Antislavery in Domestic Legislation coding notes

# General

For each of the forms of exploitation considered in the database, provisions are coded in three distinct categories: constitutional provisions; criminal provisions; and labour or other non-penal provisions. The fourth category, domestic provisions, represents an aggregate of these categories, with a positive result if any one of the three categories contains a positive result.

Constitutional provisions are generally those relevant provisions contained in national constitutions. For those States with uncodified constitutions, provisions contained in recognised ‘quasi-constitutional statutes’ are also coded as constitutional provisions where applicable and where these operate in a similar manner in the protection of human rights (e.g. the United Kingdom’s Human Rights Act and New Zealand’s Bill of Rights Act).

Provisions of labour law entailing criminal penalties with the possibility of imprisonment for any term are coded as positive results in both the ‘labour or other non-penal provisions’ and ‘criminal provisions’ to reflect both the body of law and administration within which they are situated and the penal sanctions attached.

Provisions are considered relevant if they prohibit the specific form of exploitation under consideration in whole or in part (see further detail in relation to each form below). However, provisions prohibiting some peripheral act with an element of intent to exploit in a relevant practice do not generate a positive result for that practice. Thus, trafficking provisions only generate a positive result in relation to another form of exploitation where the construction of the offence is such that it addresses the act of exploitation directly, rather than other acts for the purpose of exploitation. Likewise, provisions prohibiting kidnapping or abduction for the purpose of some form of exploitation are not coded as positive results in relation to that form of exploitation.

Provisions encompassing only a particular group (or groups) on the basis of age or gender are coded as positive results, despite the fact that a significant proportion of the population may thereby be excluded from the protection of the prohibition. Thus, provisions extending prohibition only to the exploitation of women or children are still coded as positive results. Where the provision is only applicable to a very small sub-group of potential perpetrators (e.g. public officials), however, this is coded as a nil result.

# Slavery and the slave trade

Encompasses provisions directly prohibiting slavery or the slave trade, or its constituent parts, including: buying, selling, dealing, or trading in human beings, persons, or slaves; disposing of a person as a slave; sexual slavery; forcing a person to work under conditions of slavery; importing and exporting slaves and foreign slave trade. Also includes the prohibitions of slavery and the slave trade where an exception is stated allowing slavery as punishment for a crime.

Does not include: kidnapping, abducting, or trafficking with the intent to enslave; enslavement only in the context of crimes against humanity; sexual slavery only in the context of war crimes; pledging of persons; entering an agreement to alienate liberty; restricting individual liberty; general coercion.

# Institutions and practices similar to slavery

Coding for institutions and practices similar to slavery is separated into five sub-categories, with each category being coded within these five sub-groups. The first sub-category accounts for provisions addressing institutions and practices similar to slavery on a broad construction, without specific reference to each of the four practices. This includes provisions prohibiting: institutions and practices similar to slavery; slavery-like conditions, situations, or practices; status or conditions similar to slavery; practices or conditions analogous to slavery; and quasi-slavery status. It also includes prohibitions against placing, keeping, removing, buying, selling, disposing of, accepting, restraining, or working a person in one of these situations.

Does not include: pledging of persons; placing or keeping a person in conditions where another owns him or her; transporting a person with the intent that they will ultimately enter a position similar to slavery; kidnapping or abducting a person into the practices similar to slavery.

## Additional practice-specific notes

Debt bondage includes provisions on peonage, and placing or receiving a person in servitude as security for a debt.

Marriage practices include: buying and selling women for marriage; coercion or compulsion into marriage; forced marriage; servile marriage; provisions requiring consent for marriage and prohibiting acts contrary to this rule; forcible interference with freedom of marriage; taking or detaining someone against their will for marriage; marriage for the purpose of acquiring, buying, offering, selling or trading a person into exploitation; causing a person to marry without their consent in exchange for consideration; causing marriage by force or duress; forcing the person through deceit, coercion, violence or the threat of violence to enter into or remain in an extramarital or marital relationship;

Marriage practices do not include: kidnapping or abducting for forced marriage; provisions recognising that marriage is founded on consent; broad provisions against child marriage or setting minimum ages for marriage; coerced or child marriage only in the context of traditional ceremonies.

Delivery of children for exploitation includes: provisions prohibiting trafficking in children for exploitation; adopting, facilitating adoption, or improperly inducing consent to adoption for the purpose of exploitation; exploitation of children, including through adoption, by parents, guardians, and adopters; placing a child under the control of another for the purpose of exploitation and in exchange for money.

Delivery of children for exploitation does not include: illegal adoption, including for payment; adoption for illicit purposes without further definition; limited and specific acts relating to adoption; participating in the adoption of a child for the purpose of trafficking; adopting, fostering or obtaining guardianship of a child with the intention of exploitation (as related to receipt rather than delivery).

# Servitude

Includes provisions explicitly referencing servitude, including: personal or involuntary servitude; provisions prohibiting servitude except as punishment for a crime; placing or holding a person in servitude defined to cover exercising powers and rights attaching to ownership, placing or holding in conditions of continuing enslavement, sexually exploiting, imposing coerced labour or forcing begging, or exploiting in any other way.

Servitude does not include: provisions prohibiting only kidnapping for the purpose of servitude; placing a person in servitude as security for debt (accounted for in debt bondage); enforced subjection broadly; pledging of persons; the act of making someone suffer regularly the offense of trafficking in persons through that person’s vulnerability or a state of dependence, visible or known to a perpetrator.

# Forced labour

Includes provisions specifically addressing forced or compulsory labour, including where such provisions only apply to children, as well as: coercive labour; forced labour provisions that introduce additional exceptions beyond those recognised in the Forced Labour Convention or ICCPR; use of violence or threat to violate the freedom of work and labour;

Does not include: provisions addressing forced labour only in a specific defined industry; provisions addressing forced begging only; work that undermines human rights (broadly conceived); provisions applying only to specific minority groups; using unpaid work; withholding wages; provisions prohibiting offences only when committed by public officials; violating or encroaching on freedom of work broadly; forced prostitution only; kidnapping or abducting for the purpose of compelling someone to work; forcing or compelling labour only for the purpose of organising, maintaining or preventing strikes or lock-outs; provisions requiring grave injury or death in order to apply;

# Human trafficking

Provisions related to trafficking in persons explicitly and those which reflect the definition of trafficking contained in the Palermo Protocol are included, including: provisions applying only to women and/or children; provisions restricted to trafficking for sexual exploitation; provisions prohibiting only transnational trafficking; provisions prohibiting buying and selling people as ‘trafficking’.