

AP-Forced Labour Net online discussion:

What is forced labour, human trafficking and slavery? Do definitions matter, and why?

Background Note

Date: 21 April – 2 May 2014, Venue: <http://apflnet.ilo.org/discussions>

AP-Forced Labour Net is an ILO-sponsored online community of practice for individuals, organizations, and institutions interested in issues related to forced labour, human trafficking and slavery in the Asia Pacific region. In conjunction with its launch on 21 April 2014, the AP-Forced Labour Net hosts its first public online discussion forum on ***What is forced labour, human trafficking and slavery? Do definitions matter, and why?*** from 21 April - 2 May 2014.

The past few years have seen a significant intensification of global action against the forms of coercion variously referred to as slavery, forced labour and human trafficking. The past decade saw an upsurge in action to combat trafficking in persons, particularly following the entry into force in 2003 of the UN Trafficking Protocol. More recently, there has been a tendency to use “modern slavery” as an umbrella term to capture all the above forms of coercion. Forced labour, human trafficking and slavery are overlapping but not identical phenomena and legal concepts. While many coercive situations can be alternatively identified, and even prosecuted as, either forced labour, human trafficking or slavery, blurring of definitions causes confusion.

Therefore, the first public online discussion forum on AP-Forced Labour Net invites participants to discuss the following questions:

1. Forced labour, human trafficking and slavery are concepts defined in **international law**. (See ***glossary*** for details.) Is distinguishing between these concepts necessary or not, and for what reason? What effect do definitions and choice of terminology have on international responses and action to prevent and address these coercive practices?
2. **National legislation** in most ILO member States prohibits forced labour, human trafficking and/or slavery. What effect do national definitions and choice of terminology have on policy responses and practical interventions at country and local level to address these practices?
3. Freedom from forced labour is a fundamental right at work promoted by **workers’ and labour rights organizations, business CSR initiatives and consumer groups**, whereas human trafficking is mostly tackled through a **criminal justice response** seeking to prosecute criminals. Do these initiatives have a common ground and shared objectives? Could establishing a common understanding of concepts of forced labour, human trafficking and slavery help bring these initiatives together? Is an integrated multi-stakeholder approach possible?

Discussion participants will include:

- ILO constituents in East and South-East Asia, including representatives of governments, employers’ organizations and workers’ organizations.
- Development practitioners and civil society organizations working on issues related to forced labour, human trafficking and slavery.
- Academia, especially legal scholars.

- Business and CSR community.

The online discussion page will be open from 21 April to 2 May. On 30 April - 1 May, participants will be invited to take part in a **vote** on whether or not definitions matter, and to choose their preferred term. Results of the vote will be announced on the discussion page on 2 May.

Background and some key arguments for consideration

In recent media discussions, several specialists and development practitioners have called for conceptual clarity on what is and is not forced labour, human trafficking and slavery. At the same time, some commentators have considered discussing legal definitions too academic, and instead emphasized the need for urgent action for eradicating the various forms of coercion and severe exploitation. The bullet points below summarize some of the key arguments presented in these contributions for the purposes of facilitating the online discussion.

Some arguments on why it is not important to distinguish between concepts of forced labour, human trafficking and slavery:

- If a case of severe exploitation at workplace is identified, it does not matter whether the crime committed is called forced labour, human trafficking or slavery. The only important thing is to ensure that the victim has access to remedies and protection and to impose penal sanctions on the perpetrator. For example, in Thailand and Malaysia identified cases are prosecuted as human trafficking or slavery, whereas in China they are prosecuted as forced labour.
- We should not waste time in discussing definitions. The most important thing is to mobilize public opinion and policies to prevent and eradicate the various forms of coercion and severe exploitation.
- All government departments, social partners and civil society should work together to prevent and eliminate coercive recruitment and employment practices, regardless whether they prefer to call these practices forced labour, human trafficking or slavery. Workers' and labour rights organizations, business CSR initiatives and consumer groups tend to promote freedom from forced labour as a fundamental right at work, whereas criminal justice authorities concentrate their efforts in prosecuting human trafficking. Essentially all these initiatives pursue the same goals, so closer coordination is needed.

Some arguments on why it is important to distinguish between concepts of forced labour, human trafficking and slavery:

- Forced labour, human trafficking and slavery are all legal concepts defined in international law. (See **Glossary** for details.) Even if they are overlapping, they each have a different definition and scope. Blurring of definitions will cause confusion. For example, trafficking for organ removal is not forced labour nor slavery. Trafficking for forced marriage is considered a slavery-like practice, but is not forced labour unless forced marriage leads to forced labour.
- Some countries in East and South East Asia have criminalized human trafficking in their national law, while others have penal provisions on forced labour and/or slavery. Law enforcement and judicial authorities need clear guidelines for prosecuting each of these crimes and convicting perpetrators. Blurring of differences between these concepts leads to legal uncertainty.

- Choice of terminology is important because it implies how we plan to deal with the problem at hand. Efforts to combat human trafficking tend to focus on criminal justice response by prosecuting the criminals, whereas efforts to address forced labour and slavery emphasize progressive action over a period of time to dig out the roots, practices and entrenched systems of exploitation, in addition to pursuing criminal justice.

Some arguments on why it is important to distinguish forced labour, human trafficking and slavery from other less severe labour rights violations.

- Some organizations and media use terms such as “modern slavery” as an overarching umbrella concept for all types of labour rights violations. Calling labour rights violations of various degrees of severity by the same name may water down the extremity of violations such as forced labour, human trafficking and slavery. This may be counterproductive as it undermines the sense of urgency to address forced labour, human trafficking and slavery.
- Different labour rights issues require a different response, so grouping them under one rubric is not advisable. Practices such as forced labour, human trafficking and slavery constitute a crime and require criminal sanctions, whereas many other labour rights issues are best dealt with through regulation, labour inspections and organizing workers to defend themselves against abuse.
- Conceptual clarity is needed to understand inter-linkages between practices that violate labour law and crimes such as forced labour or slavery. It may be useful to see these as parts of the same continuum covering a range of possible situations with, at one end, slavery and slavery-like practices and, at the other end, situations of freely chosen employment. In between the two extremes, there are a variety of employment relationships in which the element of free choice by the worker begins at least to be mitigated or constrained, and can eventually be cast into doubt.