



# Contemporary survivor definitions of slavery

Rights Lab briefing on the findings of an academic article by Dr Andrea Nicholson, Minh Dang and Prof Zoe Trodd, November 2018<sup>i</sup>

*Taking a survivor-centred and survivor-informed approach to defining slavery expands and enriches our understanding of it and has significant implications, in particular, for a key area of anti-slavery policy: survivor support.*

## Key research findings

Through interviewing survivors and analysing hundreds of historical and contemporary slavery narratives, the authors identify five additional elements to the legal definition of slavery:

1. **Stasis** – Being denied temporal and spatial movement and a lack of access to the future
2. **Destruction of identity** - Being dehumanised and treated as a 'non-person'
3. **Lack of purpose** – Where one's actions lose meaning
4. **Denial of privacy** – Losing one's dignity and sense of agency
5. **Disregard for well-being** – Where one's personal needs are deemed irrelevant

Survivor-informed definitions place the focus on the *impact* of slavery on those who experience it, rather than the *intent* of those perpetrating it.

## Why is this important?

Not only can survivors provide a vital new perspective to the debates around slavery and its definition - helping non-survivors in the anti-slavery movement better understand how and when slavery occurs and the impact it can have on individuals and communities - but they can also offer a blueprint for their recovery: **by understanding what is lost through slavery, we can understand what needs to be restored in freedom.**

If we know that one of the central aspects of the experience of slavery is an inability to make plans for your own future, then a central aspect of any survivor support programme must be on restoring this agency. Likewise, if being dehumanised is a key component of being enslaved, the restoration of a person's individual identity and sense of shared humanity is crucial to their 'full freedom'<sup>ii</sup>, as demanded by the nineteenth century abolitionist and former slavery Frederick Douglass.

## Recommendations for the anti-slavery movement

- Amend the definition of slavery and 'practices similar to slavery' (including the definition of 'modern slavery' in the UK) in anti-slavery policy and guidance to incorporate the five additional definitional elements focusing on the *impact* of slavery on those who are enslaved
- Ensure that survivor voices are central to the development of survivor support services
- Ensure that inspection frameworks of survivor support services incorporate survivor voices and include an assessment of the extent to which the five elements lost or denied to those in slavery have been restored
- Provide opportunities for survivors to join the anti-slavery movement and be included in policy discussions.

## Research overview

The definition and legal parameters of slavery and 'slavery like practices' have long been debated by scholars. This article discusses developments in these definitional debates and for the first time incorporates the perspectives of survivors, by drawing on new survivor interviews and by analysing hundreds of historical and contemporary slavery narratives.

## Slavery definitions in law

The 1926 Slavery Convention provided the first legal definition of slavery, as 'the status or condition of a person to whom any or all of the powers attaching to the right of ownership are exercised'.<sup>iii</sup>

Recognising the most serious nature of slavery and the evolving way in which it manifests in a world where legal ownership of another person is prohibited but where it *de facto* still exists, legal courts across the world have considered its definition and provided new interpretations. For instance, in 2008 in the case of *Tang*<sup>iv</sup> (2008), the High Court of Australia made the distinction between slavery and harsh and exploitative treatment, highlighting the need to determine 'the nature and extent of the powers exercised', and in 2010 in the case of *Rantsev v Cyprus and Russia*<sup>v</sup>, the European Court of Human Rights found that human trafficking fell within the scope of Article 4 of the European Convention of Human Rights.

In 2012, the Bellagio-Harvard Guidelines on the Legal Parameters of Slavery<sup>vi</sup> (2012) were published and advanced the definitional debate by further explaining the meaning of ownership and the powers attached to it. Scholars, such as Bales<sup>vii</sup> and Allain and Hickey<sup>viii</sup>, have used the 1926 Convention and the 2012 Guidelines as a starting point for the on-going refinement and application of the definition. Whilst these scholars do reach consensus on some fundamental elements for identifying slavery, such as the loss of personal liberty, there remains differentiation on the working definition that reflects today's slavery and its continuum.

## Slavery definitions in historical (and contemporary) slavery narratives

Survivor-centred definitions of slavery can be found in the narratives of ex-slaves, past and present. For instance, the leading African-American abolitionist and former slave Frederick Douglass offered a clear definition of slavery as 'the granting of that power by which one man exercises and enforces a right of property in the body and soul of another'<sup>ix</sup>. Central to Douglass' definition and others of that era, including Harriet Jacobs<sup>x</sup>, was a slave's lack of access to space and time, where the future is inaccessible – a state of 'stasis'.

Contemporary slave narratives often also include reference to stasis but provide further nuance to our understanding of slavery, and go beyond the definitional points raised in recent legal and scholarly debates. **They reveal at least five new criteria for the operation of the slavery definition, all of which help us to understand slavery's meaning and nature from the survivor perspective of slavery's consequences and impact rather than its intent**, rather than the intent of perpetrators on which current definitions employed by government bodies and NGOs is based.

## Implications of a survivor-informed definition of slavery

Current legal definitions provide guidelines for law enforcement to detect slavery and respond to it as a crime. Interventions are therefore aimed at criminal justice, rather than social justice and survivor restoration. However, a survivor-informed slavery definition would encompass the psychological impact of enslavement, allowing legal definitions to delineate that harm and encouraging service-providers to focus on what *survivors themselves* suggest in their narratives should be the key post-enslavement concerns. Numerous narratives call for therapeutic justice: a justice model where legal processes are geared to enhancing psychological well-being.

By putting survivor perspectives, definitional ideas and policy suggestions at the centre of their work, the thousands of organisations and individuals working to end global slavery could create a survivor-informed antislavery movement—one that understands slavery through its impact *and* perpetrator intent, and so target the liberation of 40 million people towards Douglass' 'full freedom'.

<sup>i</sup> 'A Full Freedom: Contemporary Survivors' Definitions of Slavery'. Published in the Human Rights Law Review, Volume 18, Issue 4, December 2018, Pages 689–704.

<sup>ii</sup> Douglass, 'Give us the Freedom Intended for Us' *The New National Era*, 5 December 1872.

<sup>iii</sup> Article 1 League of Nations, Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 LNTS 253; signed at Geneva on 25 September 1926; entered into force 9 March 1927.

<sup>iv</sup> *The Queen v Tang* [2008] HCA 39.

<sup>v</sup> For a detailed analysis of the problems with the Court's approach to the definition on trafficking and slavery, see Allain, 'Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery' (2010) 10 Human Rights Law Review 546.

<sup>vi</sup> 2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery'.

<sup>vii</sup> See Bales, *Disposable People: New Slavery in the Global Economy* (1999) at 19-20.

<sup>viii</sup> See Allain and Hickey, 'Property and the Definition of Slavery' (2012) 61 *International and Comparative Law Quarterly* 915 at 933-5.

<sup>ix</sup> Douglass, 'American Slavery, American Religion, and the Free Church of Scotland: An Address Delivered in London, England, on May 22, 1846' in Blassingame et al. (eds), *The Frederick Douglass Papers: Series One—Speeches, Debates, and Interviews Vol. 1* (1979) 269.

<sup>x</sup> Jacobs, *Incidents in the Life of a Slave Girl* (1861)