important considerations. Being realistic in that way offers the prospect of effective responses.

2. What is required for treaty monitoring?

Slavery is a global phenomenon. Responding to it requires a global perspective. There are gaps. So, the question of treaty monitoring is an important one. [The gaps are accidents of history. We consider the research implications in Point 4.2 below.]

2.1 Australian support for the *slavery* Special Rapporteur

There is no treaty monitoring body for the Supplementary Convention at the United Nations. There is a Special Rapporteur for slavery. She works in relation to the so-called 'Contemporary Forms of Slavery'¹, but, in effect, she is not resourced. This weakens the effort that is required to deal with a serious global issue. For example Weissbrodt² proposed using the anti-exploitation mechanisms from labour treaties as a substitute for slavery monitoring.³ Slavery is *ownership*, not exploitation.

Australia seeks to boost its aid budget and effectiveness. In the short to medium term Australia could support the Rapporteur for slavery to develop an effective treaty monitoring process. In addition to financial support Australia could assist with other resources such as research support; expertise around consultation; and the secondment of staff who have expertise in program development, social marketing or other non-legal skills, which exist in portfolios such as Health and FAHCSIA. We expect that setting the parameters for a slavery program would be a high priority.

Action 1

We ask the Joint Standing Committee to consider that Australia could provide the resources required to strengthen action by the Special Rapporteur for slavery

2.2 Australian Joint Committee on Human Rights

Treaty monitoring also occurs within Australia, enabled by the Human Rights (Parliamentary Scrutiny) Act. The Act defines so-called core human rights treaties.

Regrettably the Act excluded the Supplementary Convention from the list of core human rights treaties to be considered. This appears to deprive Australians in two ways.

- Firstly it deprives us of the wisdom embedded in the Supplementary Convention; and does so at the very time that Australian parliamentarians and governments are grappling with how to address the presence of slavery in this country
- Secondly it may have the (possibly unintended) consequence of excluding slavery from up-front consideration by monitoring bodies or processes such as:
 - the Parliamentary Joint Committee on Human Rights
 - the Human Rights Education Grants Framework and or
 - the Universal Periodic Review, next scheduled for Australia at the Human Rights Council in 2015 (see below)

These exclusions would deprive the Parliament and Government of an opportunity to assess just how well Australia is doing in some respects; to strengthen or change direction where required; and to trumpet our success where we can.

Action that might be taken to address this apparent gap in Committee function

On 4 January 2012 the Attorney General issued a media release⁴ which encouraged the Parliamentary Joint Committee to develop its role and expertise early in its operation. It would appear to be consistent with a range of interests for the Joint Committee to be encouraged to engage with the Supplementary Convention.

Action 2

We respectfully request the Joint Standing Committee to encourage the Joint Committee on Human Rights to develop expertise, early in its life, with regard to slavery and the Supplementary Convention

2.3 Australia's Universal Periodic Review (UPR)

Australia to review progress on slavery for the 2015 UPR

The United Nations has instituted a process of Universal Periodic Review. Each country will present its human rights record for a sort of peer review, once every four years. Australia was an early participant in the first round, in 2011; and will participate again in 2015. Slavery Links believes that Australia's solid legislative record should be on display at the United Nations. As an organisation with extensive experience in researching and creating public awareness, Slavery Links also wants to prepare, to assist government and to strengthen consideration of slavery programs.

There is time for Government to plan to include Australia's record on addressing slavery in the next round of the Review. However Slavery Links was surprised to be informed by a Ministerial advisor that it is a matter for the United Nations as to what so-called core treaties are included in the UPR. Let us indicate why we do not agree.

1. We are advised that the list of so-called core treaties has no particular standing as regards deliberations / instruments of the General Assembly. It is an administrative list. The Supplementary Convention 1956 was developed through the Assembly. The Human Rights Council did not exist at the time. We do not agree that the United Nations' human rights process would require one to overlook the Supplementary Convention or the subject of slavery.
2. The advisor's e-mail indicated that only matters listed in the UN core treaties may be covered in the UPR process. The e-mail could be read in three ways:
 - i. On one reading, the Supplementary Convention is not itself one of the so-called core treaties. In this case the subject of slavery would be required to be included in a UPR report by virtue of the reference to slavery in the International Covenant on Civil and Political Rights, ICCPR

- ii. In an alternative reading, based on precedent, matters to be included are defined in a broad way, as indicated by Australia's response to the UPR in 2011. In 2011 Australia's report covered the gamut of social programs that could contribute to human rights in some direct or possibly indirect way. Anti-slavery work would be a relevant social program to include in the UPR
- iii. In a third possible interpretation, Australia's response to the UPR in 2011 leaves no doubt at all that slavery should be included in the 2015 process.

The precedent is that trafficking was included in 2011. Anti-trafficking action is based on a crime protocol, not a human rights instrument. By including this subject, the government admits that exploitation is a matter that impinges on human rights. If exploitation impinges, then surely the more serious form of oppression (ownership) would qualify slavery to be included in the UPR.

Action 3

We ask the Joint Committee to consider that the Attorney General does have discretion; and that what is to be included in Australia's report to the Universal Periodic Review is a matter for the Attorney General. We ask for slavery to be included in the 2015 Universal Periodic Review.

2.4 Universal Periodic Review (UPR) in the Asia Pacific

Australia to invite neighbouring countries to include slavery in their UPRs after 2015

Australia participated in the first round of the UPR, in 2011. Australia provided a 'model' for other countries. Australia seeks to boost its aid budget and effectiveness. In the Asia Pacific as elsewhere, slavery can express itself in particular ways in particular countries and or cultures.

Australia could contribute to regional assessments, understanding and anti-slavery actions by developing a model for slavery self-assessment in the 2015 UPR; and encouraging other countries to apply the model in future rounds of the UPR.

We repeat: there are persistent systems of slavery in the Asia Pacific. In a global economy, local slave-making systems can have an effect regionally. So Australia would benefit from encouraging other countries to address slavery in effective ways.

2.5 Regional web portal

A web portal is required to identify action and harness effort across the region. Slavery Links has developed a model, in conjunction with Swinburne University. We refer to this in the submission from the Slavery Links Web Portal Working Group.

3 Machinery of government required to implement best practice in Australia

Machinery of government would need to be brought into line with the anti-slavery components of the draft Bill. We ask the Joint Standing Committee to consider that the strengthened focus on slavery should be expressed through the following, at least:

3.1 An ‘Ambassador’ (or similar role) for the Supplementary Convention

We ask the Committee to consider the role for an Ambassador to be resourced through the Australian Human Rights Commission to travel Australia and speak to elected members of parliaments and local governments; staff of departments of state; human rights and other interest groups; schools and universities⁵

3.2 Organisation change at the Australian Human Rights Commission

We ask the Committee to consider that the ‘slavery’ function of the Human Rights Commission would be better placed within the human rights remit (rather than the current placement as a gendered function)

3.3 A Round Table and NGO consultation process to be established

The current consultation processes have a trafficking remit and a border control agenda. Consulting about *trafficking* will not illumine *slavery*. The issues are different. The solutions are different. The stakeholders are different. We ask the Committee to consider a slavery Round Table and NGO consultation process

3.4 An Inter-Departmental Committee (IDC) to be established

The current Committee has a trafficking remit and a border control agenda. The comments from the above point apply. We ask the Committee to consider the scope of and mechanism for Inter-Departmental consultation about slavery

3.5 A work unit with an anti-slavery remit to be established

The current unit within the Attorney General’s Department has a trafficking remit and a border control agenda. Paradoxically, this trafficking unit ran the consult-ation about slavery. Not surprisingly some conflation has occurred.^{6,7} Anti-slavery expertise should be developed and acknowledged, with a career path

3.6 Exchange of staff between Attorney General’s, D/FAT and FaHCSIA

We ask the Committee to consider an exchange of staff to be facilitated between Attorney General’s, FAHCSIA and those roles in the Department of Foreign Affairs and Trade (within and beyond AusAID) where trade and development issues intersect with slave-making systems: human rights; governance; programs which

address the ‘engines of slavery’; and the sort of social marketing skills that are applied in social inclusion or health programs

3.7 Program development to be undertaken

The current program framework derives from documents prepared by the UN Office of Drugs and Crime in relation to *trafficking*. Trafficking is not slavery. We recommend that Australians and modern slavery be used as a reference. Slavery Links can assist as well. We ask the Committee to consider program development

3.8 Budget lines to reflect slavery and call forth slavery activity

We ask the Committee to consider the practical impacts of budget processes:

- 3.8.1 In evidence to the Joint Standing Committee on Foreign Affairs, Defence and Trade during July 2011, this writer told of one major NGO which did work on child labour and labour migration; but at the same time asserted that “we do not do slavery”
- 3.8.2 Many NGOs depend on government funds and there are strong incentives to align the NGO’s work with supposed government interests and priorities. Slavery should be included in budget ‘lines’

3.9 Slavery is a crime (against humanity). Fund it accordingly

We ask the Committee to consider that Victim-of-crime’ funds could be found and applied to anti-slavery work

- 3.9.1 To build competence and programmatic action, anti-slavery work needs to be funded in the millions-of-dollars range, as trafficking has been
- 3.9.2 The human rights education fund is paltry, inadequate. It should be grown in size and developed in scope to make specific reference to slavery

Action 4

We ask the Committee to consider which of these proposals (and other necessary changes) could be funded within the stricture of ‘no new funds’ announced by the Attorney General; and to identify where new funds would be required and or where there may be opportunities to re-deploy ‘victim of crime’ funds

We ask the Committee to consider: what is the point of passing an under-funded Bill? Slavery Links commends a form of words to guide the Committee’s thinking:

Slaves are the most marginalised and excluded *people* in the world. Often the *subject* of slavery comes to be marginalised and excluded, as are the *people*. A conscious decision is required to change the priority given to slaves and the subject of slavery

4 Research about slavery and its impact

4.1 Enabling a slavery research program

During two years of consultation about forced marriage, criminal law and the Bill itself, practitioners have pointed to the lack of Australian research about slavery.

We request consideration of the roles of the Australian Research Council (ARC), the Australian Institute of Criminology (AIC) and research by community associations

4.1.1 The Australian Research Council (ARC)

The Australian Research Council parameters need to be changed. At present border control (trafficking) is on the list of national research priorities. This has called forth a number of PhD projects in relation to trafficking. Slavery is not a border control issue; it is not an ARC priority. We ask the Committee to consider how slavery could be identified as an ARC research priority so that funded projects can be established in relation to the four 'engines of slavery' and to issues including anti-slavery education, community and economic development, health, human rights, justice and trade

4.1.2 The Australian Institute of Criminology (AIC)

The Australian Institute of Criminology has conducted several useful projects about trafficking in Australia and the region. However the antecedents, causes, modes and 'solutions' of slavery differ from trafficking. A new and fresh effort will be required.

The AIC research programme is governed by availability of funds and the guidance of its research committee. This writer understands that the AIC has no funds for slavery research; and the remit of the AIC's oversight Committee's does not assign a priority to slavery research. AIC funds are committed ahead and this writer understands that the earliest that AIC could conduct slavery research would be 2015. That is too long.

Action 5

We ask the Joint Committee to consider how priorities of the Australian Research Council and the Australian Institute of Criminology can take account of slavery in Australia; and how resources can be found to fund evidence-based and rigorous research by community associations, academics, PhD projects and government

4.1.3 Member-sponsored research by Slavery Links Australia

We Australians need to think the slavery issue through for ourselves. We cannot usefully borrow from the US and British experience of 200 years ago. To consider how slavery works in this region, Slavery Links has conducted member funded research. This may be a model for other community associations. For example:

- The book Australians and modern slavery by Roscoe Howell (Slavery Links, 2011)⁸
- A paper for the Australian Institute of Judicial Administration, to identify ways in which category error has led to apparent mis-identification of slavery cases⁹

Slavery Links has demonstrated that it is possible to apply a human rights framework to write about slavery in an evidence-based and rigorous way. We ask the Committee to consider how resources can be allocated so that the start made in Australians and modern slavery can be continued and strengthened.

Action 6

We ask the Joint Committee to consider how evidence-based research programs of community associations can be encouraged, supported and utilised by government

4.2 Academic research centres

Slavery Links has encountered instances where it has not been opportune for academics to invest in slavery issues. It appears that current funding arrangements may be having an impact, in the sense that academics' promotions can depend on their number of publications; and publications are assessed on a points system which, ultimately, depends on which topics are to be funded by the Australian Research Council.

This priority-setting has a secondary effect, in that the topic of slavery can tend to be over-looked or forgotten. For example, Joseph's and McBeth's (2010) Human Rights Handbook refers to slavery in the past but in effect ignores modern day slavery. Further, Joseph's chapter on the UN ignored the 1956 Supplementary Convention.

Australia needs solid research on the Convention, its systems approach, its role in Australian CALD and other communities, in trade and in our AID program. Slavery Links has demonstrated that such research can be done. We ask the Committee to consider further development of Australia's academic capacity for slavery research

Action 7

We ask the Joint Committee to consider ways to develop and strengthen the academic component of Australia's slavery research capacity

5 Education and training

5.1 Community based human rights education

Community-based human rights education has been contemplated in the Human Rights Education Grants Framework (Attorney General's Department). The Framework understands that community associations have a role in bringing change. Indeed Slavery Links applied for five grants in 2012, for five distinct projects, to cover aspects of human rights education in relation to slavery in Australia.

Regrettably grants have been small (around \$40,000) and the grants framework had an expected life of only three years (following the national human rights consultation).

Action 8

We ask the Joint Committee to consider the benefits of continuing the human rights education grants framework, to be funded at a level sufficient to support ongoing, evidence-based education and change-making

5.2 The need to by-pass official systems of control on some issues

Community-based systems have energy which can be strengthened and encouraged. Slavery Links has sought funds for human rights education to enable young people to recognise the signs of forced marriage, to differentiate arranged marriage and to protect themselves from being forced

Action 9

We ask the Joint Committee to consider the benefits of community-based responses to slave-making systems; and to encourage government in supporting community-based change

5.3 Broadening qualifications: formal Human Rights (anti-slavery) education

Graduate studies

In the mid-1970s a 'broadening' challenge for Australia was the transformation of local government from a streets-and-drains role, to develop a capacity for human service delivery. Graduate Diploma courses were established to give the process a kick-start. Prior learning and life experience were recognised in order to attract persons of ability from a range of backgrounds.

A similar approach to Graduate studies could be used with respect to slavery, to kick-start the development of a skills base. This would allow a cohort of qualified staff to be grown during the 3 – 5 year period that under-graduate and PhD studies would require to provide staff with more specialised qualifications.

Post-graduate studies

We ask the Committee to consider how to ensure that no one discipline (such as law) captures control of anti-slavery studies. We need work on anti-slavery education, community and economic development, health, human rights, justice and trade.

Action 10

We ask the Joint Committee to consider the scope and resources for academic research and formal courses of education and training in relation to *slavery*, including graduate and post-graduate studies

6 The Court system

In August 2012 Slavery Links presented a paper to the Conference of the Australian Institute of Judicial Administration, to identify ways in which category error may have led to mis-identification of slavery cases.¹⁰ The paper gave eleven examples.

Action 11

We ask the Joint Committee to consider ways in which prosecutors and court officers can be informed about the sometimes obscure ways in which slavery cases may arise.

Experience shows that slavery can permeate social practices and institutions but remain un-recognised by mainstream society and institutions. Even when a situation of slavery comes to official notice, it may be treated as an industrial matter or an issue of work place relations or occupational health.

To counter such problems each of the United Nations High Commission for Human Rights and the International Labour Organisation has developed frameworks and guidelines to assist in recognising the signs of slavery and slave-like practices. For example, to protect migrant workers, the ILO prepared a training manual to raise awareness among labour inspectors of how to recognise the trafficking of migrant labour. This manual is also relevant for court officers.¹¹ Yet we in Australia need to think these issues through afresh, to take account of the *systems* of slavery that persist in our region. These systems have a long reach, over distance and time.

Research needs to be done to measure the extent to which cases coming before the courts have had a component of over-control: ownership and slavery or forcing of work or other relationships. It will be desirable for the Commonwealth to find funds for a [pilot] study by the Australian Institute of Criminology (AIC); and to consider the AIC's assessment of the overall situation.

There are further implications to be considered, as regards the reference in the Bill's Explanatory Memorandum to educating jurors. Explaining matters may lead to longer trials, where there is a need for an expert witness to explain the psychological pressure that slaves may experience. It may be part of the implications of such trials that defence lawyers would want to offer a defence in the form of some sort of duress.

Slavery Links believes that a strengthened program for human rights education of the general public would likely educate potential jurors, before they were called.

Insofar as people who have been trafficked are concerned, the government has provided resources for victim support. However there is an as-yet-unmet need for expertise and resources in support of people who have been trapped by one of the persistent *systems* of slavery; people who come from a class or group that is vulnerable to being harvested.

7 The machinery for implementing best practice beyond Australia

The present submission is about implementation and the machinery for it. There is no ‘one-size-fits-all’ policy. Slavery can express itself differently in each country and culture. Yet there are principles and guidelines that can be followed in many settings; and these are set out in the submission of Slavery Links’ Policy Working Group.

The point we make below is that ‘best practice’ by governments and non-government organisations needs to embrace more than the structures that show up on formal organisation charts. There are informal processes to take into account and other organisations that have an impact even though they do not have a formal role.

Insofar as implementation beyond Australia is concerned, we have already made some points, as follows:

- In Section 2.1 we proposed support be given to the slavery Special Rapporteur, including with regard to setting the parameters for a world slavery program.
- In Section 2.3 we proposed that Australia prepare to include slavery in its 2015 submission to the Universal Periodic Review. In addition, in Section 2.4, we proposed that after 2015 Australia would encourage other countries to include slavery in their UPR submissions.
- In Section 2.5 we noted the proposal for Australia to promote the development of a region-wide web portal in relation to anti-slavery research and action.

7.1 Gaps in the United Nations human rights system

About 30 pages of Australians and modern slavery were spent describing those bits of international systems which appear to have an impact on human rights generally and on slave-making processes in particular (refer to Section 8 of the book). Why devote ten percent of the book to this aspect? Because one needs to be wary of assuming that official structures reflect “what really happens”.

The formal human rights structure of the United Nations is an example. This is illustrated in Chart 1 over the page, entitled “What the UN thinks its human rights system looks like”. The Chart came from two UN handbooks, one intended to assist non-government organisations; and the other for civil society organisations. Such Charts can be taken as a sort of reality. For example (and no criticism is intended) the Joint Standing Committee on Foreign Affairs, Defence and Trade reproduced the Chart in its report dated April 2010.¹² The Chart was used to summarise ‘what we need to know’ about human rights in the UN system. Well, we need to know more than that; and the following charts show why.

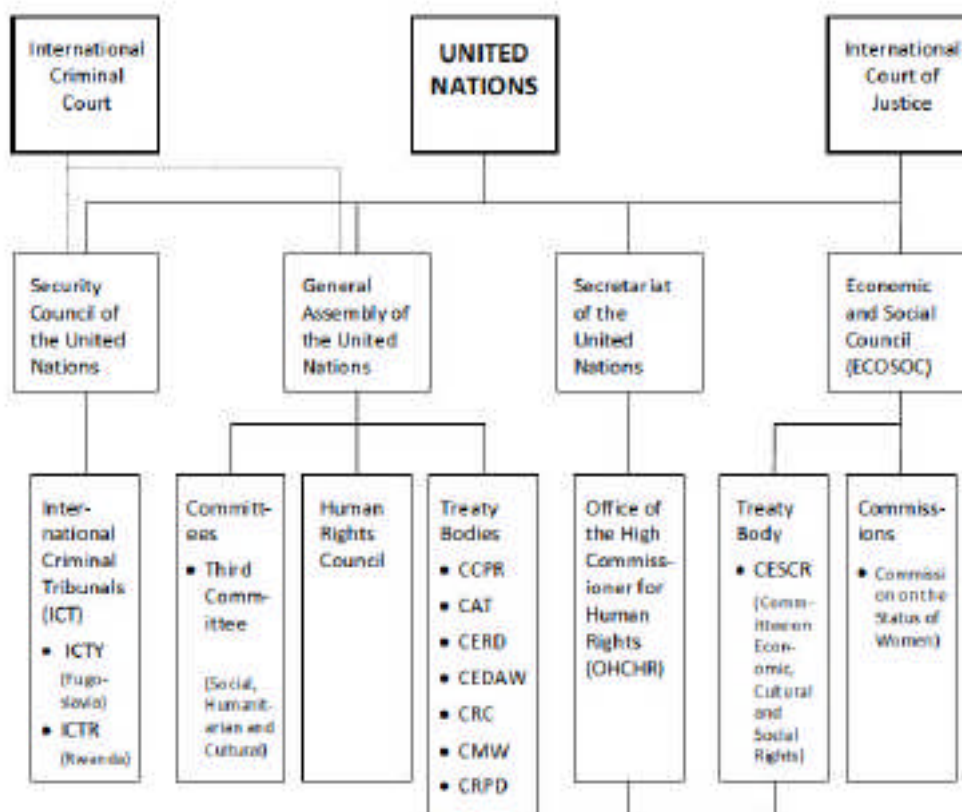
Chart 2 illustrates “What other ‘bits’ actually influence the human rights system”.

Chart 1

© From Australians and modern slavery, P 202

What the UN thinks its human rights system looks like

Source: United Nations Non-Governmental Liaison Services (NGLS), The United Nations Human Rights Systems: How to Make it Work For You, August 2008, p. 21



KEY to Treaty bodies:

- CCPR – Convention on Civil and Political Rights (via the Human Rights Committee)
- CAT – Committee Against Torture
- CERD – Committee on the elimination of racial discrimination

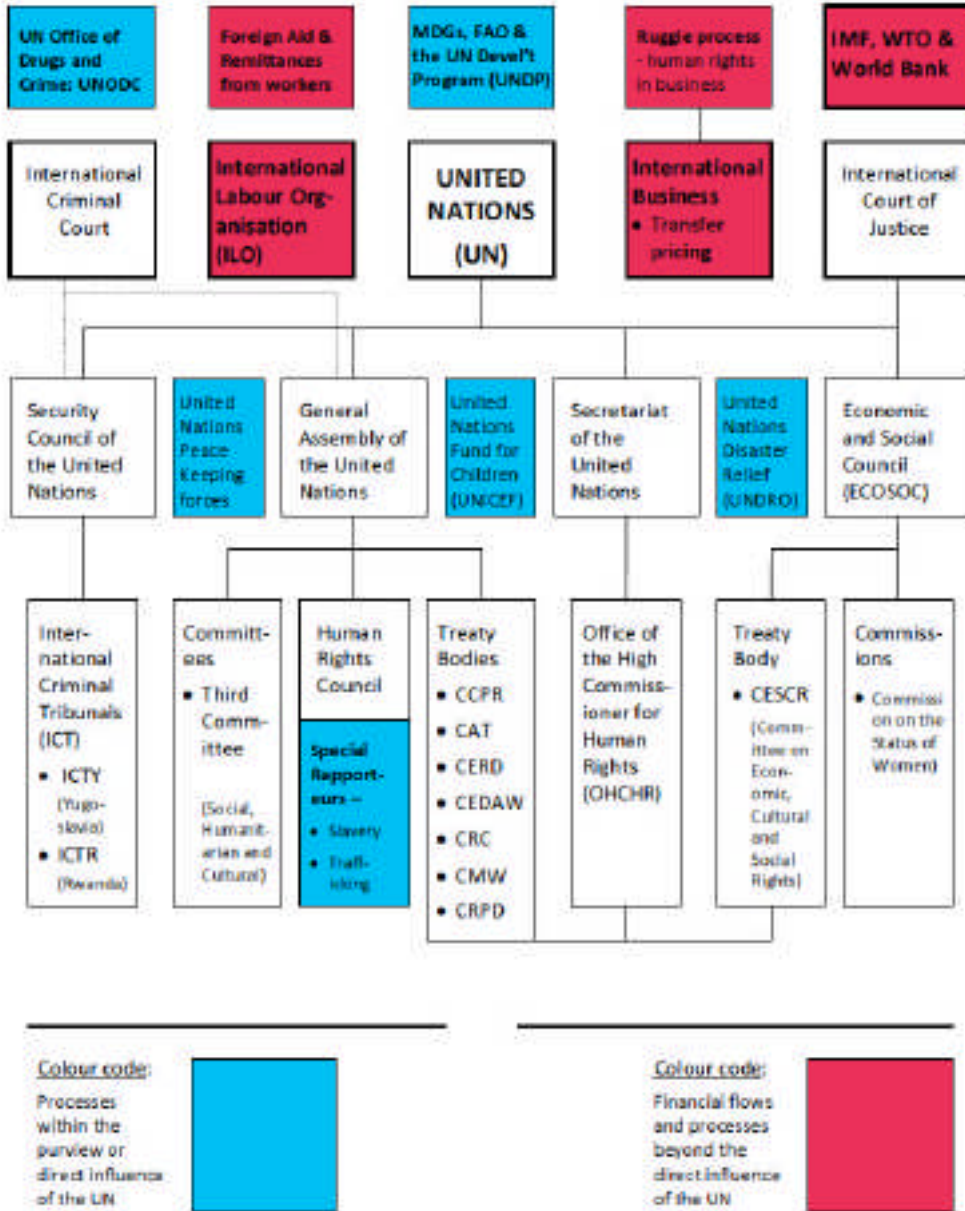
- CEDAW – Committee on the Elimination of Discrimination Against Women
- CRC – Committee on the Rights of the Child
- CMW – Committee on Migrant Workers
- CRPD – Committee on the Rights of Persons with Disabilities

Chart 2

© From Australians and modern slavery, P 203

What other bits actually influence the human rights system

Source: We identify and describe these other bits in Section 8 and elsewhere in this book



Some of these bits, such as the UN Office of Drugs and Crime (UNODC), peace keeping forces, disaster relief (UNDRO) and the fund for children (UNICEF), are within the purview or direct influence of the United Nations. Other bits are beyond the direct influence of the United Nations: this includes financial flows and processes such as foreign aid, remittances, the IMF, WTO and World Bank, the International Labour Organisation and international businesses (via governance, political influence and transfer pricing).

Action 12

When considering what might constitute best practice beyond Australia, we ask the Joint Committee to take account of the formal and informal relationships, processes and structures shown in Chart 2

Why bother? Take for example the box labelled '*foreign aid and remittances*'. The sum of remittances from migrant workers to their homes has a value equivalent to the value of formal foreign aid budgets. Is it possible that re-thinking the way Australia engages with migrant workers could make the flow of remittances more effective? If so, would Australia be prepared to re-think its position regarding (not signing) the Convention on Migrant Workers? Would better protection for workers enhance the flow of remittance dollars? Likewise, would better protection for migrant workers reduce the problems identified by Stephen Howells report to the Minister for Immigration? Howells identified 50,000 – 100,000 workers in Australia without visas and potentially exposed to pressure from criminals. Would Australians, migrant workers and their families be better off if changes were made?

7.2 Using the Internet as a tool for community development and linking

As Chart 2 shows, much human rights activity happens through informal or unofficial systems. Because the formal structures and systems may be 'under-connected', the question of how to co-ordinate effort is a serious one. Slavery Links has made a separate submission about using the internet as a tool for community development and linking of anti-slavery activity in Australia and the region.

We commend to the Joint Committee the Submission from the Slavery Links [Web Portal Working Group](#).

1 Weissbrodt, David (2002) [Abolishing Slavery and its contemporary forms](#), Report from Anti-Slavery International and David Weissbrodt to UN High Commission for Human Rights, HR/PUB/02/4

2 United Nations, Office of High Commissioner for Human Rights (n.d.) [Contemporary forms of slavery](#), Fact Sheet 14. Go to: www.ohchr.org/documents/publications/Fact-Sheeten.pdf

³ And the problem? Slavery is about *ownership*. Exploitation (theft of labour) is not slavery

4 The media release is at <http://www.attorneygeneral.gov.au/Media-releases/Pages/2012/First%20Quarter/4-January-2012---Human-Rights-check-for-new-laws.aspx>

5 Slavery Links has made an application for funds from the Human Rights Education Framework to commence such a speaking program

6 Take for example the Attorney General's Department (2011) Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections

There was no dedicated 'slavery' work unit to receive comments about slavery. Submissions were to be forwarded to: peopletrafficking@ag.gov.au

7 Take for example the submission from the Australian Human Rights Commission (AHRC) to respond to the Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012. The AHRC response was entitled:

Exposure Draft Bill Crimes Legislation Amendment (Slavery, Slavery Like Conditions and People Trafficking) Bill 2012, Australian Human Rights Commission Submission to the Attorney General's Department, 20 January 2012

On Page 4 the AHRC submission has a heading 'slavery' under which one would expect discussion on the subject of slavery. However the text asserts that a United Nations framework for anti-*trafficking* action (crime-fighting) would be used to assess progress in relation to the human rights question of *slavery*. The conflated text follows:

"Slavery and slavery-like offences

According to the United Nations Office on Drugs and Crime International Framework for Action to Implement the Trafficking in Persons Protocol, national anti-trafficking laws should address all forms of exploitation with reference to human rights standards including fundamental principles and rights." [Italicised emphasis added]

How was it that Australian law officers came to assume that anti-*slavery* work could be assessed according to criteria developed to assess an anti-*trafficking* program?

8 Slavery Links has made an application for funds from the Human Rights Education Framework to distribute the book Australians and modern slavery to parliamentarians, local government, libraries, secondary schools human rights groups and others. In the alternative, Slavery Links has offered to give copyright of the book to the Government for long enough for Government to do the job itself

9 Roscoe Howell and Robert Evans (2012) '**How the Court system might encounter forms of slavery in Australia**', paper presented to Australian Institute of Judicial Administration Conference, "Doing Justice for Young People - Issues and Challenges for Judicial Administration in Australia and New Zealand", 23-24 August 2012, Brisbane

¹⁰ Roscoe Howell and Robert Evans (2012) Op. Cit

¹¹ For the ILO Handbook, Go to:

http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_081894/index.htm

¹² Parliament of Australia (2010) Human rights in the Asia Pacific Joint Standing Committee on Foreign Affairs, Defence and Trade, April. Go to:
http://www.aph.gov.au/house/committee/jfad/asia_pacific_hr/report/Chapter%203.pdf

Submission

on

Slavery and slavery like conditions: Web portal

to the

Joint Standing Committee on Foreign Affairs, Defence and
Trade, Human Rights Sub-Committee

from

Web Portal Working Group

Slavery Links Australia Inc

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EXECUTIVE SUMMARY

This submission is about using the internet as a tool for community development and linking of anti-slavery activity in Australia and the region.

The submission refers to the Supplementary Convention 1956; and to the necessity of recognising the *systems* of slavery that enable whole groups or classes of people to be harvested as slaves.

When a web page is published, its ranking by Google or other search engines depends on the number of links between the page and pages on other web sites. These two-way links need to be negotiated between each site. It is the process of identifying relevant pages for linking and then negotiating the links that can be managed to become a community development process.

This submission addresses a problem identified in the Slavery Links submission regarding implementation and the co-ordination of effort within and beyond Australia (see Chart 2 on Page 14 of the submission by the Slavery Links Implementation Working Group entitled: Slavery and Slavery-like Conditions: Implementation Issues)

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There are two essential points.

1. Slavery is not trafficking.
Consulting about *trafficking* will not illumine *slavery*. The issues are different. The solutions are different. The stakeholders are different. In this submission we recommend using the internet to harness anti-slavery activity in the region
2. It is necessary to implement the Supplementary Convention 1956.
Australia acquired an obligation to implement upon signing the Convention. Moreover, the Supplementary Convention identifies that *systems* of slavery persist. in the Asia Pacific. This ‘systems’ insight offers a real chance to get to the heart of the matter and develop solutions that will likely be effective

We request an opportunity to give oral evidence to the Committee in relation to slavery and the **community-development-via-internet proposals** in this submission.

1. Preamble

1.1. Scope of this submission

This submission is about using the internet as a tool for community development and linking of anti-slavery activity in Australia and the region. It refers to the Supplementary Convention 1956; and to the slavery offences in Division 268 and Section 270 of the Commonwealth Criminal Code Act 1995 (Criminal Code).

1.2. General endorsement of the intent of the draft legislation

Slavery Links endorses action which will bring Australian laws into harmony with our obligations under the anti-slavery Conventions. The Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012 is one more step along the way and we support the continuation of such steps. However, some aspects of the Convention are not covered in the Bill. Also, policy and program development will be required to develop the Bill (when passed) and to enable its implementation.

1.3. Sources: Australians and modern slavery

This submission has been drawn from information compiled for the book Australians and modern slavery which was published by Slavery Links Australia Inc in 2011.

1.4. The core message

The submission has one core message: that slavery is to be recognised as a distinct phenomenon to be discerned, understood and dealt with as *slavery*, not as something else. Being realistic in that way offers the prospect of effective responses.

This Submission encourages the Committee to consider using the internet as a tool for linking anti-slavery activity and community development in Australia and the region

2. What is the proposal?

Use the internet as a tool to link anti-slavery activity in Australia and the region; and harness it to develop communities' capabilities to withstand slave-making processes.

This proposal is for a *community development* process, not for a Web 2.0+ social networking site.

2.1. Why?

Research for the book Australians and modern slavery identified numerous anti-slavery projects in the region; and over a hundred useful, effective community-based projects. Some of these projects have been reported as case studies in the book. The projects reported in the book are (on the whole) projects that could be scaled-up. Yet, despite being effective, they have not captured widespread attention internationally.

Why are the projects not coming to international attention? Reasons may include the following: the projects are working 'bottom-up; they are usually 'home grown' or largely run by local agencies; their constituencies are local; their work is known and respected mainly in their localities; results are promulgated often in a local context or language; from the point of view of westerners, the work may not be easily accessible. Where evidence or results are reported in western-friendly places, these seem to be in specialist academic journals or formal reports of funding agencies - places that do not readily contribute to understanding or dialogue by the public, media or other projects.

2.2. Where is the added value? Community development

This proposal is about social marketing and community development. Each involves intervening in social process with information that will encourage behaviour change.

How can the internet become a tool for community development? When a web page is published, its ranking by Google or other search engines depends on the number of links between the page and pages on other web sites. These two-way links need to be negotiated between each site. It is the process of identifying relevant pages for linking and negotiating the links that can be managed to become a community development process. In this context the internet is a tool, too valuable to be left to technocrats.

2.3. What standing does the proposal have?

The concept was developed by Slavery Links with staff of Swinburne University's Design Centre. Further work was undertaken by Slavery Links, from 2010. The concept was tested with the assistance of a Swinburne student on field placement with Slavery Links at the Borderlands Cooperative in Hawthorn; where the user segments were clarified and aspects of the community development process refined. The work was also informed by staff from AusTrade who included this writer in an all-day session for Design Victoria regarding how to optimise a trade-related presence on the internet.

3. Who wants information about slavery? User segments

This proposal is built on the identification of potential users, their needs and interests, the problem(s) they want to solve. This avoids a flaw in some 'social issues' web sites, which are in effect little more than dumping grounds for lists of internet references.

In our submission there are four user groups or segments to cater for.

3.1. Four user groups

Slavery Links' research suggests that seekers of information from the internet about slavery can be grouped according to the form of question asked, as follows:

- Forms of slavery
 - Our research shows that a major segment of web queries regarding slavery are framing questions about 'forms of slavery'. This segment will recognise and likely use search terms such as 'child labour', 'child soldier', 'child trading', 'debt bondage', 'forced marriage', 'forced labour', 'slavery in war'
 - Human rights education needs to articulate the nature and extent of modern slavery. Enabling searches that relate to contemporary forms and systems of slavery will likely educate web users by promoting search terms that relate to real problems; and that can deliver sound, useful information
 - There is an authoritative list of forms and systems of slavery. Slavery Links' submission to the Joint Committee in relation slavery policy addresses this
- Organisations
 - Our research shows that another large group of slave-related web users ask about the work that particular organisations are doing. These queries may be coming from staff or members or (potential) donors of the organisations. On occasion queries seem to be triggered by press or media reports
 - A regional anti-slavery web portal would have the resources to identify the local community based organisations that do not currently rate a mention. This would add to the intellectual capital available across the region
 - Slavery Links believes that enabling a search what NGOs are doing about slavery will encourage such organisations to recognise their role more fully
 - Further Slavery Links believes that enabling such searches can produce more 'educated' members of these organisations, more discerning donors

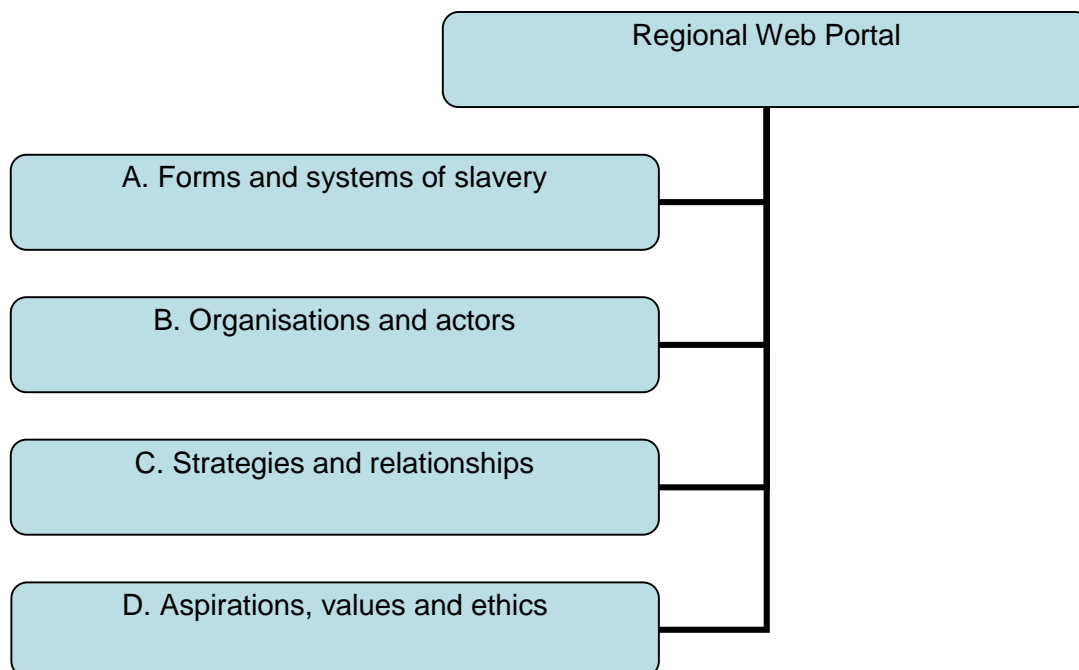
- Strategies and relationships

In our submission a web portal can lead a user through complex ideas without ‘dumbing down’; can illumine how relationships work; and can contribute to co-ordinating or harnessing anti-slavery activity, as follows:

- A third user segment will want to find out ‘what works’, and how. In common parlance this user might start off with a search for ‘strategies’ or ‘tactics’. Slavery Links’ research on web users indicated that we could embed quite complex and nuanced ideas in apparently simple and familiar internet search terms. We found that good design enables a user to be drawn easily through difficult territory. There is no need to ‘dumb down’
 - What about relationships? In Australians and modern slavery we identify community-based projects that utilise bottom-up approaches to overcome **powerlessness**. These may or may not operate within a context of top-down change. In change that develops from the bottom-up, the work emerges via relationships that can continue over the long term. It appears that the language of relationships is more useful than the language of tactics and strategy. Users may well find this for themselves through the experience of searching; thereby strengthening their understanding of anti-slavery options
 - Slavery Links has made a submission to the Joint Committee regarding policy for best practice anti-slavery work. That submission argues that an effective anti-slavery project needs to deal with each of **poverty, powerlessness, crime / corruption** and **conflict**; and all them together. A web portal would facilitate comparisons between projects based on the range of strategies used or relationships being expressed
 - Further, research and experience indicate the obvious: that a ‘one-size-fits-all’ approach does not work for every country or for every form of slavery. We need to unpick each form of slavery, understand the processes or mechanisms that underpin it, and express the strategy or relationships that will address how people have become trapped. A web portal will assist
- Ethics. Each ‘call to action’ is guided by an ethic, such as
 - The fair trade ethic of promoting justice back through the supply chain
 - Corporate social responsibility (CSR) and the triple bottom line
 - Human rights treaties of the UN and labour standards of the ILO
 - Sustainability principles, in particular as applied to lands of first peoples
 - The ethic that business can embed human rights (The Global Compact and the Ruggie principles)

3.2. Architecture of the web portal

To be useful for the four sorts of questions to be asked, the web portal requires a four-level architecture as follows:



Slavery Links is prepared to assist the Joint Committee with further information or evidence regarding the proposal.

3.3. The community development component

This submission addresses a problem identified in the Slavery Links submission regarding implementation of best practice for slavery; and the need for co-ordination of effort within and beyond Australia (see Chart 2 on Page 14 of the submission by the Slavery Links Implementation Working Group entitled: Slavery and Slavery-like Conditions: Implementation Issues)

The community development result would arise from the process of locating and linking the web portal to anti-slavery projects in the region. It would require AusAID, AusTrade and other agencies to forge links with local programs; especially those that are working ‘bottom-up; those that are ‘home grown’ or largely run by local agencies; whose constituencies are local; whose work is known and respected mainly in their localities; whose results are promulgated often in a local context or language; whose work may not otherwise be easily accessible.