

Appendix 1

Bellagio-Harvard Guidelines on the Legal Parameters of Slavery

We, the Members of the Research Network on the Legal Parameters of Slavery,

Recognizing that there has been a lack of legal clarity with regard to the interpretation of the definition of slavery in international law;

Conscious that the starting point for understanding that definition is Article 1(1) of the 1926 Slavery Convention which reads: ‘*Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*’;

Recalling that this definition is reproduced in substance in Article 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

Also noting that the 1926 definition of slavery is once again reproduced in substance in the definition of enslavement found in Article 7(2)(c) of the 1998 Statute of the International Criminal Court and developed in more detail in the secondary legislation of the Court, in its Elements of Crimes;

Bearing in mind the provisions in international human rights law regarding slavery within the 1948 Universal Declaration and 1966 International Covenant on Civil and Political Rights; as well as the provisions regarding slavery in regional human rights conventions of the African, European, and Inter-American systems;

Considering the inclusion of slavery as an enumerated type of human exploitation in both the 2000 United Nations Palermo Protocol on Trafficking in Persons and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings;

Mindful of the pronouncements and case-law related to slavery of international, regional and domestic courts;

Having met to consider the issue at the 2010 symposium entitled: ‘The Parameters of Slavery’ at the Rockefeller Foundation’s Bellagio Conference Centre in Bellagio, Italy; having further deliberated in 2011 at a meeting under the auspices of the Harriet Tubman Institute for Research on the Global Migrations of African Peoples, York University, Canada; and came together once more at a 2011 symposium entitled: ‘The Legal Parameters of Slavery: Historical to the Contemporary’ at Harvard University, under the auspices of the Charles Hamilton Houston Institute for Race and Justice, Harvard Law School; the Harvard Sociology Department; the W.E.B. DuBois Institute;

Recommend the following Guidelines related to the legal parameters of slavery:

Guideline 1 – The Legal Definition

The legal definition of slavery is found at Article 1(1) of the 1926 Slavery Convention, which reads: ‘Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.

Guideline 2 – The Exercise of the Powers Attaching to the Right of Ownership

In cases of slavery, the exercise of ‘the powers attaching to the right of ownership’ should be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually this exercise will be supported by and obtained through means such as violent force, deception and/or coercion.

Guideline 3 – Possession is Foundational to Slavery

Where there is a right of ownership in respect of a thing, ownership implies a background relation of control. That control is the power attaching to the right of ownership known as possession.

Possession is foundational to an understanding of the legal definition of slavery, even when the State does not support a property right in respect of persons. To determine, in law, a case of slavery, one must look for possession.

While the exact form of possession might vary, in essence it supposes control over a person by another such as a person might control a thing. Such control may be physical, but physical constraints will not always be necessary to the maintenance of effective control over a person. More abstract manifestations of control of a person may be evident in attempts to withhold identity documents; or to otherwise restrict free movement or access to state authorities or legal processes; or equally in attempts to forge a new identity through compelling a new religion, language, place of residence, or forcing marriage.

Fundamentally, where such control operates, it will significantly deprive that person of his or her individual liberty for a period of time which is, for that person, indeterminate.

Cases of slavery are to be distinguished from those where, though there has been control exercised, it does not constitute control tantamount to possession, such as where employers make legitimate decisions about the management of workers.

Possession is foundational in that, not only is it a power attaching to the right of ownership, it also creates the factual conditions for the exercise of any or all of other powers attaching to the right of ownership, such as those set out in *Guideline 4*.

Guideline 4 – Further Examples of Powers Attaching to the Right of Ownership

Where a person controls another such as he or she would control a thing owned, such possession makes possible the exercise of any or all of the powers attaching to the right of ownership.

Correlatively, the exercise of any or all of the powers attaching to the right of ownership may serve to indicate the presence of control of a person tantamount to possession, and so provide evidence of slavery.

The following are further examples of powers attaching to the right of ownership:

a) Buying, Selling or Transferring a Person

Buying, selling or otherwise transferring a person may provide evidence of slavery. Having established control tantamount to possession; the act of buying, selling or transferring that person will be an act of slavery.

Evidence of slavery may also be found in similar transactions, such as bartering, exchanging, or giving or receiving a person as a gift, where control tantamount to possession has been established.

b) Using a Person

Using a person may provide evidence of slavery. Having established control tantamount to possession; the act of using that person will be an act of slavery.

Evidence of such use of a person may include the derived benefit from the services or labour of that person. In such cases, a person might be used by working for little or no pay, utilised for sexual gratification, or used by providing a service.

c) Managing the Use of a Person

Managing the use of a person may provide evidence of slavery. Having established control tantamount to possession; the act of managing that person will be an act of slavery.

Evidence of such management of the use of a person may include direct management such as a brothel owner delegating power to a day manager in a situation of slavery in the context of sex work.

d) Profiting from the Use of a Person

Profiting from the use of a person may provide evidence of slavery. Having established control tantamount to possession; the act of profiting from the use of that person will be an act of slavery.

Evidence of profiting from the use of a person may include cases where a person is mortgaged, lent for profit, or used as collateral.

Evidence of profiting from the use of a person may also include making money or deriving any other kind of income or benefit from the use of the person. Such as the use of an agricultural worker in a situation of slavery, where the profit from the picking of a crop is taken or received by another whether in the form of wages or of the harvest.

e) Transferring a Person to an Heir or Successor

Transferring a person to an heir or successor may provide evidence of slavery. Having established control over a person tantamount to possession; the act of willing that person to a child or other heir or successor will be an act of slavery.

Evidence of such transferring of a person may include a case of inheritance where a woman, on the death of her husband, is deemed to be inherited by another person.

Evidence of such a transferring of a person may also include the conveying of a status or condition of a person to that of a successive generation, such as from mother to daughter.

f) Disposal, Mistreatment or Neglect of a Person

Disposing of a person following his or her exploitation may provide evidence of slavery. Having established control over a person tantamount to possession; the act of disposing of a person will be an act of slavery.

Mistreatment or neglect of a person may provide evidence of slavery. Having established control tantamount to possession, such disregard may lead to the physical or psychological exhaustion of a person, and ultimately to his or her destruction; accordingly the act of bringing about such exhaustion will be an act of slavery.

Evidence of such mistreatment or neglect may include sustained physical and psychological abuse, whether calculated or indiscriminate; or the imposition of physical demands that severely curtail the capacity of the human body to sustain itself or function effectively.

Guideline 5 – Making a Determination as to whether Slavery Exists

The exercise of any or all of the powers attaching to the right of ownership just considered shall provide evidence of slavery, insofar as they demonstrate control over a person tantamount to possession.

Accordingly, in determining whether slavery exists in a given case, it is necessary to examine the particular circumstances, asking whether ‘*powers attaching to the right of ownership*’ are being exercised, so as to demonstrate control of a person tantamount to their possession.

In evaluating the particular circumstances to determine whether slavery exists, reference should be made to the substance and not simply to the form of the relationship in question.

The substance of the relationship should be determined by investigating whether in fact there has been an exercise of one or more of the powers attaching to the right of ownership. This will include a determination as to whether control tantamount to possession is present.

Guideline 6 – Expropriation

Ordinarily exclusion from expropriation or ‘security of holding’ would be deemed a power attaching to the right of ownership. However, as the State generally does not support a property right in persons, a negative obligation against the State generally no longer exists.

However, the State has *at minimum* the positive obligation to bring about the end of either the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

The State may have further positive obligations with regard to the prohibition against slavery on the basis of domestic law as well as regional or international instruments.

Guideline 7 –Terminology

The term ‘slavery’ has often been utilised to describe circumstances that go beyond the legal definition as established by the 1926 Slavery Convention.

In law, only ‘slavery’ and ‘institutions and practices similar to slavery’, which is often abbreviated to ‘practices similar to slavery’ have standing and are defined in international law via the 1926 Slavery Convention and the 1956 Supplementary Convention.

Guideline 8 – Distinction between Slavery and Forced Labour

The 1926 Slavery Convention recognises that forced labour can develop ‘into conditions analogous to slavery’.

Although forced or compulsory labour is defined by the 1930 Forced Labour Convention as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’; forced labour will only amount to slavery when, in substance, there is the exercise of the powers attaching to the right of ownership.

Slavery will not be present in cases of forced labour where the control over a person tantamount to possession is not present.

Guideline 9 – Distinction between Slavery and ‘Institutions and Practices Similar to Slavery’

Article 1 of the 1956 Supplementary Convention recognises that the ‘institutions and practices similar to slavery’, that is: debt bondage, serfdom, servile marriages, or child exploitation; may be ‘covered by the definition of slavery contained in article 1 of the Slavery Convention of 1926’.

The distinction between these servile statuses as defined by the 1956 Supplementary Convention in the following terms and slavery is that slavery is present where in substance there is the exercise of the powers attaching to the right of ownership.

It should be emphasised that slavery will only be present in cases of such ‘institutions and practices similar to slavery’ where control over a person tantamount to possession is present.

The following are the conventional servitudes set out in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(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;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Guideline 10 – When Slavery and Lesser Servitudes are Present

Accepting that both slavery and lesser servitudes such as forced labour or ‘institutions and practices similar to slavery’ may be found in substance in a particular circumstance; the manner to proceed is by making reference to that substance and not simply to the form, and first ask whether there has been an exercise of the powers attaching to the right of ownership. If so, then the more serious offence of slavery is present.

If not, reference should be made to the legal definition of the lesser servitude which corresponds in substance to the particular circumstance in question.

Adopted on this day, 3 March 2012, by the Members of the Research Network on the Legal Parameters of Slavery.

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