

URGENT MEDIA RELEASE

SEXUAL SLAVERY LAWS ON TRIAL IN LANDMARK HIGH COURT APPEAL

Australia's laws against sexual slavery will literally be on trial at a two-day appeal before the High Court of Australia, Canberra, commencing on 13th May 2008.

'The case, *The Queen v Wei Tang*' is the most crucial test of the effectiveness of our criminal laws against sexual and all other forms of slavery ever to come before an Australian court,' stated Nina Vallins, Joint Co-ordinator of Project Respect Inc, Australia's leading anti-trafficking and slavery non-government organisation.

'The full bench of the High Court will hear arguments about the constitutionality of our criminal laws against slavery, the definition of slavery and what needs to be proven to make out the crime of slavery. The outcome of the Appeal will have huge implications for the protection of people from sexual slavery and servitude and other forms of slavery and servitude,' said Hui Zhou, lawyer working with Project Respect.

The High Court Appeal is a consequence of an Australian Federal Police raid on a brothel in Fitzroy, Melbourne in May 2003. There has been a committal hearing, two trials and a successful appeal by Wei Tang of her slavery conviction in the Victorian Supreme Court of Appeal in the last five years. 'The women who were the subjects of the alleged slavery and courageously testified in each case have remained in virtual limbo for all these years,' said Ms Zhou.

'The slavery laws to be tested in the High Court are almost ten years old. In all this time, there have been only a tiny number of successful prosecutions for slavery and related offences. All Australians should be asking what we need to do differently to better support victims of trafficking, slavery and servitude and to prevent trafficking in the first place through best practice investigations, prosecutions and effective criminal laws,' said Ms Zhou.

'Slavery is defined in Australian and international law as one of the most serious violations of human rights as well as, in certain circumstances, a war crime and a crime against humanity. The human rights of victims of trafficking and slavery must be placed at the centre of the Australian Government's entire approach to preventing and responding to trafficking, slavery and servitude. Nothing less is acceptable. Australia is lagging behind a growing international recognition of the critical link, as shown in Italy, between a human rights-based approach to victim support and the effective criminal prosecutions of perpetrators,' said Ms Vallins.

'Our research and a decade of experience at the coalface of working with trafficked and enslaved women indicates that 1000 women are trafficked into Australia for prostitution every year. There is also evidence that other forms of labour slavery and servitude are also proliferating,' concluded Ms Vallins.

The case is of such significance that the Human Rights and Equal Opportunity Commission will be seeking leave to intervene and make submissions on Australia's international human rights obligations regarding slavery and their application to our anti-slavery laws.

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Media spokespeople will be available prior to and during the Appeal at the High Court, Canberra.

History and Key Legal Issues in the ‘*The Queen v Wei Tang*’ Appeal

Wei Tang was tried for ten charges relating to enslavement of women at the brothel she owned at 417 Brunswick Street, Fitzroy in Melbourne. She was convicted on all counts at the second trial on 3rd June 2006, after the first trial ended in a hung jury.

The five women were allegedly enslaved for between ten months and two weeks. The amount of the debt that each woman had to repay through prostitution ranged from \$40, 000 to \$45, 000 per woman and required each woman to have sex with an estimated 800-900 men at the brothel. The women were forced to do prostitution for at least six days per week without any pay.

Wei Tang successfully appealed her conviction in June 2007 in the Court of Appeal of the Victorian Supreme Court on the ground that the trial judge did not adequately direct the jury about the fault or intention elements of the slavery offences.

However, the Court of Appeal found that the evidence (encompassing the evidence given by the five victims) was capable of supporting the convictions, and ordered a re-trial. The Commonwealth Director of Public Prosecutions (Cth DPP) has appealed the quashing of convictions to the High Court. Wei Tang has lodged a cross appeal.

The key legal issues to be argued in the High Court are:

- Are the slavery offences in the 1999 Model Criminal Code constitutional?
- What is the definition of the crime of slavery in Australian law?
- What needs to be proved in relation to the ‘intention’ of persons accused of slavery in order to establish that the crime of slavery occurred?
- Should the crime of slavery in our law be interpreted consistently with Australia’s international human rights obligations in relation to the prohibition on slavery?

The decision of the High Court will impact directly on the investigation and prosecution of slavery offences in the States and Territories and may influence the interpretation and prosecution of slavery offences in other countries.

Background Facts on Trafficking, Sexual Slavery and Debt Contracts

Based on research conducted in 2004, Project Respect estimates that there are 1000 women trafficked to Australia for prostitution each year. Trafficking cases have also been documented in other sectors, such as hospitality and construction.

Victims of trafficking have come from Thailand, Indonesia, Malaysia, Vietnam, Burma, China, Hong Kong, the Philippines, Singapore, Albania, Colombia, South Africa, India and the former Soviet Republic. The majority of detected victims have come from Thailand, with women from South Korea being the next most commonly identified victims of trafficking.

Trafficked women are often referred to as “contract” workers. This “contract” is actually a unilateral, legally unenforceable debt bondage arrangement. It may be just a verbal agreement; it may be purposely stated in such a way that women are confused as to its terms (for eg. women think that the amount of the debt is given in local currency, when the trafficker actually means Australian dollars); or women may not even be aware of the existence of a “contract” until they arrive in Australia. Women do not know that their passports will be taken from them, that they will be deprived of their liberty, unable to refuse sex without a condom, beaten, and made to fear for their and their family’s safety.

The “contract” is expressed either as a number of jobs which must be done without payment (usually between 500 – 700 customers) or as a monetary sum to be paid back (usually between AUD 30-45,000). The debt amount is arbitrary as it does not reflect a real debt incurred by the victim, and it may be changed at the whim of the exploiter: they may increase the debt through fines to the women for being late, or for not satisfying a customer. They may also charge the women inflated prices for basic necessities such as food or accommodation, etc.

The “contract” and “debt” are not only illegal but are proven methods of control used by the traffickers to intimidate and exert power over their captives. The women involved are often afraid of what will happen to them and their families if they escape the situation before the “debt” is paid off. They may also hope that the “debt” can be repaid quickly or that they can get a customer to buy out the debt, to gain freedom and so soon start making money for themselves and their families.

Trafficking and sexual slavery has severe health impacts on women, as they are subject to physical, sexual, psychological and verbal abuse. Physical impacts include bruising, fractures, sexually transmitted infections, pelvic and vaginal pain, drug and/or alcohol dependency, malnutrition and fatigue. Psychological impacts include depression, low self-esteem and self-respect, anger, paranoia and fear of others (especially men). Victims of trafficking are often in a financial situation worse than prior to being trafficked, which causes extra anxiety as the women do not want to return home without any money to show for all the time they have been away.

Who are Project Respect ?

Project Respect is Australia's leading support and advocacy agency for victims of trafficking. We have worked with women in the sex industry and trafficked women since 1998.

Project Respect:

- Conducts daily outreach to brothels;
- Offers intensive counselling to women in the sex industry;
- Provides support to trafficked women in Victoria and New South Wales;
- Works closely with victim support, law enforcement and research agencies around Australia;
- Participates regularly in conferences and other forums;
- Publishes our own research on trafficking and;
- Assists media, government staff and academics with research, law reform and policy development.

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What Actions on Trafficking and Slavery are Needed from the Rudd Government?

Visas and comprehensive support must be available to all victims of trafficking. Currently, victims of trafficking are only eligible for special visas if their cooperation is required by criminal justice authorities. Under this arrangement many victims remain unprotected and unsupported. Those who do qualify are effectively imprisoned by the legal system. International human rights law requires the State to provide basic assistance, protection and support to all victims of trafficking, irrespective of whether or not they are cooperating in the investigation and prosecution of their exploiters. Australia, as the State in which the exploitation has occurred, is under a clear obligation to ensure that all victims can access protection and support. In addition to fulfilling a legal obligation, such an approach also supports a stronger criminal justice response to trafficking. Victim involvement is key to successful prosecutions. The experience of other countries, such as Italy, confirms that when victims of trafficking are secure and supported, they are much more likely to cooperate in the prosecution of their traffickers. If comprehensive support had been available to all victims since 2004, perhaps Australia would have had more than 18 prosecutions, with only six convictions (five of which are under appeal).

Prosecutors need training in preparing and presenting trafficking and slavery cases. Trafficking and slavery are complex cases to prosecute, as is amply shown by the Wei Tang case. Australia is funding, through AusAID, an AUD 19 million project in South East Asia that is delivering world-class training on the prosecution and adjudication of trafficking cases. Specialised training should similarly be delivered in Australia. Australia should also institute a specialist taskforce of slavery and trafficking prosecutors, just as it has created a specialist unit for this crime within the Australian Federal Police.

We applaud the recent announcement in March by the Minister for Home Affairs regarding increased measures of support for victims of crime, particularly the possibility that **provisions to adapt legal processes for victims of sexual assault be extended to victims of trafficking and slavery.** We urge the Government to ensure this is implemented as a matter of priority.

Other Resources and Links:

1. Project Respect: <http://www.projectrespect.org.au>
2. *Human Trafficking in Australia: a Research Challenge*. 2007. Australian Institute of Criminology: <http://www.aic.gov.au/publications/tandi2/tandi338.pdf>
3. *Law enforcement responses to trafficking in persons: challenges and emerging good practice*. 2007. Australian Institute of Criminology: <http://www.aic.gov.au/publications/tandi2/tandi347.pdf>
4. *Trafficking for Women in Sexual Exploitation*. 2005. Australian Centre for the Study of Sexual Assault: <http://www.aifs.gov.au/acssa/pubs/briefing/b5.html>
5. Good Shepherd Social Justice Network Trafficking in Persons Clearinghouse: <http://www.goodshepherd.com.au/justice/trafficking.html>
6. *Australian Government's Action Plan to Eradicate Trafficking in Persons*. June 2004: http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004
7. Media release from 2007 Federal Budget regarding an increase in funding counter-trafficking activities: <http://www.ag.gov.au/www/agd/agd.nsf/Page/RWP7561D03F6952FB64CA2572D4000BB873>
8. Fact sheet from the Office for Women trafficking program: http://www.ofw.facs.gov.au/international/combating_people_trafficking-fs.htm
9. 'The Trafficking of Women: a Human Rights Issue,' *Women's Health Journal*, April-June 2003: http://findarticles.com/p/articles/mi_m0MDX/is_2_2003/ai_n18616818/pg_1