
INQUIRY INTO THE CUSTOMS AMENDMENT
(PREVENTING CHILD LABOUR) BILL 2023

Submission to the Senate Legal and Constitutional
Affairs Legislation Committee

from

The SlaveCheck Foundation

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1. About SlaveCheck

SlaveCheck is a global, survivor-centric modern slavery due diligence system - powered by the **slavecheck.ai** ‘collective intelligence’ clearinghouse - self-funded via a ‘profit-for-purpose’ business model. SlaveCheck helps business comply with all anti-slavery legislation globally as part of leading, coordinating and managing the collaborations necessary among all solution stakeholders to systematically eliminate modern slavery.



2. About the Submission Author

The author is the former and first UK Independent Anti-Slavery Commissioner, a role created in the UK’s Modern Slavery Act 2015 and provided the office holder with a statutory position overseeing the statutory agencies’ responses to human trafficking and modern slavery.¹ Before being Commissioner, the author headed the UK’s Scotland Yard Human Trafficking Unit and was Ireland’s representative to the Council of Europe Groups of Experts on Human Trafficking (GRETA) between 2018 and 2022. He is also the former chair of the Leadership Group of the Institute of Human Rights and Business² and the co-founder and global strategy director of the Santa Marta Group, an international network of criminal justice actors, civil society, faith groups, and governments launched in 2014 at the Vatican, endorsed by Pope Francis.³ This experience and knowledge has provided first-hand strategic and tactical expertise. He is also the Global Strategy Advisor for SlaveCheck.

¹ *Independent Anti-Slavery Commissioner* <https://www.antislaverycommissioner.co.uk/>

² IHRB: <https://www.ihrb.org/>

³ International network of law enforcement & civil society: <https://santamartagroup.org/>

3. Customs Amendment (Preventing Child Labour) Bill 2023

While the trans-Atlantic slave trade ended over 200 years ago, its relevance and the socioeconomic norms that fuelled its existence remain an essential reference point today. However, one of the main differences between the trans-Atlantic slave trade and contemporary human trafficking and modern slavery is that during the 17th to 19th century, this phenomenon was legal and considered essential for a successful business.⁴ In the 21st century, human trafficking and modern slavery are crimes in most countries, yet today, prevalence is more significant than ever before, with current estimates at almost 50 million people suffering. According to the UN, in the three centuries of the trans-Atlantic slave trade, an estimated 15 million people were enslaved.⁵ By August 2020, 93 percent of the world's nations had introduced anti-human trafficking legislation, an increase from 18 percent in 2003.⁶ However, according to the ILO, the prevalence of this crime continues to grow, reaching historic levels.⁷

The first contemporary international instruments came from the United Nations (UN) in December 2000, the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,' better known as the Palermo Protocol.⁸ Australia put this protocol into force in September 2005. The UN assigned responsibility for implementing the Palermo Protocol to the United Nations Office for Drugs and Crime (UNODC). While this convention is advisory upon UN members, it does have scrutiny imposed by the US Department of State Trafficking in Persons Office (TIP Office), which publishes an annual Trafficking in Persons (TIP) Report authorised by the US Victims of Trafficking and Violence Protection Act 2000 (TVPA 2000).⁹ TIP Reports grade countries against the Palermo Protocol and has an evaluation grading process. Countries that meet the minimum standards are placed

⁴ Eltis D and Engerman SL, The Importance of Slavery and the Slave Trade to Industrializing Britain (2000) 60 The Journal of Economic History 123

⁵ Slave Trade (*United Nations*) <https://www.un.org/en/observances/decade-people-african-descent/slave-trade>

⁶ Countries with full, partial or no trafficking legislation 2003 to 2020 <https://www.statista.com/statistics/300899/percentage-of-countries-by-legislation-on-trafficking-in-persons-by-region/#:~:text=As%20of%20August%202020%2C%2093,of%20countries%20offered%20such%20legislation.>

⁷ ILO, 50 Million People Worldwide in Modern Slavery (12 September 2022) https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_855019/lang--en/index.htm

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

⁹ *Victims of Trafficking and Violence Protection Act 2000* - <https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>

in tier one; those trying hard but falling short of the minimum requirements are placed in tier two. Those failing to achieve the standards in significant areas are placed on the tier two watch list, meaning they are being monitored for demotion to the lowest grading of tier three. If placed on tier three, the US can and invariably does impose sanctions on the country. Australia is in tier one.

In 2008, the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings [CETS No. 197] was introduced.¹⁰ This convention obliged the State to implement a systemic approach to prevent and respond to human trafficking.

In 2011, the European Parliament and Council introduced measures to prevent and combat the trafficking of human beings and protect its victims [Directive 2011/36/EU].¹¹

Globalisation has become a political and economic priority, creating a war for talent, corporate investment decisions, qualifications, skills and competence, as disclosed in the 2009 report titled 'Education, globalisation and the knowledge economy' in which former UK Prime Minister Rt. Hon. Gordon Brown stated:¹²

“Once, we worried about a global arms race. The challenge this century is a global skills race and that is why we need to push ahead faster with our reforms to extend education opportunities for all...In a globally competitive national economy, there will be almost no limits to aspirations for upward mobility.”

Franko A argues that, with globalisation, aspirations of international criminality are unlimited.¹³ This would go some way to explain increases in human trafficking and the increasing global demand for people as a commodity.

Multilateral agencies, including the UN, the Council of Europe, the EU, the African Union,¹⁴ and the Association of Southeast Asian Nations (ASEAN),¹⁵ have emphasised the importance of taking action to suppress and respond to human trafficking.

¹⁰ CoE, Full List - Treaty Office - <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=197>

¹¹ EU Parliament, Human Trafficking Directive 2011 - <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>

¹² Brown Lauder A, Education, Globalisation and the Knowledge Economy

¹³ Franko Aas K, *Visions of Global Control: Cosmopolitan Aspirations in a World of Friction* (2011)

¹⁴ Home | African Union, 12 September 2023) <https://au.int/>

¹⁵ ASEAN Plan of Action Against Trafficking in persons, especially women - <https://asean.org/wp-content/uploads/2021/01/ASEAN-Convention-Against-Trafficking-in-Persons-Especially-Women-and-Children-Plan.pdf>

Serious multilateral efforts to end slavery, human trafficking and forced labour began almost 100 years ago in the 1926 Slavery Convention agreed at the League of Nations.¹⁶ This Convention obliged signatory nations to eliminate slavery, the slave trade, and forced labour in their territories. It was adopted by the UN when it replaced the League of Nations in 1946.

The 1926 Slavery Convention has 12 Articles as the foundations to end slavery and forced labour:

Article 1: (1) Slavery is the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

In 1998, the Rome Statute of the International Criminal Court (ICC) made slavery-type practices and human trafficking crimes against humanity when they were a widespread attack on part of a community.¹⁷ The ICC recently issued an international warrant for Vladimir Putin for the illegal movement of Ukrainian children to Russia, including human trafficking.¹⁸

Four years after the 1926 Convention, the International Labour Organisation (ILO) agreed to implement the Forced Labour Convention 1930.¹⁹ Article one of this Convention requires members who ratify the Convention to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. The 1930 Convention echoes the 1926 Slavery Convention, again stressing the need to work with other states.

In 1957 the ILO added further multilateral measures to counter exploitation introducing the Abolition of Forced Labour Convention.²⁰ This convention reinforced and widened the articles of the 1926 Slavery and the 1930 ILO Conventions. Additional protections became necessary

¹⁶ *Slavery convention: Report presented to the Assembly by the Sixth committee* (League of Nations 1926) <https://www.loc.gov/item/2021667888/>

¹⁷ International Criminal Court (*Rome Statute*) <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁸ <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

¹⁹ *International Labour Organization*, <https://www.ilo.org/global/lang--en/index.htm>

²⁰ Abolition of Forced Labour Convention, 1957 (No. 105): https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB%3A55%3A0%3A%3ANO%3A%3AP55_TYPE%2CP55_LANG%2CP55_DOCUMENT%2CP55_NODE%3ACON%2Cen%2CC105%2C%2FDocument

following the Second World War (1939-45), as the effects of the war changed political regimes that were detrimental to social and economic stability and development.²¹ In 1951, the UN Economic and Social Council (ECOSOC) partnered with the ILO to examine new forms of labour exploitation.²² A new form of forced labour was identified as the punishment for holding political views, especially in communist regimes.²³

Forced labour, sexual exploitation, human trafficking and slavery are linked to everyday products and services purchased on the high street, as explained by Wolfgang Kaleck, General Secretary of the European Centre for Constitutional and Human Rights,²⁴ when he exposed the extent of forced labour in the supply chains of companies such as Ikea, Aldi, Siemens, and Quelle, and over 6,000 other companies who profited from forced labour.²⁵

Human rights, in the shadow of 70 million deaths during the Second World War,²⁶ were needed to justify the reasons and sacrifices of the war.²⁷ The UDHR would challenge global inequalities, injustices and wrongs and set the foundations of what would make a better world for all. Regarding slavery and forced labour, the UDHR introduced an inalienable right to end this abuse.

Article 4 UDHR states:

'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms', once again reiterating the priority on the concept of freedom from slavery and servitude.

In 2014 the ILO introduced the Forced Labour Protocol, which introduced concrete actions to implement the 1930 Convention. It directs the State to engage with employers and unions to

²¹ Money Matters, an IMF Exhibit -- the Importance of Global Cooperation, Destruction and Reconstruction (1945-1958), Part 1 of 6
https://www.imf.org/external/np/exr/center/mm/eng/mm_dr_01.htm

²² Economic and Social Council (United Nations) <https://www.un.org/en/model-united-nations/economic-and-social-council>

²³ Bregha F, Forced Labour Camps in Countries under Communist Domination (1950) 6 Relations Industrielles 4

²⁴ General Secretary - Wolfgang Kaleck (ECCHR, 6 August 2023)
<https://www.ecchr.eu/en/person/wolfgang-kaleck/>

²⁵ Kaleck W, Forced Labour – Not Just in the GDR (ECCHR) <https://www.ecchr.eu/en/publication/forced-labor-not-just-in-the-gdr/>

²⁶ Research Starters: Worldwide Deaths in World War II: The National WWII Museum: New Orleans (*The National WWII Museum | New Orleans*) <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-worldwide-deaths-world-war>

²⁷ Morsink J, World War Two and the Universal Declaration (1993) 15 Human Rights Quarterly 357

prevent forced labour. It lists the sectors and areas businesses should conduct due diligence to protect their workers.²⁸

The US Tariff Act of 1930 (19 U.S.C. 1307), prohibiting the importation of products or items into the US where it can be shown forced or child labour has been used.²⁹ A loophole in the Tariff Act allowed businesses to avoid a ‘Withhold Release Order’ until 2016, when President Obama made an Executive Order to remove the shortcoming.³⁰ Currently, the US has 52 active Withhold Release Orders, including industries involved in fishing, textiles, electronics, palm oil, latex gloves, furniture, palm oil, diamonds and gold mining.³¹

Germany introduced the German Supply Chain Due Diligence laws in 2023, obliging German businesses to identify and mitigate human rights violations, including forced and child labour.³² France introduced the Duty of Vigilance Law in 2017, requiring French businesses to prevent human rights violations.³³ Both legislations refer to the UN Guiding Principles on Business and Human Rights as the basis for their legal frameworks.³⁴ In January 2021, the EU introduced the Conflict Minerals Directive, placing a duty on member states to prohibit trade where the production of the mineral is used to fund armed groups, is connected to forced or child labour and other human rights abuses, or where it supports corruption and money laundering.³⁵

Global data provided by Governments to the US Department of State reveals that worldwide in 2022, there was a total of 15,159 prosecutions and 5,777 convictions. The estimated number of victims is 49.6 million, yet only 115,324 were identified. This equates to only circa 0.25 per cent of all victims being identified,³⁶ and the likelihood of a victim seeing their trafficker

²⁸ Protocol of 2014 to the Forced Labour Convention, 1930 - https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB%3A12100%3A0%3A%3ANO%3A%3AP12100_IL_O_CODE%3AP029

²⁹ Forced Labor, (U.S. Customs and Border Protection) <https://www.cbp.gov/trade/forced-labor#:~:text=CBP%20implements%20Section%20307%20of,imported%20into%20the%20United%20States>

³⁰ Urbinar I, U.S. Closing a Loophole on Products Tied to Slaves, *New York Times* (15 February 2016) 8

³¹ Homeland Security, Withhold Release Orders and Findings List (U.S. Customs and Border Protection) <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>

³² German Supply Chain Law Comes into Force (ECCJ, 11 January 2023) <https://corporatejustice.org/news/german-supply-chain-act-comes-into-force/>

³³ All You Need to Know about France’s Corporate Duty of Vigilance Law, (Worldfavor Sustainability Blog) <https://blog.worldfavor.com/all-you-need-to-know-about-frances-corporate-duty-of-vigilance-law>

³⁴ *Guiding principles on business and Human Rights*, OHCHR https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

³⁵ EU, Conflict Minerals Regulation: The Regulation Explained (1 January 2021) https://policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation/regulation-explained_en

³⁶ Number in TIP report compared to GSI as percentage

convicted is as low as 0.02 per cent.³⁷ While these calculations have not been formally verified, they indicate deficient identification levels and high impunity for perpetrators.

In April 2024 the European Parliament approved with 374 votes for, 235 against and 19 abstentions the new “[due diligence](#)” directive, agreed on with the Council, requiring firms and their upstream and downstream partners, including supply, production and distribution to prevent, end or mitigate their adverse impact on human rights and the environment. Such impact will include slavery, child labour, labour exploitation, biodiversity loss, pollution or destruction of natural heritage.

The rules will apply to EU companies and parent companies with over 1000 employees and a worldwide turnover over 450 million euro. It will also apply to companies with franchising or licensing agreements in the EU ensuring a common corporate identity with worldwide turnover higher than 80 million euro if royalties generated at least 22.5 million euro. Non-EU companies, parent companies, and companies with franchising or licensing agreements in the EU that reach the same turnover thresholds in the EU will also be covered.

Larger companies are required to report in the UK and Australia, and Canada is now exploring introducing legislation relating to business and public procurement.

Since 2018, the Leaders Declaration of the G20 has referred to forced labour and exploitation. In the 2024 G20 in Brazil, Chair President Lula da Silva and President Biden agreed that forced labour and exploitation would be prioritised. Australia actively participated in the modern slavery issue at the G20. It was one of the nations that assisted in securing SDG8.7, ending modern slavery, in partnership with the UK and Argentina in 2015 when the new Global Goals were in draft form.

The world's history of responding to modern slavery and human trafficking has been deplorable over the decades. Despite legal instruments going back to 1926, global efforts to prevent, deter and end this criminal exploitation have been substandard.

Over the past 10 years, there have been renewed efforts to address modern slavery and human trafficking, including in supply chains, business activities and government procurement. However, to date, financial investment in comparison to other global crimes has been derisory. As a crime that generates over US\$236 billion in criminal assets from the exploitation of 49.6

³⁷ Convictions against victims as percentage

million people, governments across the world are still falling well short of what is required to deter offending and trace this large sum of illicit funds.

4. Recommendations

The Customs Amendment (Preventing Child Labour) Bill 2023 is a welcomed addition to the tools to prevent modern slavery. The measures will encourage and educate businesses and governments that Australia is extremely serious in preventing child labour and will not trade with those who commit serious crimes by using children for labour. Data on injuries and deaths of children at work is poorly recorded across the world, but the ILO does estimate that circa 22,000 children die every year in working environments.

A recommendation to be considered in the amended legislation is that it should include a requirement for a company identified as being involved in using child labour to pay reparation and compensation to any exploited child. This should allow the child to be educated and support their family. Until a company has made satisfactory compensation, it should remain debarred from trading in Australia, even beyond the 48-month period.

This amendment is very welcomed progress in the fight against modern slavery.

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