

## Submission

Slavery Links Australia Inc (2015) 'What does slave-making in the Indian Ocean - Asia Pacific mean for Australian programs in Australia and overseas' Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee Inquiry into Human rights issues confronting women and girls in the Indian Ocean – Asia Pacific region, from Slavery Links Australia Inc., P.O. Box 1357 Camberwell Vic 3124

# **What does slave-making in the Indian Ocean - Asia Pacific mean for Australian programs in Australia and overseas**

to the

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

Inquiry into Human rights issues confronting  
women and girls in the Indian Ocean – Asia  
Pacific region

from

Slavery Links Australia Inc

A.B.N. 68 313 911 591

P.O. Box 1357

Camberwell Vic 3124

<http://www.library.slaverylinks.org>

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Inquiry Secretary

Parliament House

Canberra ACT 2600

Telephone: 02 6277 4318

Email: [jscfadt@aph.gov.au](mailto:jscfadt@aph.gov.au)

Slavery Links: Joint Foreign Affairs, Defence and Trade Committee – Women and Girls – May 2015

## **INTRODUCTION AND SUMMARY**

### **Who is Slavery Links?**

Slavery Links is a member-funded charity whose work refers to the ways that Australia is exposed to slave-making processes in the region; and sometime contributes to slavery.

Slavery Links' expertise refers to slave-making systems as defined in the Supplementary Convention 1956 and the slavery offences defined in Division 270 of the Criminal Code.

Slavery Links' work is evidence-based. That evidence comes from South Asia, East Asia Southeast Asia and, in some cases, the South Pacific. Slavery Links refers to that area as the Asia Pacific. Slavery Links' search for evidence does not (generally) extend into the 'Indian Ocean' in the sense of the Seychelles, Mauritius, the Horn of Africa or the Gulf states.

### **Terms of Reference**

This Submission has been prepared for the Inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade into the human rights of women and girls in the Indian Ocean - Asia Pacific region.

The Submission addresses three aspects of the Terms of Reference as follows:

1. Barriers and impediments
2. Achievements to date
3. Implications for economic and social development.

### **Barriers and impediments**

The Barriers and impediments to be overcome, regarding slavery, are the ancient slave-making systems that persist in the Indo-Asia-Pacific. These systems affect whole groups or classes of people, women and girls among them. The Submission argues that the root causes of slavery need to be addressed, the four 'engines' that allow slave-making systems to persist, namely: poverty, powerlessness, crime / corruption and conflict.

### **Achievements**

Best practice antislavery is systemic, focussed, holistic and works from the bottom-up to build the 'agency' of people affected. The Submission describes SEWA and some other effective programs. It summarises a tested model for 'empowerment'.

### **Implications**

The Submission steps through Implications in relation to specific slave-making systems defined in the Supplementary Convention, 1956, namely:

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

It also considers the implications for two important contexts: trade and defence.

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## **1. Preamble**

### **1.1. Structure of this submission**

This Submission has been prepared for the Inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade into the human rights of women and girls in the Indian Ocean - Asia Pacific region. The Submission addresses three Terms of Reference as follows:

4. Barriers and impediments
5. Achievements to date
6. Implications for economic and social development.

### **1.2. Six essential points**

There are six essential points.

1. Slavery is defined in the Supplementary Convention 1956 and the Criminal Code. The Supplementary Convention identifies *systems* of slavery that persist in the Asia Pacific. Australia has progressively implemented the Supplementary Convention in Division 270 of the Criminal Code. Australia's definitions are at the 'leading edge'.
2. In the Asia Pacific, slave-making is systematic  
This 'systems' insight offers a real chance to get to the heart of the matter and develop solutions that will likely be effective.
3. People can be enslaved "in place"  
Slavery persists where whole groups or classes of people have been excluded from the mainstream, based on caste, race, religion, tribe, gender, or disability. Because slave-making affects whole groups, antislavery needs to address the root causes, viz:
  - **Poverty, and**
  - **Powerlessness, and**
  - **Crime / corruption, and**
  - **Conflict**
4. Groups or classes who are exposed to slave-making *systems* have been excluded. Generalist programs will not reach them. Special antislavery programs are required.
5. Best practice antislavery is systemic, focussed, holistic and works from bottom-up. Effective policing is required, but is of itself not a solution to slavery. Community-based programs are required to enable the people affected to develop their 'agency' while they address their poverty, to enable people to overcome powerlessness, to challenge corruption, and to resist the forces of conflict.
6. Slavery is not trafficking.  
Trafficking involves movement, deception, exploitation and organised crime. Consulting about *trafficking* will not illumine *slavery*. The issues are different. The actions are different. The solutions are different. The stakeholders are different.

### **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.

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## **2. What are the legal bases for action?**

Slavery is about *ownership*. This strict legal definition discourages action that is not focussed.

### **2.1. Freedom from slavery is a fundamental freedom**

Freedom from slavery is a fundamental freedom. In law, this freedom is not derogable.

### **2.2. Slavery has *jus cogens* status**

Slavery has *jus cogens* status internationally. Slavery is a crime whether or not a State is a Party to the Convention. That makes slavery an incontrovertible ‘frame’ for taking action.

### **2.3. Slavery is a crime against humanity<sup>1</sup>**

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. That loss of freedom is what makes slavery a crime against humanity.

### **2.4. Where is slavery defined, internationally?**

Freedom from slavery is embedded in the Universal Declaration of Human Rights (UDHR).<sup>2</sup> It is also mentioned in Article 8 of the International Convention of Civil and Political Rights (ICCPR).<sup>3</sup> 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 Convention<sup>4</sup> defines slave and slavery in terms of *ownership*.<sup>5</sup>

### **2.5. Where is slavery defined, in Australia?**

In Australia, slavery is defined in terms of ownership. Slavery in international humanitarian law has been described by Division 268 of the Criminal Code. Slavery with regard to international criminal law has been described in Section 270.

The Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012<sup>6,7,8</sup> defined a hierarchy of offences, from forced labour through servitude to slavery.<sup>9</sup> The amendment also referred to forced marriage and debt bondage.

In these ways, Australia is progressively implementing the Supplementary Convention, 1956.

### **2.6. ‘Contemporary Forms of Slavery’: What are they?**

The so-called Contemporary Forms of Slavery<sup>10,11</sup> are associated with a number of treaties made by the International Labour Organisation and the United Nations. If slavery in war is added to the list of Contemporary Forms, then eleven forms of modern slavery can be listed.<sup>12</sup>

Some treaties refer to slavery only by implication. Slavery Links has shown that it is necessary to tease out what refers to violence, abuse and exploitation and what refers to slavery.<sup>13</sup>

- The distinction can be put simply: Persons who have been trapped by a *system* of slavery (as defined in the Supplementary Convention) are in effect owned, they are slaves.<sup>14</sup>
- Persons in one of the Contemporary Forms may be oppressed or exploited, but not necessarily owned. For example, only some child workers or domestic workers are slaves.

Actions which target *slavery* will therefore deal with the most serious, intractable problems.

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### **3. Barriers and impediments to be overcome regarding slavery**

Slavery is a *systemic* problem. An effective response would address all aspects, holistically.

#### **3.1. Ancient slave-making systems persist in the Indo-Asia-Pacific**

There are *systems* of slavery in our region which have persisted for generations. The British addressed some of them (such as Suttée) from the late 1800s. Other systems still persist.

#### **3.2. Slave-making systems affect whole groups or classes of people**

The 1956 Supplementary Convention was supplementary in the sense that it added five servile conditions to the chattel form of slavery that had been identified in the Slavery Convention 1926. The servile conditions defined in the Supplementary Convention were:

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

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

#### **3.3. Four ‘engines’ of slavery allow slave-making systems to persist**

How have these systems been able to persist? They have been driven by persistent forces or ‘engines’: poverty, powerlessness, crime / corruption and conflict:<sup>15</sup>

- 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, unable to escape when exposed to slave-making
- **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 together and in a holistic way, to make it possible to suppress slave-making *systems*. 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.

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#### **4. Achievements: What approaches work to address slave-making systems?**

##### **4.1. Best practice antislavery is systemic, focussed, holistic and bottom-up**

Slavery is a symptom or expression 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 for antislavery is to address the forces or ‘engines’ that enable *ownership* to persist.

Best practice needs to address what really happens in slave-making systems.<sup>16</sup>

- 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 would 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. Specialist programs are required to reach those excluded.
- Action should be holistic  
The four engines of slavery operate together, 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 (i.e. to be holistic).

- 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 run for women by women themselves 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).

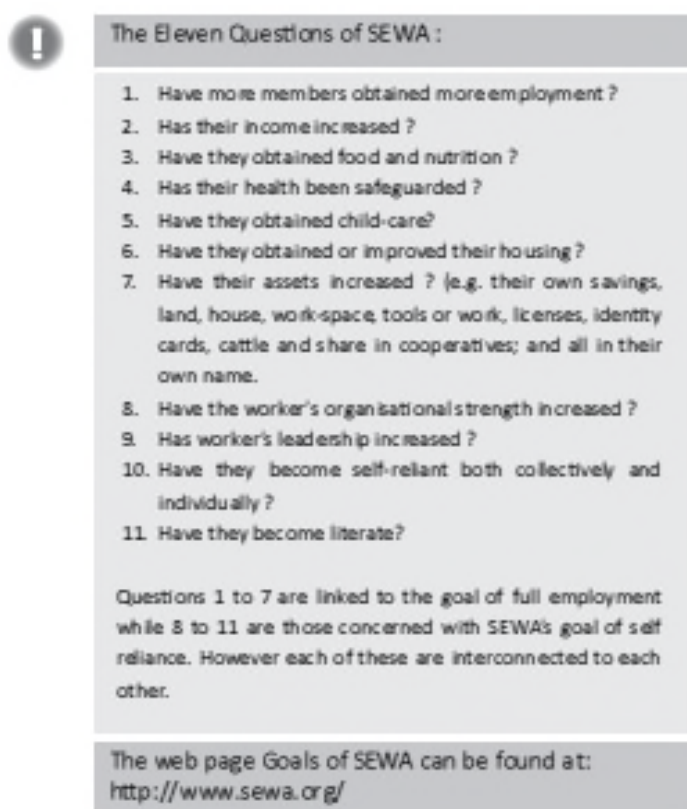


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## 4.2. 'Empowerment' is more than a slogan

In south Asia, practitioners rather than academics have often done the work in relation to 'agency' and 'empowerment' in the process of emancipation from systems of slavery. One exception was a program funded by the Dutch to address debt bondage in South Asia – the Program for Elimination for Bonded Labour in South Asia (PEBLISA). PEBLISA involved action research, a practical way of developing and testing, where cycles of Plan-Act-Observe-Reflect move from immediate to wider contexts and back again, to encourage cycles of change.<sup>17</sup>

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 extract from Australians and Modern Slavery 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

## 4.3. A tested model for 'Empowerment'

A tried-and-tested approach was developed by the late Professor Connie Benn in Australia in the 1980s, in the context of poverty. The approach evokes SEWA's and PEBLISA's programs.

Professor Benn's program proposed a sequence of empowerment commencing with access to relationships. Relationships are the context in which people work together to develop control over the resources that affect their lives. People who have control over their access to resources can proceed to develop control over their information and work out what is relevant or useful to them. Having developed control over their relationships, resources 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. That enables 'agency'.

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## **5. Child Trading**

In the Supplementary Convention 1956, child trading is defined in terms of a child being placed for exploitation by a parent or guardian. It is driven by extreme poverty.

Child trading affects boys and girls.

### **5.1. Child trading is an ancient practice**

Child trading is a long-established practice. It was encountered by the British in colonial South Asia. It was considered by the League of Nations in the *travaux* for the Slavery Convention 1926, under the heading of a related practice called ‘sham adoption’. In each practice, the child lived in a household, was fed and clothed in return for *service*, but did not have the same status as a member of the family and could not, in effect, leave if subject to abuse.

### **5.2. Child trading developed to feed domestic service**

Child trading occurs in the region. As the UN Office of High Commissioner for Human Rights pointed out, profits are to be made by the illicit transfer of children from poor homes to rich.<sup>18</sup>

### **5.3. The ILO Convention on domestic service will protect some children**

In June 2011 the International Labour Organisation made a Domestic Workers Convention.<sup>19</sup> The Convention re-defined domestic *service* as domestic *work*, to be subject to terms and conditions such as payment in money, rest periods and being able to hold one’s documents.

### **5.4. New forms of child trading still reflect the ancient practice**

New forms of child trading have been reported in the past decade.

- Children from South Asia who were placed as camel jockeys were not trafficked: there was not necessarily deception. Some parents placed the child in the hope of a better life.
- Slavery Links, ForgetMeNot and others have reported stories of orphanages whose business model involves the sale of children to supposed parents
- Australians, too, may have been involved in the transfer of children sold into an orphanage and apparently put out for adoption.<sup>20</sup>
- Commercial surrogacy can be framed as trading a child for exploitation: a parent or guardian has placed a child, where money has changed hands.
- A recent case in Pennsylvania (USA) showed that even a Court-based position of guardian *in loco parentis* can be abused for financial gain.<sup>21</sup>

### **5.5. Child trading is not the same as child trafficking**

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. Chasing criminals will not have an impact on the circumstances which lead a parent to place a child. The Crime Commission is not equipped to research trading; and a fresh research effort will be required to replace the intellectual capital lost by disembodiment of the Australian Institute of Criminology.<sup>22</sup>

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## **6. Debt Bondage: Illustrating the problem(s) of numbers**

Debt bondage is relevant to Australia. It may contaminate supply chains in three ways:

- Australia imports goods from countries in South Asia and South East Asia where debt bondage exists
- Australia exports quarried materials (ore, stone, rare earths) and gas to those countries
- Migrant workers who come to Australia may become debt bonded to pay for a visa

Moreover debt bondage in another country lowers costs there and creates unfair advantage.

Debt bondage can trap girls and boys, men and women, whole families, whole villages.

### **6.1. How big is the problem? Probably huge, but we don't know precisely**

In 2011 Slavery Links published the book Australians and Modern Slavery (300 pp). The Introduction to the book discussed the extent of modern slavery. It used:

*"... Kevin Bales' figure of 27 million as a gross estimate for the number of modern slaves. Bales derives this estimation from knowledge of stocks of slaves and flows of people trafficked in each country.*

*Between 21 and 26 million of Bales' slaves are to be found in south Asia (the region where systems of slavery have persisted). The Table ... calls attention to the huge numbers of modern slaves in India and Pakistan and to a lesser extent Bangladesh and Nepal. While Bales is not specific about classes of slave, experience says that the south Asia numbers mainly relate to debt bondage ..."*

Chart 1. Kevin Bales (2005) estimates of slavery in South Asia<sup>23</sup>

<b>Country</b>	<b>Number of slaves Low estimate</b>	<b>Number of slaves High estimate</b>
India	18,000,000	22,000,000
Pakistan	2,500,000	3,500,000
Bangladesh	250,000	300,000
Nepal	250,000	300,000

### **6.2. What problem is being measured? It could be done, but hasn't been**

Some 43 pages of Australians and Modern Slavery were devoted to untangling the gaps and overlaps between conditions that were covered or not defined by the Slavery Convention 1926, the Supplementary Convention 1956 and other treaties that covered aspects of slavery (*ownership*).

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In essence, the discussion showed that different estimates of the numbers of slaves derived from different methods of counting slavery or forcing, under the rules of different treaties.

In 2014 the Global Slavery Index, associated with the Australian NGO Walk Free, was released. Apparently, it did not apply a strict definition of slavery.

*“Different countries use different terminology to describe modern forms of slavery, including the term slavery itself, but also other concepts such as human trafficking, forced labour, debt bondage, forced or servile marriage, and the sale and exploitation of children.”*

According to Appendix 2 of the Index, the term 'Sale or exploitation of children' was defined “in Article 2 CRC Optional Protocol on Sale of Children, and Article 3 ILO Convention on Worst Forms of Child Labour”. The ILO defines *exploitation*. The index apparently did not apply the definition of child trading, which is a form of slavery defined in the Supplementary Convention.

Chart 2. Global Index estimates of slavery in South Asia, 2014

Country	Percent in slavery	Number of slaves
India	1.141%	14,285,700
Pakistan	1.130%	2,058,200
Bangladesh	0.435%	680,900
Nepal	0.823%	228,700

The 2014 Index included trafficked persons, forced labourers, debt bonded persons and other persons who were defined as slaves. Anne Gallagher AO expressed some concern about the temptation to produce numbers that give only an illusion of substance:

*“It is understandable that Walk Free, a new player seeking to make its mark in a highly competitive environment, has succumbed to that temptation. Less forgivable are the weaknesses that mar the substance of the index and compromise its findings: a mysterious, inconsistently applied methodology, a raft of unverified assumptions and multiple, critical errors of fact and logic. Even the basic unit of measurement of “modern slavery” is flawed: the definition is self-created and, bizarrely, changes from one year to the next.”* <sup>24</sup>

### 6.3. Where do we go with this?

Australia is exposed to debt bondage. The condition has been defined in the Criminal Code. Reliable data are needed. Two things are needed in order to get that data:

- To get agreement on how to count slavery, apply international definitions of slavery
- Learning how to count requires investment, to develop skills and intellectual capital

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## **7. Forced Marriage: Learning from programs which illustrate what works**

### **7.1. Forced marriage in Australia**

In Australia, forced marriage was defined under amendments to the Criminal Code in 2013, as follows:

270.7A Definition of forced marriage

(1) For the purposes of this Division, a marriage is a forced marriage if, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting.<sup>25</sup>

This definition is not ‘genderised’. That may be an advantage: recent statistics from Britain indicated that around 15 per cent of persons seeking refuge from forced marriage were males. In Australia, the Attorney Generals Department web site indicates that:

*“Forced marriage is a slavery-like practice, a form of gender-based violence and an abuse of human rights. Forced marriage is not limited to any particular cultural group, religion or ethnicity, and there are reports of forced marriage from all over the world. While men and boys can be victims of forced marriage, most reported victims are young women and girls.”<sup>26</sup>*

In Australia, slavery offences fall within the remit of the Minister for Justice. In that context, forced marriage has been construed as a matter for policing. Simmons and Burn (2013) indicated a need for greater community consultation and awareness.<sup>27</sup> However ‘consultation’ and ‘awareness-raising’ are driven by experts. This Submission argues that ‘expert’ approaches are of limited use: they can dis-empower and disrespect communities. What actually works, effectively, are community-based approaches (see Section 4 and below).

### **7.2. Forced marriage in the Supplementary Convention 1956**

In the Supplementary Convention 1956, Article 1 (c) refers to situations where a woman, without the right to refuse, is promised or given in marriage on payment of consideration to her family or guardian; or the spouse, family or clan of a woman has the right to transfer her to another person for value received; or a woman on death of her spouse is liable to be inherited by another. Thus was “forced marriage” or “servile marriage” defined internationally. The definition is genderised. It defines specific circumstances that may constitute forcing.

### **7.3. Forced marriages under ISIS and Boko Haram are exceptional**

These three circumstances – forcing, sale and inheritance – have been reported in reality from territory controlled by ISIS in Mesopotamia and Boko Haram in Nigeria. This affirms the thoroughness and understanding in the *travaux* for the Supplementary Convention 1956.

Slavery in armed conflict is an exception to the ‘norm’ found throughout the Asia Pacific. It is covered in Division 268 of the Criminal Code. These extra-territorial offences contravene international humanitarian law as well as international criminal law. A Working Paper on this topic has been prepared for the Board of Slavery Links and can be requested.

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#### **7.4. Forced marriage: What works in the ‘general’ case?**

Section 4 indicated that best practice for antislavery is systemic, focussed, holistic and a bottom-up community based process, where ‘empowerment’ is more than a slogan. Forcing is able to persist where the ‘engines’ of slavery allow it: it appears the same ‘engines’ drive forcing in marriage and other areas of life, both for women as for others who are excluded.

Slavery Links has provided an extract from Australians and Modern Slavery, as an Exhibit for the Inquiry, which summarises five community-based programs to counter forced marriage:

Example 1: Marriage, consent and wellbeing in Indonesia and Sri Lanka

Example 2: Postponing marriage with incentives to value girls more highly

Example 3: Empowering young people: Direct action in Bangladesh, Pakistan and Nepal

Example 4: A whole community (in Senegal, Africa) declares respect for consent

Example 5: Women sitting on customary courts in India

#### **7.5. These forced marriage programs address the four ‘engines’ of slavery**

The analysis for this assertion was provided in Australians and Modern Slavery, p 127 ff:

*“At the core of forced marriage is the status of a woman as property: a chattel that can be married off by others ... Do the engines of slavery play a part? What roles do **poverty** and **powerlessness** play?”*

*“UNICEF’s summary Digest20 covers forced marriage and early marriage (where lack of consent amounts to forcing). UNICEF makes repeated reference to the association between early / forced marriage and **poverty** (where ‘**poverty**’ refers to both material want and the exclusion of women from social benefits and services). Further, early marriage contributes to a cycle of **poverty** through “the ‘feminization of **poverty**’ and its resulting impact on children”.*

*“UNICEF also describes systematic **disempowerment** of girls before marriage, during marriage and in arrangements following separation divorce or widowhood. Young women and older can be trapped as players in a cycle of **disempowerment**. Older women are often excluded from the ‘modernisation’ of thinking that is assumed to come along with the demographic transition. We are left with a paradox, that older women may support arrangements that continue the oppression of young women through early and forced marriage “*

*“What about **crime and corruption**? Forced marriage – slavery - is a **crime** against humanity. On occasion the law explicitly colludes in sexual forcing of women. In Algeria, California, Chad, Costa Rica, Lebanon, Libya, Romania and Uruguay, “the law allows a perpetrator of rape, including statutory rape of a minor, to be excused of his crime if he marries his victim; a judge simply legitimizes the union”. From the point of view of women and their rights, the law has failed. The UNICEF Digest points out another failure, in which “the use of law as a means of regulating early marriage is in no way sufficient”. In these cases, the law excludes women explicitly or in effect: In Cameroon, Jordan, Morocco, Uganda and Yemen “women (are) specifically not granted by law the right to*

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*‘full, free and informed consent’ to their marriage. But in a large number of countries, these (formal) legal provisions are merely symbolic.” Often a gap is accepted in practice between formal legal requirements and custom. UNICEF concludes that “the more important practical issue is, therefore, whether or not the idea of consent is socially rated”. (This is muddy territory, where rights can be upheld or compromised by local customary tribunals. We re-visit ‘custom’ below, with help from the International Council on Human Rights Policy.)”*

*“Finally UNICEF presents evidence that where people and their society are stressed by **conflict** (arising from war, disaster or epidemic such as HIV AIDS) the incidence of forced marriage may actually increase, apparently as a hopeful or last-ditch attempt to protect girls within a marriage. The NGO ‘Plan-UK’ reports findings along similar lines:”*

*“Disasters and emergencies increase economic pressures on households and many families that would not previously have considered early marriage turn to it as a last resort. Food insecurity in Kenya has led to the phenomena of ‘famine brides’, drought and conflict in Afghanistan have forced farmers to arrange and receive money for the early marriage of their daughters, and girls in Indonesia, India and Sri Lanka have been pressed into marriages with ‘tsunami widowers’, in many instances doing so to receive state subsidies for marrying and starting a family. Often, the pressures caused by disasters and humanitarian emergencies are not only economic. Early marriage increased in Indonesia after the 2004 tsunami as families in refugee camps saw it as the only protection for their daughters from rape and in Sri Lanka, where rates of early marriage are normally relatively low, girls have been married to protect them from recruitment into militia.”*

*“The costs of **conflict** are not equally distributed. Elites tend to capture benefits. People who belong to excluded groups tend to lose. In societies “where the lines between customary and formal legal norms are often blurred, leaders and elites are better positioned to leverage plural legal orders to their advantage because of their access to information and authority.” Customary tribunals or tribal councils can diminish human rights in peace time too; ...”*

## **7.6. Summary: Forced marriage**

This Section has summarised the law on forced marriage, in Australia and internationally. In Australia the machinery of government places forced marriage in the Ministry of Justice. There has been an emphasis on policing. The call from Simmons and Burn (2013) points to a shortfall in community engagement; but their prescription would not address it. The possibility of community-based engagement, bottom-up action, ownership and ‘agency’ was illustrated in five programs where evidence-based work showed results.

In Mesopotamia and Nigeria, forcing is being used as a weapon of armed conflict by Boko Haram and ISIS. These exceptional circumstances are not representative of the general case.

Finally this Section quoted from Australians and Modern Slavery, to illustrate the connection between forced marriage and the four engines of slavery (poverty, powerlessness, crime / corruption and conflict). An effective response to forced marriage needs to address each ‘engine’, and all of them, together.

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## **8. Forced labour and trade**

In 2014 Slavery Links published an Occasional Paper, to review forced labour, servitude and slavery as regards Australia and the region (see Howell, 2014: Note 9).

### **8.1. Forced labour in the region has devastating effects on families**

The Occasional Paper described how in 1998 an Australian, the then Justice Robyn Layton, conducted inquiries regarding forced labour in Burma for ILO pursuant to enforcement powers under the Forced Labour Convention, 1930. That report led to a process of negotiations and the reforms in Burma that are becoming apparent in the present time.

The ILO report, along with reports from Amnesty and others, indicated the often devastating impact of forced labour on families in Burma. Subsequent reports have documented forced labour in other countries of the region, ranging from abuse of domestic servants in the Gulf countries to factory fishing in the archipelago to prawn production in Thailand.

Australia has an interest in protecting families off-shore from forced labour; and an interest in ensuring that the products of forced labour do not contaminate Australian supply chains.

### **8.2. Australia seeks to keep forced labour out of our supply chains**

Reforms to the Criminal Code Act 1995, made in 2013, created a hierarchy of offences (from forced labour, servitude and slavery). The reforms also enabled deceptive recruiting to be considered in a non sexual context (in other words, *forcing* is the issue, not the gender of the person forced or the occupation or industry in which it takes place).

### **8.3. Forced labour contamination through trade**

The Occasional Paper considered that gaps in the treaty regime, gaps of protection from forced labour, were an important factor in exposing Australian supply chains to risk.

How so? To quote from the Occasional Paper:

*“If Australia imports from a country whose people are not protected from forced labour, then there is a risk that Australia’s supply chains will be contaminated. If Australia exports to a country whose people are not protected, then there is a risk that Australia’s profit will derive from forced labour.”*

*“According to the ILO, the following Members have not ratified the Abolition of Forced Labour Convention, 1957, or have denounced it:*

- *Brunei Darussalam*
- *China*
- *Japan*
- *Korea, Republic of*
- *Lao People's Democratic Republic*
- *Malaysia: Denounced on 10 Jan 1990*
- *Marshall Islands*
- *Myanmar*



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- *Palau*
- *Singapore: Denounced on 19 Apr 1979*
- *Timor-Leste*
- *Tuvalu*
- *Viet Nam*

*Several of Australia's major trading partners are on the list.*

#### **8.4. Significance for the Department of Foreign Affairs and Trade**

Data on merchandise trade for 2013-14 indicate that forced labour is enmeshed in Australia's trade, both imports and exports. Experience shows that forced labour can readily develop (to paraphrase the Slavery Convention) into conditions analogous to slavery.

This suggests that, apart from offering overseas aid, Australia could achieve improved outcomes for people in the region by:

- Reforming our own trade relations;
- Ensuring that protection from forced labour, servitude and slavery do become part of our trade treaties; and
- Encouraging all States in the region to become parties to the Abolition of Forced Labour Convention, 1957.

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## **9. Peonage (serfdom)**<sup>28</sup>

### **9.1. How is peonage relevant to Australia?**

Peonage may be relevant to Australia for two reasons:

- On-shore businesses are importing migrant workers from the Philippines, a country where peonage (serfdom) occurs. Workers have to pay for visas; and the peon system is a potential source of visa patronage. In this event, workers would bring invisible bonds with them and may be subject to forcing by criminals or other influences.
- Where Australia's overseas aid and trade are concerned, peonage (serfdom) has always been a possible consideration. Why? Because whole families and clans can be trapped in a servile condition which is passed from generation to generation. Moreover, where peon patronage exists, aid given to an area is likely to be diverted or captured by local elites.

Whether on-shore or off-shore, it is in Australia's best interests to comprehend peonage.

### **9.2. Why peonage may be difficult to comprehend?**

Compared to the tangible aspect of a debt or share crop agreement, an obligation to render personal service may be obscure or invisible to outsiders or visitors.

### **9.3. How is peonage defined?**

Peonage is a relic of Spanish and other colonial occupation. It is a form of personal service that arose where indigenous clans were forced off their lands by European settlers. Some indigenes were allowed to farm a portion in return for accepting an obligation of service.

Serfdom is defined in Article 1 of the Supplementary Convention:

( b ) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status

### **9.4. The appearance of consent**

Peonage can give the appearance of consent. The High Court referred to this aspect in *R v Tang (2008) 237 CLR 1*, Para 35:

*"The Appeals Chamber was right to point out that consent is not inconsistent with slavery. In some societies where slavery was lawful, a person could sell himself into slavery. Peonage could be voluntary as well as involuntary, the difference affecting the origin, but not the character, of the servitude."*

### **9.5. Why research is needed**

Peonage or serfdom exists in the Philippines. Some form of peonage or serfdom appears to exist in Cambodia. Little research has been done to document the forms that are taken by contemporary peon patronage; how this affects families and children; and how Australia may be exposed.

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## 10. Defence

Servitude and slavery are not normally construed as defence issues. However there are associations with conflicts, some of which have had substantial impacts in the region:

- The foregoing discussion (Section 7.5) illustrated that conflict can impel families to make forced marriages, in an attempt to protect daughters in a time of turmoil.
  - Even where post-conflict ‘settlements’ are made in reparation, these can discriminate against women. For example, during RAMSI, some reparations for rape were paid to village or clan *chiefs* and not to the *women* who had been assaulted.
  - In Mesopotamia under ISIL and in Nigeria under Boko Haram, forced marriages are being made as a matter of policy and in support of armed conflict.
  - People who flee conflict can become humanitarian entrants to Australia. In 2012 this writer provided a Seminar for Multicultural SA indicating how humanitarian entrants to Australia have been exposed to slave-making forces – child labour, child soldiery, forced labour and worse – during their escapes and on their journeys to safety.
  - In Burma, the Rohingya minority are denied the right to own land, to move without permission or to marry without permission. They are subject to pogroms at home and abuse when they try to flee. Neighbouring countries are also affected.
  - In Nepal, some 40,000 child soldiers were supposedly on foot during the insurrection. These children were entitled to be re-integrated under UN guidelines. Instead, many were jailed and or punished or left isolated from their former communities.
  - In Sri Lanka, the LTTE (Tamil Tigers) encouraged child soldiery and used them openly. The former children were entitled to be re-integrated under UN guidelines. That has been problematic.
  - In India, landless peasants and Dalits have been subject to entrenched corruption and elite resistance to land reforms that were promised but not delivered. Some have formed ‘Naxalite’ associations. The Naxalites reportedly have effective control over a substantial portion of local government areas in eastern India. Some have associated with ‘Maoist’ elements, apparently for want of support from elsewhere.
- Taken in context of China’s supposed push for access to the Indian Ocean through Burma, the possibility of dis-affection in eastern India is to be avoided. Insurrection likely could not be suppressed by military means. Reform would be a better approach.
- Australia has an opportunity to affirm the fundamental freedom of Dalits, and the right to land of those who have been promised it but left in landless servitude.

This context of Defence simply adds another thread to the reasons why it is in Australia’s interests to uphold the fundamental freedom from slavery; and to do so by addressing the slave-making forces of poverty, powerlessness, crime / corruption and conflict in the region.

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1 *R v Tang* (2008) 237 CLR 1

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

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3 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

4 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

5 The Supplementary Convention, 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

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

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

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

9 Roscoe Howell (2014) Australian Perspectives on Forced Labour, Servitude and Slavery, Occasional Paper No 1, Occasional Papers in Slavery (Slavery Links Australia Inc, Melbourne)

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](http://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.

Other systems of slavery exist. For example AusAID funded a program to address a system of temple slavery called the Trokosi system, in Ghana.

13 See Roscoe Howell (2011) Australians and Modern Slavery (Slavery Links, Melbourne). Some 43 pages 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 were:

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

15 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

16 What really happens is set out in Australians and modern slavery. 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.

17 Yoland Wadsworth (2010) Building in Research and Evaluation: Human Inquiry for Living Systems (Crows nest, NSW: Action Research Press and Allen and Unwin)

18 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.ohchcr.org/Documents/Publications/Factsheet14en.pdf](http://www.ohchcr.org/Documents/Publications/Factsheet14en.pdf)

19 ILO convention concerning decent work for domestic workers, 2011 (No 189)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189)

20 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](http://bharatsite.com/australia/2008_08_01_archive.html)

21 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-scandal-sentenced-to-28-years/> Cited in Australians and modern slavery, Page 49. Extract in the book used with permission from Mary Jacoby of Main Justice

22 The Australian Institute of Criminology has conducted research on child trafficking in the Asia Pacific, including factors leading families to be vulnerable to the practice. In April 2015 the Australian Government announced that the Australian Institute of Criminology would be absorbed by the Australian Crime Commission.

23 Kevin Bales (2005) Understanding Global Slavery (University of California Press. The Chart is taken from data in Appendix 2, pp 133 ff

24 Anne Gallagher (2014) The global slavery index is based on flawed data – why does no one say so? The Guardian, Saturday 29 November 2014. <http://www.theguardian.com/global-development/poverty-matters/2014/nov/28/global-slavery-index-walk-free-human-trafficking-anne-gallagher>

25 Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Act 2013 (No. 6, 2013) - Schedule 1.

[http://www.austlii.edu.au/au/legis/cth/num\\_act/clascapta2013781/sch1.html](http://www.austlii.edu.au/au/legis/cth/num_act/clascapta2013781/sch1.html)

26 Forced Marriage (web page)

<http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/ForcedMarriage.aspx>

27 Frances Simmons And Jennifer Burn (2013) Without Consent: Forced Marriage In Australia, Melbourne University Law Review [Vol 36: 970]. [http://www.mulr.com.au/issues/36\\_3/36\\_3\\_5.pdf](http://www.mulr.com.au/issues/36_3/36_3_5.pdf)

28 For an account of peonage and how it was taken into account during the travaux for the Supplementary Convention 1956, go to C.W.W. Greenidge (1958) Slavery (London: George Allen and Unwin Ltd)