



Submission by Anti-Slavery International to the Australian Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into establishing a Modern Slavery Act in Australia

June 2017

Summary

This submission includes:

- A short description of Anti-Slavery International and its 178 years of expertise in combatting slavery.
- Description of different types of slavery and some of the key underlying causes.
- Slavery in supply chains and Anti-Slavery recommendations on establishing legislation in Australia
- Child labour and child slavery and Anti-Slavery recommendations on establishing legislation in Australia

Introduction

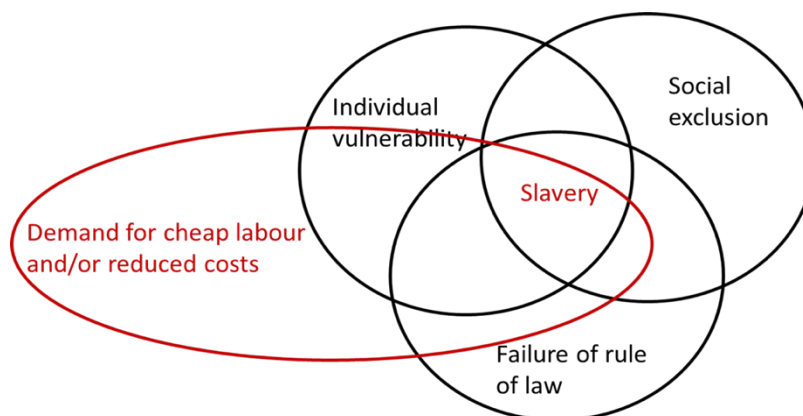
1. Founded in 1839, Anti-Slavery International is the world's oldest international human rights organisation. We aim to eliminate all forms of slavery around the world. We have consultative status with the United Nations, participatory status with the Council of Europe and are a member of the International Labour Organization (ILO) Special List of NGOs. Our work ranges from community level to national and international policy, focusing on West Africa, Europe, South Asia, South East Asia, South America and the Middle East. We campaign for the eradication of slavery by exposing current cases, supporting the initiatives of local organisations to release people, preventing the enslavement of communities at risk and providing support for the rehabilitation of victims of slavery. We do this through litigation, unionisation, psycho-social support, access to education and vocational services, income-generation schemes, and pressing for more effective implementation of international laws against slavery and transparency in business supply chains. We encourage and support effective coalitions for change, involving grassroots organisations drawn from or representative of slavery groups, local and national government, and the international community. Anti-Slavery has a long history of working with trade unions both nationally and internationally, as well as with businesses and investors, providing strategic advice and acting as "critical friend" for a number of UK and international businesses.
2. The focus of this submission is on providing additional information specifically requested from Dr Aidan McQuade, Anti-Slavery International Director, by the Australian Commission following his verbal submissions to them in Australia House, London. This submission further endorses and supplements submissions made by the Anti-Trafficking Monitoring Group on 28 April 2017, a coalition of 13 organisations led by Anti-Slavery International, and the Advisory Committee of the Modern Slavery Registry that is co-chaired by Anti-Slavery International.

The nature and the extent of modern slavery

3. Anti-Slavery International uses the word “slavery” as an overarching term for the human rights abuses defined in international law, principally by the 1926 Slavery Convention, by the 1930 and 1957 Forced Labour Conventions, the 1956 Supplementary Convention on Slavery, the 1957 Abolition of Forced Labour Convention, the 2000 Palermo Protocol on trafficking, and the 2014 Forced Labour Protocol. The notion of slavery will be used as an overarching term throughout this submission.
4. There are other significant international standards, in particular on child labour and decent work, and migrant rights and there are nuances within the slavery conventions mentioned above. But it is vital to note that this question of, “What is slavery?” is not a matter for social scientific contention. It is something that has been established in international law as a result of considerable effort over the past 100 years to provide a robust framework for the continuing struggle against slavery. National law should pay close attention to this international framework.
5. A good working definition is provided in the 1930 Forced Labour Convention, which defines forced labour **as all work or service extracted under menace of penalty, for little or no pay, for which the person in question has not offered themselves voluntarily.**
6. Part of the reason for this breadth of law in the international conventions is that contemporary slavery reflects a diversity of human experience. Hence the responses to these problems must be nuanced and adjusted to the realities of those particular abuses in the time in which they occur. For example the 2014 Forced Labour Protocol was adopted in recognition that the realities of forced labour have changed since the original Convention was adopted in 1930. There will doubtless be other areas where there is a need for further extension and development of the international law, as was the case in the past two decades when contemporary forms of slavery have been found to constitute war crimes and crimes against humanity under international criminal law.
7. In addition, Anti-Slavery wishes to highlight in particular the issue of forced child marriage, which is too frequently overlooked as an issue of child abuse and slavery because it is politically inconvenient, and those who are subject to it are effectively silenced by the more powerful who benefit from it.
8. Despite potential confusion over definitions, international legal definitions are consistent and as the standards evolved, definitions have not changed, but rather further developed and in these developments, reference has consistently been made to definitions contained in other treaties. So for example, the Palermo Protocol mentions forced labour as one of the purposes of trafficking but does offer its own definition of forced labour, for it is to be understood as defined in the ILO Forced Labour Convention.

Causes of slavery

9. In spite of the spectrum of experiences of contemporary and historical slavery empirical studies conducted by Anti-Slavery International and others indicate that slavery emerges at the conjunction of three common factors: individual vulnerability, usually, but not exclusively as a result of poverty; social exclusion; and failure of rule of law. When a demand for cheap labour or reduced costs and lack of decent work opportunities are added to this mix, slavery emerges.



10. The issue of social exclusion is important for a variety of reasons, not least because, as is also the case with forced child marriage, it inhibits the issue from becoming a political one: if slavery is being inflicted upon groups and individuals who are voiceless, or who the wider society simply does not like, then that wider community is more likely to tolerate the abuses if they see them and not raise their own voice to demand that these practices stop.
11. For example, in South America today many in forced labour are indigenous people. In Western Europe, South East Asia and elsewhere most people in slavery are migrant workers. In South Asia most people in slavery are Dalits or from other scheduled castes or minority groups.
12. And slavery is a political problem were it is enabled or perpetuated through failure of governments' to establish and/or uphold the rule of law. Tom Bingham, one of the outstanding British jurists of the past 50 years argued that human rights, including, of course, an absolute prohibition on slavery, must be at the heart of any credible system of rule of law.

Nature of slavery

13. Analysis of political economies¹ suggest several broad typologies of slavery that point to the problem being perpetuated or directly caused by acts of governments. Some examples include:
14. **State sponsored forced labour** which occurs where governments operate policies of actively subjecting their citizens to forced labour. Examples of include the trafficking of its own citizens by North Korea, state organised forced labour in the cotton production in Uzbekistan

¹ In this paper "political economy" refers to the laws, policies and customs which regulate business, employment and trade in any given society.

and Turkmenistan² and forced labour of citizens of Eritrea through a system of forced conscription. Produce of citizens enslaved by their own governments are frequently a concern for human rights due diligence in supply chains. Cases have been reported of North Koreans in European agriculture³, cotton supply chains of global brands being affected by forced labour in Central Asia⁴ and mining in Eritrea⁵

15. **Slavery facilitated through visa regimes.** Some states in the Middle East have established tied visa systems (“kafalah”). These so-called sponsorship systems tie workers to their employers to such an extent that even in the most abusive employment relationships, up to and including forced labour, the workers cannot change jobs and require employer’s permission to leave the country. It is this system that underpins the trafficking for forced labour of thousands of South Asian labourers for work on the infrastructure and venues for the World Cup in Qatar 2022.

16. **Slavery facilitated through lack of capacity of institutions and corruption.** In some countries in South Asia and South East Asia, the trappings of rule of law exist, but they do not extend to tens of millions, particularly of the poorest Dalits and indigenous peoples. There are insufficient judges and labour inspectors, there are insufficient police and many of those are corrupt. These problems are well identified by, for example, Indian institutions such as the Supreme Court, but the government has consistently failed to resolve these issues.

17. **Slavery facilitated through gaps in policies and legislation.** There are states such as those of Western Europe where rule of law generally pertains but where there are gaps in law and policy which allow for slavery to thrive in the cracks in the system. For example Anti-Slavery has dealt with cases where victims of trafficking have presented themselves to the police in the UK and other European countries, but the police, not understanding their responsibilities under the law, have erroneously told the victims that it is not a criminal but an “immigration matter.” The abuses, including forced labour and domestic servitude, that have arisen from the system of tied visas that the UK has established for overseas domestic workers is well documented.

Slavery as an international issue: international courts

18. Slavery has national and transnational aspects. International courts have played a crucial role in identifying the practices that governments should apply with regards to upholding the rights of victims of slavery and pointed out where they have failed in that duty. Through that, the courts have signalled where reform of the systems or practices which give rise to slavery should occur. For example, the European Court of Human Rights has made a number of important judgements relating to slavery, including, in 2012, C.N. v the United Kingdom⁶, which concerned allegations of domestic servitude by a Ugandan woman who complained that she had been forced into working as a live-in carer. The Court held that there had been a violation of the European Convention on Human Rights, finding that that the legislative

²http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTKM%2fC0%2f2&Lang=en

³ <http://www.telegraph.co.uk/news/2016/05/31/polish-firms-employing-north-korean-slave-labourers-benefit-from/>

⁴ <https://www.antislavery.org/what-we-do/where-we-work/uzbekistan-turkmenistan/>

⁵ <https://www.antislavery.org/canada-slavery-case-mining/>

⁶ https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/cn-v-united-kingdom_en

provisions in force in the UK at the relevant time had been “inadequate to afford practical and effective protection against treatment contrary to Article 4 [prohibiting slavery and forced labour]”. In the case of *Chowdury et al v Greece*⁷ in 2016, the court found that Greece had failed in its obligations under the European Convention of Human Rights to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences committed and to punish those responsible for the trafficking.

19. Such judgements are not limited to Europe. In 2008 the Court of the Economic Community of West African States considering a case brought by a young woman *Hadjiatou Mani*⁸, found that Niger had failed to protect its citizens from slavery, and this judgement has been a stimulus for considerable change in attitudes and laws relating to slavery across the region.

Slavery as an international issue: maritime

20. Slavery on high seas is an issue that has received significant international attention in the recent years in connection with forced labour in the fishing industry. However, the risks extend well beyond the fishing industry to commercial cargo carriers and holiday cruisers. Concerns have also been raised in relation to ship breaking⁹.
21. Traditional law enforcement activities are constrained when it comes to high seas and coastal waters. The UK Modern Slavery Act empowered commanders of Royal Navy ships to inspect vessels in British waters for forced labour and slavery. Given the extensive nature of forced labour in this sector – recent reports have highlighted the extent of trafficking in both Northern and Southern Hemispheres, in fishing and shipping, we **recommend that, respecting international law, Australia considers empowering Australian Navy commanders to carry out anti-slavery inspections on vessels at sea.**

Slavery as an international issue: supply chains

22. Millions are vulnerable to modern slavery or practices similar to slavery. Anti-Slavery’s current work in response to slavery ranges from community level to national and international policy focussing on the following key thematic and geographic areas: chattel slavery in West Africa; forced labour and trafficking in Europe; bonded labour in South Asia; trafficking and forced labour in South East Asia; forced domestic servitude, particularly in the Middle East; and forced labour in the supply chains of international supply business, including through provision of strategic advice and trainings for businesses.
23. Complex supply chains with multiple tiers stretching across continents and jurisdictions make it a challenge to ensure that working conditions are decent for all workers in those supply chains. The complex nature and the increased pressure on reduction of costs lead to risks of human rights violations along the supply chains, with modern slavery¹⁰ being the

⁷ <https://www.opensocietyfoundations.org/litigation/chowdury-and-others-v-greece>

⁸ https://www.unodc.org/res/cld/case-law-doc/traffickingpersonscrimetype/ner/2008/h_m_v_republic_of_niger_html/Hadjiatou_Mani_v._Republic_of_Niger_Community_Court_of_Justice_Unofficial_English_translation.pdf

⁹ http://www.amwu.org.au/unions_demand_action_on_ship_breaking_slavery

¹⁰ Modern slavery is used as an umbrella term in the paper. It means a sum of exploitative actions, including forced labour, human trafficking, child slavery, worst forms of child labour and servitude.

most heinous one. The risk of violations is the highest in lower tiers where there is little visibility and where there is the most vulnerable and socially excluded workforce or workers in precarious situations. However, abuses can occur in any part of the supply chain and in any country and every business can be affected by slavery.

24. Human rights violations along supply chains do not exist in a vacuum. Research by Anti-Slavery and others shows that policies, such as development and trade policies, can play a significant role in reducing both the causes of vulnerability to exploitation and in addressing the consequences. Anti-Slavery International's experience shows the considerable potential that anti-slavery measures have in contributing towards poverty reduction, by transforming exploitative labour into decent work. Hence without a focus on modern slavery the potential for obtaining the Sustainable Development Goals is significantly constrained. Businesses and governments of countries with high prevalence and risk of modern slavery must be compelled to put human rights at the core of the law, policy and customs that govern their practice of business, employment, aid and trade. **Australia can play an important role in advancing this agenda.**
25. The private sector has played a crucial role for many years in poverty reduction, through investment, provision of tax revenue, and provision of work. However, it is important to recognise that in many parts of the world there is a considerable difference between availability of *jobs* and availability of *decent work*.
26. This is starkly exemplified by consideration of the issue of contemporary slavery. Anti-Slavery's investigations over a number of years have shown that while millions of people work as forced labourers in some extremely high profile industries their employment contributes nothing to poverty reduction.
27. For example the [fisheries supply chains of Thailand, most notoriously that of prawns, are rife with forced labour of migrant workers](#); the brick kilns of northern India are staffed almost exclusively with bonded labourers from the Dalit or minority communities; [the garment workshops of Southern India which supply many prominent European retailers are in large part staffed by the forced labour of girls and young women](#); [the building sites for the infrastructure and venues of Qatar's World Cup employ the forced labour of vulnerable South Asian migrants](#); domestic workers in every major city on earth are frequently trafficked for forced domestic servitude.
28. It should be reemphasised that, regarding the above paragraph, when we refer to forced labour and slavery we are not exaggerating poor working conditions or exploitation for rhetorical effect. We are describing human rights abuses that would be classified as slavery or forced labour either under the 1926 Slavery Convention, the 1930 Forced Labour Convention, the 1956 Supplementary Convention on Slavery, or the 2014 Forced Labour Protocol.
29. Slavery and forced labour represent significant constraints on poverty reduction internationally for two reasons: First, when those enslaved are nationals of the country in which they are enslaved they are kept in extreme poverty in spite of their hard work. Second, their children will inherit the status: it is estimated by the ILO that a minimum of 5.5 million children are already enslaved. In spite of international progress on the issue of child labour there has been no recorded reduction in child slavery since 2005. So without effective national and international action against slavery neither enslaved parents nor enslaved

children will ever be free of poverty and able to contribute to the wider development of their country.

Role of regulation

30. The UN Guiding Principles on Business and Human Rights note that states have the responsibility to protect human rights of workers whereas businesses have the duty to respect those rights. In many parts of the world human rights violations in supply chains occur largely because states are abjectly failing in this responsibility (see above). In in such states the risks of modern slavery in supply chains are highest, even if the economic development that such business engagement brings provides others with decent work and a route out of poverty.
31. Many businesses operate globally, hence they are exposed to high risks of slavery and labour rights violations occurring in their supply chains. However, the risk is not related only to supply chains that lead countries in the global South. No country, industry, business operation or supply chain is immune from the risk of slavery/ Increasing number of cases are being reported from within the EU. For example:
32. **Belgium – labour trafficking on motorway service stations**
“In 2012 the court in Ghent, Belgium, held the end company liable for abetting the crime of trafficking in persons, regardless of lack of direct legal relationship with the abused workers. This is a good example of establishing corporate liability up the supply chain under anti-trafficking laws. In 2007 tens of Bulgarian, Moldovan, Romanian and Kazakh workers agreed to leave their homes in return for lawful employment in Belgium. The recruiter (Kronos Sanitärservice GMBH – a company registered in Germany, owned by a German national of Kazakh origins) transported workers first to Germany in order to arrange for registration under German residence address, in order to engage workers under EU legal regime of transnational provision of services (posting of workers).
33. Next day, workers were transported to Belgium in order to provide for cleaning of sanitary facilities in the chain of motorway restaurants owned by N.V. Carestel Motorway Services, since then the brand of Auto-Grill Belux (an Italian-based multinational catering) to which Kronos was a contractor. Upon arrival in Belgium Kronos declined to provide with lawful status for the workers as promised. Workers were made to work 7 days a week, without breaks, from 7am until 10pm, for continuous periods of several weeks, under full control of the contractor. Their wages were withheld to be paid only at the end of the engagement period, on the level drastically below minimum pay standards in Belgium and average costs of living. Workers lived in substandard quarters. There was evidence of threatening, pervasive control and limitation of any outside contact. Carestel (Auto-Grill) was not in direct or even indirect employment relationship with workers. Instead, Kronos was “renting” the sanitary space of Carestel (Auto-Grill) in exchange of collection of fees from clients of the restaurant. Consequently, Carestel (Auto-Grill) was denying any knowledge, control or impact over working conditions of the cleaners. Remarkably, in most cases of violations of labour laws, including trafficking cases, lack of direct labour relationship with workers is a sufficient defence against liability of end contractor.
34. Many cases of severe labour exploitation showing trafficking indicators remain unsolved when end employers claim lack of knowledge of abuses by their subcontractors or suppliers. In the Belgian case, however, the court found basis for extending liability for trafficking, arguing that abuses by Kronos would not have been possible without Auto-Grill “deliberately

ignoring malpractices”. Outsourcing was also found not an excuse for “deliberately ignoring exploitation of workers”. Not ending a contract after having a possibility to acquire knowledge about such exploitation was pointed at as a sufficient ground for being an accomplice of such exploitation. Carestel’s defence of lack of relationship with workers was called “pure cynicism”.¹¹

35. UK – mattresses produced by slave labour found in supply chains of major retailers

Hungarian men were subjected to forced labour in a mattress factory supplying major UK high street retailers, such as Next and John Lewis. The men who recruited vulnerable Hungarian workers as well as the owner of the mattress factory were convicted of modern slavery offences¹². While the factory was regularly audited by both retailers, the audits failed to spot the signs of modern slavery, demonstrating the weakness of traditional compliance audits when it comes to identifying human rights violations.

36. North Korean trafficked workers working in the EU

The Democratic People’s Republic of Korea (DPRK) has been sending tens of thousands of its citizens to work abroad in under circumstances that have the hallmarks of trafficking for forced labour. The North Korean government uses the deployment of its citizens abroad as method of earning hard currency. The workers are subjected to a strict, military style discipline while working abroad and are constantly watched by supervisors deployed by the regime. Approximately 90 per cent of the workers’ salaries are appropriated by the North Korean government¹³. It is estimated that there are at least 50,000 North Koreans currently working in 16 countries worldwide.¹⁴ Deployment of workers overseas is state run, with the system of labour export organised, managed, and overseen by multiple branches of the DPRK government.¹⁵ Prospective workers are vetted by the state against selection criteria which seem to consider the candidate’s *Songbun* (or family background), political background (whether they are ideologically trustworthy), skill level and hard-working character¹⁶.

37. All workers must also be married with at least one child and be in excellent health – as verified by a physical examination no sooner than six months prior to departure.¹⁷ Single men are precluded from access to overseas jobs and only young women are selected for restaurant and textile jobs overseas. While most of the workers seem to be deployed in countries like Russian and China (cases have been found in several factories in the special economic zones in China where many European businesses source from), a number of cases have been recorded within the EU:

- In 2014, Leisure Clothing Company, a Chinese owned clothing factory in Malta was found to be employing 36 North Koreans in slave like working conditions. At the time, the company supplied small quantities of clothes to at least two British companies, Karen Millen and

¹¹ <http://www.ituc-csi.org/joint-corporate-liability-in?lang=en>

¹² <http://www.yorkshirepost.co.uk/news/crime/boss-guilty-of-trafficking-hungarian-slaves-at-dewsbury-factory-that-made-beds-for-john-lewis-1-7686768>

¹³ NKDB; Quote in ETI briefing paper

¹⁴ Estimates of North Korean workers vary widely. From the Ministry of Foreign Affairs as of January 2013, there were 46,000 workers in 40 countries; From the Asan Institute, in 2013 there were 50,000 workers in 16 countries. Quote in ETI briefing paper

¹⁵ IHR.L.; Quote in ETI briefing paper

¹⁶ Neither the job postings nor the selection criteria are made public.; Quote in ETI briefing paper

¹⁷ Scartiatou. Physical examination involves a blood test and eye, ear and liver examination. Quote in ETI briefing paper

Coast, as well as a small number of European brands. Both British companies reportedly stopped doing business with the factory when they were alerted to this in November 2014¹⁸.

- Mularski farm in Poland , a hot house tomato producer supplying to a number of retailers in the EU, employs 62 female workers from North Korea.¹⁹ Located in a quiet village 300km from Warsaw, the 'farm' consists of a vast field of glass houses and together with the dormitories, is completely enclosed by concrete walls. The workers live in the dormitories and only leave the premises on Sundays. Mularski contends that all 62 workers are legally employed, treated fairly and paid properly into their own bank accounts. This was verified by Polish authorities who regularly conduct inspections and approved the farm. A separate investigation into working conditions by Tesco (Poland) also found no evidence to suggest that workers at the site were being mistreated²⁰.

38. The above cases are just a few examples of the risks of human rights violations in business supply chains, even within countries with good standards of rule of law. They show the complexity of the risk and make it clear that resolute action must be taken not just by individual states, but along the full length of supply chains through measures that are extraterritorial in their application.

39. To mitigate the risks posed to human rights abuses in business supply chains the UNGPs also argue that states should introduce extra-territorial legislation to uphold human rights principles, including in relation to their corporate citizens. Since 2010 there have been a number of notable initiatives in relation to this approach, including action against human trafficking and modern slavery:

- 2010 California Transparency in Supply Chains Act. This requires all businesses trading in California and with a turnover of greater than USD 60 million to report on how they were combatting slavery.
- In 2015 in the UK with a similar measure as part of its Modern Slavery Act. This requires all commercial organisations (this also covers large charities such as Oxfam) trading in the UK and with a turnover of greater than £36 million to publish an annual statement on what they are doing to eliminate slavery from their supply chains.
- Legislation for broad human rights due diligence is entering the final stages in the French Parliament
- German Sustainable Textiles Initiative (which will be an element of the German G20 chairmanship in 2017)
- Dutch Industry Covenants signed in 2016 for the textile sector²¹ and the banking sector²²
- On February 7, 2017 the *Child Labour Due Diligence Law* was adopted by the Dutch Parliament. The law requires companies to examine whether child labour occurs in their production chain. If that is the case they should develop a plan of action to combat child labour and draw up a declaration about their investigation and plan of action. That statement will be recorded in a public register by a yet to be designated public authority. If the Senate gives its approval too, the Act will be effective from January 1, 2020.

40. Debates continue on the international level, including a debate about a possible new ILO convention focused on decent work in global supply chains²³, a possible new binding UN

¹⁸ <http://www.facing-finance.org/de/2016/01/deutsch-moderne-sklaverei-im-herzen-europas/>

¹⁹ Tomatoes from this farm are sold in the EU and Tesco (Poland).

²⁰ ETI briefing paper

²¹ <http://www.ser.nl/en/publications/news/2016309-coalition-agreement-sustainable-garment-textile.aspx>

²² <http://www.ser.nl/en/publications/news/20161028-dutch-banking-sector-agreement.aspx>

treaty on business and human rights²⁴. The European Parliament has recently adopted resolutions on due diligence in textile supply chains and conflict minerals and will be adopting a resolution on trade policies and global value chains in autumn 2017.

41. Due diligence approach is becoming a key element of both regulatory and voluntary supply chain transparency, as the limitation and often inability of traditional audits to pick up on the most heinous human rights violations become apparent.
42. Businesses are increasingly coming out in favour of mandatory supply chains disclosure. The UK law in particular, was a direct result of lobbying of the British government by UK businesses involved in the Ethical Trade Initiative and the British Retail Consortium. These businesses recognised that their efforts towards ethical practices were undermined by competitors who were able to undercut them with impunity by adopting exploitative labour practices, including slavery. These businesses therefore wished for increased regulation in order to “level the playing field” somewhat by compelling unethical competitors to be more transparent about their practices.
43. Furthermore, the effect of mandatory transparency legislation has led to elevation of the issues within the business and has placed human rights due diligence and anti-slavery action in the centre of business strategies in many companies. Buy in at the top of the business executive has a bigger potential to affect change in business practice than change driven only from CSR departments.
44. While not a panacea, the impact of this legislation so far has been to push the human rights question of slavery to close to the top of the agendas of businesses operating in the UK, and hence to widen the discourse on the issue with many businesses now much more actively contemplating what they can do to combat slavery in their supply chains.
45. Supply chain transparency is a prerequisite for establishing decent work in supply chains, though it is insufficient on its own to achieve decent work. Transparency allows stakeholders, not least the businesses themselves, to see from where their goods are originating, and to assess the human rights risks at each stage of the supply chain. Sometime the risks will emerge from poor business practice – inattention to labour law, for example, or inattentiveness to the standards and ethics of labour suppliers. Sometimes, as noted above, the risks will emerge from the wider set of policies, custom and practices that countries put in place to govern the conduct of business, employment and development.
46. The Transparency in Supply Chain clause in the UK’s Modern Slavery Act is an important example of the sort of extraterritorial law that the UNGPs recommend. It requires businesses to publish annually on their website a Modern Slavery Statement signed off by the company’s board.
47. The nature of the statement is left largely to the discretion of the business, and to date the quality of the statements is mixed, with the majority being poor. However the measure has increased consideration of slavery risks by businesses and promoted increased dialogue on how slavery may be eradicated from business supply chains. On this point, we wish to refer to the submission by the Advisory Committee of the Modern Slavery Registry.

²³ http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang--de/index.htm

²⁴ <https://business-humanrights.org/en/binding-treaty>

48. A further significant legislative initiative in relation to slavery has been the US Trade Enforcement and Facilitation Act, which was signed into law by President Obama in February 2016. This increased the powers of US Customs officials to exclude from US markets goods tainted with forced and child labour. It is a measure that echoes Franklin Roosevelt's initiative as president in the 1930s when he ended child labour in the US by banning its use in interstate commerce. The new US measure recognises that the question of an "uneven playing field" related to forced and child labour is not merely an issue of business policy, but also one of government policy: in some parts of the world the lack of human and labour rights protections for workers facilitates unscrupulous employers to obtain competitive advantage by allowing them to reduce labour costs by ignoring basic human rights protections.
49. Significantly, the US has reflected in their legislative framework the fact that government contracts engage large supply chains and trade of enormous value and there equally is a high risk of slavery. Consequently a Presidential Executive Order on strengthening protections against trafficking in persons in federal contracts²⁵ was introduced. Furthermore, the US Code § 1589 that prohibits knowingly benefiting from forced labour.
50. The lack of coverage of government contract under the UK's Modern Slavery Act s.54 has been identified as a weakness and initiatives have been launched in the UK Parliament to rectify this. Furthermore, the Act lacks provision similar to the US Code § 1589. However, the Human Trafficking and Exploitation (Scotland) Act 2015 includes a provision on offences by bodies corporate, which provides for criminal liability of corporation for modern slavery offences, including where they were committed through connivance and neglect²⁶.
51. **We recommend that Australia introduces a transparency provision as a part of the modern slavery law that:**
- Requires all commercial organisations with a certain annual turnover that are registered in Australia or have presence/trade in Australia to conduct human rights due diligence and periodically report on the steps taken. The turnover approach (rather than approach taken by the EU in the non-financial reporting directive and the French legislative proposal that is based on number of employees, which is limiting as large corporations that keep only small trading offices in the EU would be exempt from the requirements) is considered better as it ensures that all businesses of a certain size are required to report, regardless of the number of employees in Australia.
 - This law should require businesses to
 - a) set out in a risk analysis where there are the greatest threats of human rights violations, including modern slavery in their supply chains;
 - b) why those risk exist (in terms of government policy, business practice etc.)
 - c) what the business is doing to mitigate the risks and to mitigate the consequences for worker;
 - d) what the governments of the places where the risks exist need to do to protect the human rights of workers.
 - The due diligence requirements should cover all government contracts and public procurement.

²⁵ <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>

²⁶ <http://www.legislation.gov.uk/asp/2015/12/section/39/enacted>

- A monitoring mechanism and proportionate sanctions for non-compliance should be built into the legislation, as should a registry of businesses required to report under the law and a registry of business statements. Here we wish to refer to the submission made by the Advisory Committee of the Modern Slavery Registry
52. **Australia should further consider introducing legislation similar to the US Trade Enforcement and Facilitation Act that would enable an appropriate Australian government office to exclude from Australian markets goods tainted with child labour and forced labour.** Exclusions should not be automatic but discretionary. Before making a decision the office should evaluate the efforts by businesses and governments to remove the causes of these abuses, the extent and egregiousness of the abuses in the supply chain and the impact of the exclusions on all workers.

Child labour and child slavery

53. The International Labour Organization's 2012 estimate of forced labour estimated that there were around 5.5 million children in slavery across the world. This figure had not diminished since the previous one in 2005, in spite of a considerable reduction of the number of children estimated to be in child labour during a similar period.
54. Child slavery is often confused with child labour. It is different in an important respect. Child labour, which are those forms of work that are not in the best interests of the child, hindering their education and development, tends to occur within the family. Child slavery is the handing over of a child to a third party for purposes of exploitation. For this reason Anti-Slavery International argues that forced child marriage is child slavery. Therefore child labour may be considered as a matter perhaps best addressed by aid and development programmes, particularly related to quality education, whereas child slavery remains fundamentally a child safeguarding and protection issue.
55. Other forms of child slavery include:
- Children used by others for profit, often through violence, abuse and threats, in prostitution or pornography, forced begging, petty crime and the drug trade
 - Forced child labour, for example in agriculture, factories, construction, brick kilns, mines, bars, the tourist industry or domestic work
 - Children forced to take part in armed conflicts
56. Most children who work do so because their families are poor and their labour is necessary for their survival. Children are often employed because, compared to adults, they are more easily controlled and are unlikely to demand higher wages or better working conditions. For poorer children from rural areas, school is often not an option. Education can be expensive or schools are too far away.
57. As well as being a result of poverty, child labour also perpetuates poverty. Many working children do not have the opportunity to go to school and often grow up to be unskilled adults trapped in poorly paid jobs.

58. Anti-Slavery International argues that child and early marriage²⁷ can be qualified as **slavery** in accordance with the 1926 Slavery Convention definition if one or more of the following indicators are present:
- When the ability to refuse, leave or end a marriage is denied, thereby fundamentally compromising the child's freedom of movement and right to liberty and security of person;
 - When the conditions of marriage mean that a child spouse is exploited or denied freedom of choice by either their spouse or in-laws regarding any individual and personal matter from learning and attending school, to earning an independent income, to consent to sexual relations and/or is intimidated into working longer hours than his or her spouse or in-laws through threats of violence, divorce or the withholding of food or money;
 - When a child spouse is subject to rape, beatings or murder without recourse to law or society for protection or redress.
59. In addition, Anti-Slavery International argues that instances of child and early marriage in which child spouses are compelled to undertake work or service under the menace of any penalty and for which they have not offered themselves voluntarily should be considered **forced labour** and cases of child and early marriage in which the child is moved from one place to another for the purposes of exploitation, sexual or otherwise, constitute **child trafficking**.

Conclusion and recommendations

60. **We welcome and commend the initiative and considerations of the Australian Parliament and Government to establish comprehensive anti-slavery legislation.** A carefully considered Australian anti-slavery law could be an important measure in the national and international struggle against slavery, giving clear leadership to law enforcement, business and other key stakeholders on what their roles and responsibilities are in the struggle against slavery.
61. **How the notion of slavery is framed matters**, as framing can influence political and policy responses to a phenomenon, and can lead to excluding certain types of conduct from consideration as a form of slavery. For example, framing of contemporary forms of slavery only as a matter of criminal law may lead to a disproportionate focus on prosecutions, to the detriment of the protection of the rights of victims. Similarly, considering contemporary forms of slavery through the human trafficking lens only can lead to less attention being given to traditional forms of slavery.
62. In practice, situations will often overlap and national laws may complicate matters further, as legal traditions differ and states adopt definitions that depart from international definitions, or include notions in their national laws that are not covered in the international law. A high degree of precision is required at a micro level when interpreting a particular context or applying a definition to a specific case. At the macro, international level, precision is important to achieve a common understanding of what is essential. In the context of contemporary forms of slavery, the essential is focusing on the situation and using international legislation to understand whether the situation experienced by a human being represents a form of slavery under the dense network of international treaties.

Recommendations

²⁷ <http://www.antislavery.org/wp-content/uploads/2017/01/behind-closed-doors-child-marriage-as-slavery.pdf>

63. **Ensure consistency with international law.** Definitions of offences included in the legislation should be formulated so that they correspond as closely as possible to international standards. Such formulations ensure consistency of understanding of notions internationally, but also makes easier any cross-border investigations and prosecutions.
64. **Ensure that child and early marriage as a form of slavery are covered in the law.** In some instances, child and early marriage result in situations of slavery and forced labour. Victims of such situations should have equal access to protection and assistance as victims of other forms of slavery.
65. **Ensure that legislation focuses equally on criminal justice, victim protection and prevention measures.** The impact of a law would be enhanced as the ambition of the law was extended: in addition to criminal justice measures there must also be decent victim protection measures, which may increase the impact of the criminal justice intent by properly protecting victims and abstaining from deportation of witnesses. We recommend that any such law follows the international established formula of prevention-protection-prosecution (and partnership). In Anti-Slavery experience, where states ensure that all parts of the formula are represented, that state is able to combat and prevent slavery more effectively.
66. **Include mandatory supply chains due diligence and reporting.** Supply chains provisions should extend to public authorities and include publicly held register of organisations required to report and their statements. The legislation should also include minimum criteria for reporting. (Please refer to paras 51-52 above for more detail).
67. **Ensure extraterritorial application of the law.** Extending the reach of the law so that it was extraterritorial in key aspects would also be desirable. In addition to extraterritorial application of provisions on offences, transparency in supply chain clause would be important as would empowering the government to exclude from Australian markets goods tainted with forced and child labour. Australia may also wish to consider making extraterritorial provisions for the knowing use of forced labour or slavery beyond Australian territory.
68. **Ensure skills of those enforcing the law.** Given the evolving nature of contemporary slavery Australia should consider what mechanisms it should establish to ensure that those tasked with upholding the law are properly skilled, resourced and held accountable towards this end.
69. **Ensure that other relevant laws and policies focus on anti-slavery efforts.** Beyond the criminal justice sphere slavery is also an issue of international trade and development. Australia may wish to consider again its policies in these spheres to enhance their anti-slavery and human rights impacts, particularly in relation to child labour, education, law enforcement cooperation and peace-keeping.

ENDS

We would be happy to assist further should you require additional information from Anti-Slavery International's work and our expert input from our work with individuals affected by slavery, governments, civil society organisations, businesses, trade unions.