



Submission No 57

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

Organisation: World Vision – supplementary submission

Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
Canberra ACT 2601

8 February 2012

To the Secretary,

I am writing to respond to questions taken on notice during my appearance before the Sub-Committee's public hearing into slavery, slavery-like conditions and people trafficking on 20 November 2012. I apologise for the delay in responding, but in order to provide what we hope will be useful advice there was a need to seek counsel on some questions.

(Question 1) Senator Moore requested information on other countries that have taken steps to ensure that government procurement processes do not contribute to slavery, slavery-like conditions and people trafficking. Attachment A provides the examples of the United States, The European Union, Denmark, Netherlands, Norway, Scotland, and Sweden.

(Question 2) Referencing potential advocacy efforts in which Australia might engage at the international level, Ms Parke also asked whether something might be done during Australia's hosting of the G20 or in Australia's submissions to universal periodic reviews, which could be excellent opportunities to highlight the importance of these issues, and we have identified several other fora through which Australia might demonstrate leadership in tackling slavery and people trafficking. Examples include, ASEAN, UN Office of Drugs and Crime (e.g. Conference of Parties), UNICEF (e.g. reports to the CRC Committee), UNIFEM, the International Organisation for Migration, the OECD, as well as relevant trade associations such as the International Textile, Garment and Leather Workers Association. As outlined in our submission to the inquiry, World Vision Australia also agrees with the recommendation of the Special Rapporteur on Trafficking in Persons that the appointment of an outward-looking Ambassador for Trafficking in Persons would demonstrate Australian commitment to and leadership on this issue, and complement the work of the Ambassador for People Smuggling Issues and the newly appointed Global Ambassador for Women and Girls, across the Pacific, Southeast Asia, and globally.

(Question 3) Ms Parke also asked, on behalf of Mr Ruddock, about the implications and unforeseen consequences of signing and ratifying ILO Convention 94 concerning labour clauses and public contracts. I have been advised by legal counsel that signing and ratifying ILO Convention 94 will not, on its own, have any impact on Australian domestic law unless and until the terms of the Convention are incorporated through domestic legislation. Importantly, it should be noted that ILO Convention 94 does not prescribe minimum labour standards; rather, it requires that existing standards be effectively applied. If the Convention were to be formally incorporated into Australian law, or implemented in practice, implications

may include the following:

- The Convention and any incorporating legislation will provide clear guidance regarding minimum labour standards in public contracts. This will assist Australian public authorities to avoid being implicated in instances of labour standards violations by contractors. Administrative decision-making regarding public procurement is likely to be impacted, in particular, in instances where a decision-maker is expressly or implicitly required to consider, or act consistently with, Australia's obligations under ILO Convention 94.
- Implementation of the Convention is likely to impact industries that commonly import foreign labour where these industries supply public authorities or perform public contracts. The Convention is silent as to its application to cross-border procurement contracts. The dominant focus at the time the adoption work was undertaken was on contracts within state borders. However, contracts with a transnational dimension will not necessarily be excluded.¹ Where workers are brought to Australia to perform work under a public contract, it is likely that implementation of the Convention will enable Australian labour standards to be applied.
- Implementation of the Convention is unlikely to impact contracts for the import of goods made by foreign labour in foreign States.²

(Question 4) Finally, Ms Parke asked about possible interactions with Australia's free trade agreements. While free trade agreements do not fall within World Vision Australia's core areas of expertise, we have been advised that the International Labour Organisation has indicated that, as it does not cover supply contracts of a cross-border nature, the Convention cannot properly be regarded as a non-tariff trade barrier.³ This may limit the impact of ILO Convention 94 on Australia's free trade agreements, although impacts may vary in accordance with the terms of each agreement.

Once again, I would like to thank the Human Rights Sub-Committee for providing us the opportunity to contribute to this important inquiry. Should the Sub-Committee have any further questions, I would invite them to contact our Government Relations Advisor, Mr Nat Burke on (02) 6102 5510 or nat.burke@worldvision.com.au.

Sincerely,

Melissa Stewart
Senior Advisor, Trafficking-in-Persons

¹ International Labour Office, *Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84): A Practical Guide* (Geneva 2008), p18.

² Ibid.

³ Ibid, p19.

Attachment A – Examples of countries that have taken steps to ensure that government procurement processes do not contribute to slavery, slavery-like conditions and people trafficking (Question 1)

United States

On 25 September 2012, President Obama signed Executive Order 13627, which strengthens protections against trafficking in persons in Federal contracts. The improved safeguards are intended to strengthen compliance with anti-trafficking laws and promote economy and efficiency in Government procurement. They are modelled on successful practices in the private sector. A copy of the order is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/pdf/2012-24374.pdf>.

Further, Executive Order 13126, signed by President Clinton on 12 June 1999, prohibits the acquisition of products produced by forced or indentured child labour. It imposed internal management obligations on US executive agencies when procuring products that may have been produced by child labour. A copy of the order is available at <http://www.gpo.gov/fdsys/pkg/FR-1999-06-16/pdf/99-15491.pdf>.

Europe

There are also a number of guidelines in place relating to socially responsible government procurement within Europe, at both European Union (**EU**) and individual State levels. The European Commission (**EC**) has released a Guide on Socially Responsible Public Procurement, which defines the principles, requirements and standards of socially responsible public procurement for local and regional government. This Guide supplements other developments at an EU level, including:

- A 2011 EC Communication, which presented a renewed EU strategy for 2011-2014 for corporate social responsibility.⁴ The EC set an indicative target that, by 2010, 50% of all public procurement should comply with agreed environmental criteria.
- A guide on socially responsible public procurement published by the EC in October 2010, which explains how to integrate social considerations into public procurement while respecting the existing EU legal framework.⁵
- Two directives issued by the EU in 2004⁶ dealing with procedures for the award of public works contracts, public supply contracts and public service contracts. These directives offer scope for taking into account social considerations linked to the subject-matter of the contract.⁷

Denmark

Denmark has ratified ILO Convention No. 94, which, under Danish law, has binding effect in relation to government procurement.⁸

⁴ COM(2011)681.

⁵ European Commission, *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement* (October 2010).

⁶ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

⁷ See further European Commission, *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement* (October 2010), 5.

Netherlands

In December 2009, the Dutch parliament adopted a new policy on sustainable public purchasing, which requires state enterprises to apply ethical / social requirements to public procurements. Shortly after the announcement of the policy, more than 50% of Dutch municipal and regional sectors had indicated that they would also adopt the policy.

Norway

The Norwegian Government produced a Guide to Socially Responsible Public Procurement on 12 September 2012.⁹ This Guide aims to help public procurers to set and monitor standards for decent working conditions at production sites. It references the UN Guiding Principles on Business and Human Rights.

The Norwegian Government has also relevantly:

- Produced a White Paper on Corporate Social Responsibility (2008-2009) that addresses socially responsible public procurement;¹⁰
- created regulations on pay and working conditions in public contracts, which entered into force on 1 March 2008 and incorporate ILO Convention No. 94 on labour clauses in public contracts; and
- presented in June 2007, an action plan for 2007-2010 on environmental and social responsibility in government procurement, with which all government agencies are required to comply.¹¹

Further, the Norwegian city of Bergen has included compliance with ILO core conventions throughout the production chain as a contractual condition in selected tender processes.

Scotland

The Scottish Government has prepared guidance on 'Community Benefits on Public Procurement', which illustrates the scope to incorporate social benefits in public procurement contracts, hoping to maximise the impact of public spending. It aims to encourage local procurement departments to consider best practices and guidance to extend the use of social criteria in their procurement activities.¹²

⁸ CCRE CEMR, *Joint Statement – The EC Guide on Socially Responsible Public Procurement (SRPP) – defining principles, requirements and standards of Socially Responsible Public Procurement (SRPP) for local and regional government* (June 2011).

⁹ See

http://www.google.com.au/url?sa=t&rct=i&q=norway%20guide%20to%20socially%20responsible%20public%20procurement&source=web&cd=2&ved=0CDkQFjAB&url=http%3A%2F%2Fwww.sustainable-procurement.org%2Ffileadmin%2Ftemplate%2Fscripts%2Fsp_resources%2F_tools%2Fput_file.php%3Fuid%3D98db0f7f&ei=T_wSU_YiGEob1kQWU5IDYCA&usg=AFQjCNFUGsLEmyAiHfkn2CA4GXuK7C1O4Q&bvm=bv.42080656,d.dGI/

¹⁰ See

http://www.google.com.au/url?sa=t&rct=i&q=norway%20white%20paper%20on%20csr&source=web&cd=4&cad=ria&ved=0CEQQFjAD&url=http%3A%2F%2Fwww.regjeringen.no%2Fpages%2F2203320%2FPDFs%2FSTM200820090010000EN_PDFS.pdf&ei=o_wSU_bTNKMnMkwWDpYGwBA&usg=AFQjCNEISs9fB1GY3w0tTsXyyDTGirmqhw&bvm=bv.42080656,d.dGI/

¹¹ See

http://www.google.com.au/url?sa=t&rct=i&q=environmental%20and%20socialresponsibility%20inpublic%20procurement&source=web&cd=2&cad=ria&ved=0CEAQFjAB&url=http%3A%2F%2Fwww.regjeringen.no%2Fupload%2FMD%2Fvedlegg%2FPlaner%2FT-1467_eng.pdf&ei=5fsSUZz_BMi9kQXEtYHQDw&usg=AFQjCNGdTDRlR4cHw7K_NVuMHLsVEotoQ&bvm=bv.42080656,d.dGI/

¹² The Scottish Government, *Community Benefits in Public Procurement* (2008)

<http://www.scotland.gov.uk/Resource/Doc/212427/0056513.pdf>.

Sweden

A number of local governments in Sweden include social requirements in contracts, such as compliance with fundamental ILO conventions. These terms are consistent with Swedish procurement law.¹³ To address the requirement for effective practices and tools to control a supplier's compliance with the requirements, the Swedish Association for Local Authorities and Regions produce a sample code of conduct, and also a note on the procedure for incorporating socially responsible public procurement.¹⁴

¹³ See Act (2007:1091) on public procurement, paragraphs 1:9(a) and 6:13, cited in CCRE CEMR, *Joint Statement – The EC Guide on Socially Responsible Public Procurement (SRPP) – defining principles, requirements and standards of Socially Responsible Public Procurement (SRPP) for local and regional government* (June 2011).

¹⁴ CCRE CEMR, *Joint Statement – The EC Guide on Socially Responsible Public Procurement (SRPP) – defining principles, requirements and standards of Socially Responsible Public Procurement (SRPP) for local and regional government* (June 2011).