

SLAVERY, FORCED LABOR, DEBT BONDAGE, AND HUMAN TRAFFICKING: FROM CONCEPTIONAL CONFUSION TO TARGETED SOLUTIONS

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INTRODUCTION

Human trafficking has grabbed the headlines around the world but what is human trafficking and what is its relationship to forced labor, debt bondage and slavery? Has the focus on human trafficking and particularly trafficking into forced prostitution, undermined or marginalized efforts to address forced labor, debt bondage and slavery? The answer to the first question is that, although they are interconnected, they are not the same in international law or in practice, which has led to much confusion and misinformation. The answer to the second question is yes, global mobilization to counter 'trafficking' has diverted attention away from the great number of persons who are in forced labor, debt bondage and slavery but who were not *trafficked* into these situations. So, the purpose of this paper is to provide some conceptual clarity to the current confused state and to issue a call for governments and civil society to address the human rights abuses suffered by victims of all of these crimes.

First, the Paper discusses the international law instruments on forced labor, debt bondage, slavery and trafficking to demonstrate that these four abuses are not the same, although they all contain elements of forced labor.

Second, the Paper addresses the pervasive lack of conceptual clarity about the relationship

between forced labor, debt bondage, slavery and human trafficking. The terms are used interchangeably and sometimes they are collectively called 'a new form of slavery.' This confusion has had negative and sometimes harmful consequences on the ground.

Third, the Issue Paper concludes with a call for conceptual clarity, verifiable data and targeted responses, domestic legislation and enforcement of international standards, better labor and immigration laws, use of documented successes and responsible consumerism.

BACKGROUND

The International Labor Organization (ILO) claims there are at least 12.3 million people in forced labor, debt bondage and slavery, including people who have been trafficked into these conditions (ILO 2005, 10). To gain a bit of perspective on the scope of the problem, 12.3 million is about equal to the population of Greece or Senegal (UNDESA, Annex, p. 2). A definitive calculation on the global scope of the problem will never be possible, but the ILO number is the best estimate available to date as it is the *only* estimate that is based on a systematic methodology (however imperfect) that can be checked and replicated.¹

¹ "[T]he ILO methodology relies on a particular statistical method described as *double sampling* of reported cases of forced labour. This sampling

Yet, surprisingly, the outrage that one would expect to exist in the face of such a horrific violation of fundamental rights is not present. Global outrage is focused almost exclusively on 20% of the 12.3 million – on the 2.45 people who the ILO estimates are *trafficked* into forced labor, debt bondage and perhaps slavery² (ILO 2005, 14). The horrors endured by the other 80% - who were not trafficked - are rarely mentioned in public debates or political discourse and, surprisingly, not even in discussions about trafficking despite the fact that trafficking always involves some form of forced labor, debt bondage and/or slavery.

The costs of these abuses to the 12.3 million victims are extensive and shocking. As well as being forced to work, victims will have restrictions placed on their freedom of movement, may be beaten, killed, denied access to health care, fed a starvation diet, deprived of an education and/or forced to live in filthy and dangerous conditions. Many also face the possibility of sexual assault. They often suffer from diseases that could have been prevented with adequate nutrition, sleep and access to health care. For some victims, the suffering amounts to inhuman and degrading treatment and torture. In sum, victims are deprived of all of their basic human rights and

procedure, called “capture–recapture” in the statistical literature, was originally designed for estimating the abundance of wildlife, but is now also being applied to many types of elusive human populations, including numbers of victims of war crimes. In its simplest form, the method consists of drawing two independent lists (capture and recapture), each representing a random sample of the population to be estimated. The number of persons in each of the two lists is then counted, as well as the number of persons found in both lists. The resulting three numbers provide the basis for estimating the size of the target population as a whole” (ILO 2005, 11).

² There is no information available on cases of trafficking people into slavery, as defined in international law.

freedoms for days, weeks, or years – until they are freed or die.

Forced labor, debt bondage, slavery and human trafficking have an enormous financial cost for victims *and* society. The ILO estimates that victims lose approximately U.S. \$21 billion a year in unpaid earnings (ILO 2009(a), 32). It also estimates that criminals earn \$32 billion a year from the forced labor of trafficked persons *alone* (ILO 2005, 55). These lost billions contribute to the poverty of the workers, their families and communities. These are not just individual losses; they are collective losses that contribute to poverty and the harmful consequences of poverty.

SLAVERY

Slavery is the subject of UN conventions and is defined as:

“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (UN Slavery Convention, art. 1(1)).

Slavery is much more than forced labor. All slavery involves forced labor but not all forced labor involves slavery. The international prohibition on slavery is absolute; there are no exceptions (as there are for forced labor). Slavery is an institution in which the slave master’s exercise of the rights of ownership destroys the human personality - the person as a bearer of rights - and reduces the slave to chattel, without rights.

Slavery is a complete system of ownership. It is a social institution in which the community recognizes slaves as a separate category of beings without rights and as legally inferior to non-slaves. Slaves are born as slaves; they do not become slaves because the status of slavery is inherited at birth. Slaves have no expectation of freedom, although this is changing as local NGOs become more active in raising awareness of the illegality of slavery and the fact that all human beings are born with inalienable human rights.

Slavery is a permanent situation. The slave master has complete control over all aspects of the life of the slave including who a slave marries, what the slave eats and wears, when the slave sleeps, whether the slave is educated or provided medical treatment, and whether the slave can practice religion. Traditionally, a slave master can sell, exchange or lend child or adult slaves to anyone with impunity. Notions of ownership are *complete*. Thus, slavery involves much more than simple control over another person.

Slavery is now prohibited around the world, except in Mali. Nonetheless, the practice – though illegal – of slavery continues to exist in several countries where governments choose to ignore its presence. For example, although Sudan outlawed slavery, it persists (Human Rights Watch 2002).

It persists also in Niger, which abolished slavery in 1960 and made it a crime until 2003; Anti-Slavery International estimates that at least 43,000 people remain enslaved (The Guardian 2008). Hadijatou Mani Koraou was born into an established slave class and was inherited, sold, made to work without pay and was sexually abused. This lasted for nine years. The 24-year-old former slave sued the government and won. In 2008, the Community Court of Justice of the Economic Community of West Africa (Community Court) found Niger in breach of its own laws and international obligations to protect citizens from slavery and awarded damages to Koraou (Hadijatou Mani Koraou 2008). Whether this decision leads to true freedom for Niger's slaves is yet unclear.

Mauritania criminalized slavery in 2007 (ASI 2009) but slavery continues. The UN Special Rapporteur on Contemporary Forms of Slavery, following a 2009 mission to Mauritania, stated that she *"met with victims of slavery who had been utterly deprived of their basic human rights. These victims had recently fled from their masters and reported that they had left family members behind. The absence of alternative livelihoods and protection from high levels of*

illiteracy, limited information, combined with the separation of families, and methods of control used by masters that include the use of religion have resulted in a deep-rooted acceptance of their inherited slavery status. In addition, there is resistance from masters to change this way of life. Consequently, de facto slavery in Mauritania continues to be a slow, invisible process which results in the "social death" of many thousands of women and men" (UN Special Rapporteur, 1-2). In January 2011, human rights activists were prosecuted for demonstrating in Mauritania over the failure of authorities to investigate and prosecute allegations of the enslavement and exploitation of two young girls (ASI 2011).

Only Mali has failed to enact a law forbidding slavery. Anti-Slavery International relates the recent case of Iddar who *"[I]ike his parents before him, ... was born a slave, a status ascribed to him at birth, and grew up under the total control of a master who exacted labour from him for no remuneration"* (IRIN 2008). The article goes on to observe that *"[i]t is not clear what the state could do in cases such as Iddar's, as Mali has no law formally forbidding slavery. Although Mali's constitution states all people are equal, and the country has signed up to the major international conventions banning slavery, including the UN supplementary convention on abolishing slavery (1956)..."* (IRIN 2008).

Other practices may evolve to something similar to slavery. International law recognizes that forced labor can develop "into conditions analogous to slavery" (UN Slavery Convention, art. 5). The international community also adopted the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in order to address practices that are not slavery but are similarly heinous offenses. This Convention includes, for example, debt bondage and forced marriage as "practices similar to slavery" (UN Supplementary Convention, art. 1).

FORCED LABOR

The international instrument addressing forced labor is within the ILO, which is a specialized agency of the UN.³ The ILO Forced Labour Convention No. 29 contains the following definition:

[F]orced or compulsory labour shall mean 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 (ILO Convention No. 29, art. 2.1)⁴

A *menace of penalty* includes *threats* of physical violence against a worker or relatives, physical confinement and denial of rights (ILO 2005, 5).

The Convention's prohibition on forced labor is not absolute (whereas the prohibition on slavery is absolute) because certain forms of forced labor are permitted for (a) military service, (b) when it is part of the "normal civic obligations of the citizens," (c) convict labor performed for a public authority, (d) when necessary in "cases of emergency" and (e) "minor communal services" by members of the community for the community (ILO Convention No. 29, art. 2.2).

A later ILO Convention also prohibits the use of forced labor for political and economic purposes or as a means of labor discipline, or punishment for strike action (ILO Convention No. 105, art. 1). It is important to note, however, that the two Conventions do not prohibit the use of prison labor; they only place restrictions on its use. Historically, governments have used forced labor for public works projects like road building.

Government sanctioned forced labor that does not fall into one of the above categories is quite

³ There is no UN convention on forced labor but the UN Covenant on Civil and Political Rights prohibits most forms of 'forced labour' (UN ICCPR, art. 8.3).

⁴ For case law on the meaning of forced labor, see ILO 2009(b).

rare today, with Myanmar⁵, Uzbekistan⁶ and North Korea⁷ being the exceptions. China also continues to use forced labor in its prisons (U.S. State Department 2009(d); ILO 2005, 27). And, some questions have been raised about the use of prison labor elsewhere when the 'voluntariness' of prison labor is questioned as, for example, in the U.S. (Blustein 1997; Pelaez 2008).

A person is typically a victim of forced labor for a limited period of time, as forced labor is not a permanent condition. The employer/enforcer relies on violence or the threat of violence to coerce labor and almost always keep the worker's documents so (s)he cannot leave. The employer/enforcer does not exercise the rights of ownership of the worker or the worker's children. Nonetheless, forced labor situations can be extremely violent and deadly.

"We were beat frequently by the Thai crew, on the back of the head and across the back. The captain had a gun. On shore [on Sarawak] we saw a Thai captain decapitate a Vietnamese fisherman, and another Thai captain decapitate a Thai fisherman." - 19-year-old victim from Banteay Meanchey, Cambodia (UNIAP 2009, 5).

Forced labor often occurs when people are told they will have one set of working conditions and then are forced to work under completely different conditions for little or no pay. If

⁵ Burmese (Myanmar) "[m]ilitary and civilian officials remained directly involved in forced labor and the unlawful conscription of child soldiers.... The military forcibly recruited thousands of children and adults to serve as civilian laborers and uniformed soldiers" (U.S. State Department 2009(a); see also ILO 2005, 25-26).

⁶ In Uzbekistan, there is reportedly "government-compelled forced labor in cotton harvesting" (U.S. State Department 2009(b)); see also ILRF Cotton Campaign; ILO 2005, 25).

⁷ In North Korea, "sentences at forced labor camps, was a common punishment" (U.S. State Department 2009(c)).

people are subjected to physical and psychological violence, and have restrictions placed on their freedom of movement they are experiencing forced labor.

Two employers “had a workforce of over 400 men and women in Florida and South Carolina, harvesting vegetables and citrus. The workers, mostly indigenous Mexicans and Guatemalans, were forced to work 10-12 hour days, 6 days per week, for as little as \$20 per week, under the watch of armed guards. Those who attempted escape were assaulted, pistol-whipped, and even shot.” – Coalition of Immokalee Workers (CIW 2010).⁸

Children are particularly vulnerable to forced labor around the world, especially children whose families send them away as domestic workers:

“I worked [there] for three months. Sometimes I did not get any food. I woke up at 4:30 a.m. and slept at 10 p.m. ... [My employer] shouted at me, ‘You are a poor person. You have to know your position, you are here to work.’ I was not allowed to go out of the house. I had not seen my family since I left home. I was not paid any salary.... [My employer] hit me when she was angry. ... She laughed when I asked that I wanted to see the doctor.” - Asma, child domestic worker, age sixteen, Medan, Indonesia, December 13, 2004 (Human Rights Watch 2006, 1).

Children are treated differently in international law and thus advocates should also be aware of two important ILO Conventions that address minimum ages for child labor (ILO Convention

⁸ The case of U.S. v. Flores was brought to federal authorities after five years of investigation by escaped workers and Coalition of Immokalee Workers members. *Miguel Flores and associate sentenced to 15 years for enslaving migrant workers*, U.S. Department of Justice, <http://www.justice.gov/opa/pr/1997/November97/482cr.htm.html>

No. 138) and the worst forms of child labor (ILO Convention No. 182).

An unknown number of people voluntarily enter into employment in farms, factories and homes and, once in the door, are unable to leave because the employer/enforcer holds them in forced labor. They may work alongside persons who were recruited and brought into the same situation (i.e., trafficked). But, they are not defined as ‘trafficked’ and so are not eligible for the legal protections offered to trafficked workers.

Many governments are aware of the existence of forced labor by individuals or businesses and do little to stop it. Officials may have ties to the people using forced labor and turn a blind eye to the abuse of vulnerable groups. Thus, governments may be passively complicit in the practice.

It is important to note that forced labor is not the same as worker exploitation.⁹ People who work in exploitative conditions and receive extremely low wages but who are not subject to physical or psychological trauma are *not* victims of forced labor. Although they might not want to leave the job due to lack of alternatives, they are not prevented by the employer/enforcer from leaving.

On a scale of 1 to 10, conditions at the extremes of forced labor and good labor conditions are clear:

1-2	3-5	6-8	9-10
Forced labor	Exploitation regarding wages and/or working conditions	Some safety or wage issues	Fair wages, safe conditions

⁹ As the ILO observes, “Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives” (ILO 2005, 5).

However, at the lower end of the scale, between 2 and 3, the difference between forced labor and exploitative conditions is not as clear-cut. It is even possible for workers in exploitative working conditions to be paid high salaries. Ultimately, the decision about where to draw the line is up to the courts.

Often, worker exploitation and forced labor are only different by degrees and so eliminating conditions that permit forced labor to exist also contributes to the elimination of the exploitative working conditions. Advocates need to keep a focus both on forced labor and poor working conditions in order to help protect the labor rights of all workers.

DEBT BONDAGE (OR BONDED LABOR)

The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery includes debt bondage as a practice similar to slavery:

“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” (UN Supplementary Convention, art. 1)(emphasis added).

Debt bondage is identified as a “practice similar to slavery” but it is not actual slavery. It is a practice similar to slavery because it involves a debt that cannot be paid off in a reasonable time. The employer/enforcer who engages in this criminal practice artificially inflates the amount of debt, often by adding exorbitant interest, deducting little or nothing from the debt and increasing the amount of time the so-called debtor must work. The labor is not necessarily forced by violence or threats; instead it is enforced by the worker’s forced acceptance of the obligation to repay the artificial debt.

An example of a debt bondage situation is a person who agrees to repay a debt of \$5000 for recruitment fees and travel costs allegedly paid by the employer/enforcer. The worker agrees to sew clothes until this ‘debt’ is repaid. The market wage for the work is \$50 per day but the employer/enforcer only deducts \$20 a day from the debt and also asks the person to do other work and to work longer hours. The worker is not paid for the extra hours and the value of the extra labor is not deducted from the debt.

The employer/enforcer also insists that the debt has increased to cover the ‘costs’ for the worker’s room, food, illness and other expenses. The worker is unable to pay off the ever-increasing debt. When the worker dies, the employer/enforcer may add burial costs. Invariably, the worker dies before the debt is paid and so the employer/enforcer insists that the worker’s children must also work to pay the unfair and unreasonable debt. This cycle of debt bondage may continue through generations. For this reason, it is a ‘slavery-like practice’ since it becomes permanent and is inherited by the worker’s children.

Not all people who must repay a debt to their employer/enforcers are in debt bondage. If the employer/enforcer deducts the reasonable value of the labor from the debt, does not artificially increase the amount of the debt and does not extend the contract length of time, then it is not a debt bondage situation. Many migrants pay for their travel expenses this way and are able to change employer/enforcers once the debt is paid. Even though it is not debt bondage, it may still be illegal since it requires a person to work for a specific employer to pay off a debt.

Debt bondage is a common practice in many parts of the world and most people in those areas do not consider it to be a crime because the practice is part of the culture and the economy. While there are no good estimates on the extent of debt bondage worldwide, the ILO estimates that the majority of the 9.5 million

people in forced labor in the Asia-Pacific region are in debt bondage (ILO 2005, 1, 13).

Debt bondage continues to exist in Latin America, Africa and Russia and in almost all sectors in South Asia (ILO 2005, 31-39, 45; Upadhyaya 2008, 5). In 1976, India abolished bonded labor (India Act). Nonetheless, a court-appointed Commission found “over 1 million bonded labourers spread over 23 districts and 20 occupations” (ILO 2005, 33).

Pakistan did not abolish the practice until 1992 (Pakistan Act) but it remains a serious problem across at least ten sectors (ILO 2005, 23, 35-37). In one sector, brick kiln workers are unable to pay off their debt because they have to borrow continually from the kiln owners for necessities, such as medicine. Abdul Sadiq, whose father did the same work, explained:

“You try to repay it, but the debt stays with you, sometimes for your whole life. It’s like a pair of invisible handcuffs” (Constable 2009).

Nepal has criminalized most debt bondage in 2002 (Upadhyaya 2008, 22; Giri 2009).

HUMAN TRAFFICKING

The UN Trafficking Protocol *describes* the trafficking episode as:

Act: the recruitment, transportation, transfer, harbouring or receipt of persons,

Means: by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,

Purpose: for the purpose of exploitation.

‘Exploitation’ is defined as “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, **forced labour or services, slavery or practices similar to slavery**, servitude or the removal of organs” (UN Trafficking Protocol, art 3(a)).

It is obvious from the above language that the real abuses involved in trafficking are the crimes of forced labor, slavery and practices similar to slavery (debt bondage and sometimes forced labor).¹⁰ ‘Trafficking’ prosecutions require a conviction of at least one defendant for one of these crimes.

The ‘trafficking’ part of an episode ending in, for example, forced labor is the manipulation and movement by someone of the victim into forced labor. Often the trafficking recruiter lies to potential victims and then moves them away from home to a place where they cannot speak the local language and have no papers or friends. The trafficker then delivers the unsuspecting person to another trafficker (employer) who profits from the forced labor.

If the potential adult victim is never placed in forced labor, slavery or debt bondage (or similarly prohibited involuntary situation), then there is no trafficking - only smuggling, document theft, assault, etc. Trafficking prosecutions always *must* involve more than simply recruiting, transferring, harboring or receipt of a person. They require the end crime (or attempted crime).

Since the core abuses are forced labor, debt bondage or slavery and there are already international conventions prohibiting these abuses, was it even necessary to adopt an international convention on ‘trafficking’? Would it have been possible to accomplish much more for all victims of forced labor, debt bondage and slavery if the international community had

¹⁰ The terms ‘exploitation of the prostitution of others’ and ‘other forms of sexual exploitation’ are not defined in the UN Trafficking Protocol. However, the ILO treats them as a form of forced labor. “While the Trafficking Protocol draws certain distinctions between *trafficking for sexual exploitation* on the one hand, and *trafficking for forced labour or services* (and also slavery, slavery-like practices and servitude) on the other, this should not be taken to imply that coercive sexual exploitation does not constitute forced labour” (ILO 2005, 7).

instead adopted a binding commitment to combat those human rights abuses and provide support and services for *all* victims, as well as address the underlying social, economic and legal impediments to their abolition?

Such a comprehensive approach would have prevented confusion and recognized all victims as equally in need of attention and protection. Instead, the international community chose to adopt a narrowly focused instrument - the UN Trafficking Protocol. On the positive side, this international agreement requires governments to prosecute traffickers and provides some protections for over 2 million victims. These are important accomplishments. However, the question remains – what is the impact of this narrow focus on the approximately 10 million the victims who were not trafficked and what could have been accomplished for all victims if the same energies to counter ‘trafficking’ had been applied to creating into a more universal approach?

CONCEPTUAL CLARITY UNDERMINED

Attempts to create a new ‘slavery’ or redefine ‘trafficking’ lead to confusion

Despite the existence of separate international instruments for forced labor, debt bondage, slavery and human trafficking, many reports, conferences, news articles and laws fail to differentiate between them. This confusion is caused, in part, by the growing use of the label ‘slavery’ or a ‘modern form of slavery’ to include all four human rights abuses. For example, one proponent of a ‘new’ definition of slavery defines a slave as “a person held by violence or the threat of violence for economic exploitation” (Bales 1999, 280) and asserts that “[t]he key characteristics of slavery *are not* about ownership but about how people are controlled” (Bales 2005, 3).¹¹

¹¹ Emphasis added. Bales also claims there are 27 million ‘slaves’ in the world today (Bales 1999, 8) but this estimate is problematic on two counts. First,

This would mean that all forced labor and debt bondage are ‘slavery.’ However, Bales has not created anything new since this definition is actually almost the same as the international law definition of forced labor. It is unclear why anyone feels it necessary to re-label forced labor cases as slavery. However, as Gallagher observes, “[m]oral and political crusaders such as Bales, who rail against the ‘sickness of slavery’ and the ‘human right to evil’, understand the political and emotional significance of the slavery label (particularly in the United States) and have a vested interest in expanding its reach” (Gallagher 2009, 798; also Alain 2008, 228-232).

The requirement of ‘ownership’ as an element of slavery was affirmed in a recent case involving a provision in the European Convention on Human Rights on “forced or compulsory labour” (ECHR, art. 4). The European Court of Human Rights (European Court) affirmed the requirement of ‘ownership’ in slavery and rejected the view that ownership is not required. It declared unanimously that violence and even the lack of freedom are *insufficient* to constitute slavery. Legal *ownership* is required. “*Although the applicant was... clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense, in other words that Mr. and Mrs. B exercised a genuine right of legal ownership over her, thus reducing her to the status of an ‘object.’*” (*Siliadin v France*, para.122).

Another source of confusion is the assertion by the U.S. State Department’s Office to Monitor

Bales conflates slavery, forced labor, debt bondage and trafficking under the term ‘slavery’. Second, and equally problematic, he did not use any replicable methodology for arriving at this estimate. He simply gathered information and decided which estimates were valid and which were not (Bales 1999, 8). Consequently, 27 million is only an unreliable personal ‘guesstimate’ that cannot be checked or replicated, yet has been recited as ‘fact’ by a myriad of sources.

and Combat Trafficking in Persons (TIP Office) that ‘trafficking’ is the umbrella category for slavery, debt bondage, and forced labor: *“Over the past 15 years, ‘trafficking in persons’ and ‘human trafficking’ have been used as umbrella terms for activities involved when someone obtains or holds a person in compelled service,” and defines ‘compelled service’ as “involuntary servitude, slavery, debt bondage, and forced labor”* (U.S. State Department).

The TIP Office is using this new interpretation to expand its mandate to address the plight of all 12.3 million victims of forced labor, debt bondage, slavery and trafficking. The scope of the TIP Office’s work is limited to ‘trafficking’ under U.S. law and so it has chosen to redefine ‘trafficking’ in a way that is contrary to international law definitions. Some supporters of this approach applaud the action because it ensures that the annual TIP reports will cover all forced labor, slavery and debt bondage and not just cases of trafficking. Detractors, on the other hand, argue that it undermines international law and causes confusion.

In sum, there are at least three sources of conceptual confusion: (1) the ILO, which maintains that forced labor is the umbrella category for slavery, debt bondage and human trafficking, (2) Bales and others who argue that a ‘new slavery’ is the umbrella category for forced labor, trafficking and debt bondage, and (3) the U.S. government, which asserts that trafficking is the umbrella category for forced labor, debt bondage and slavery. No wonder people are confused, research reports are unclear and laws are often problematic.

Focus on trafficking ignores rights abuses of persons held in forced labor, debt bondage and slavery

Problems also arise when people use the term ‘trafficking’ as a stand-alone phenomenon that is not related to forced labor, debt bondage or slavery. Anyone who has been paying attention to reports in the newspapers and watching TV and movies, knows that human trafficking, especially the trafficking of women and children

into forced prostitution,¹² has really captured attention around the world. Notably absent from all of these activities is any mention of forced labor, debt bondage or slavery - the crime is identified only as ‘trafficking’.

This narrow focus on ‘trafficking,’ as though it is something new and unrelated to forced labor, debt bondage or slavery, misleads the public. It also elevates the situation of a minority (albeit an important one) of the millions of persons held in forced labor, debt bondage and slavery to a special protected status. At the same time, it ignores the plight of millions of people in forced labor, debt bondage and slavery who are not trafficked.

It also creates the impression that the causes of trafficking are different from the causes of forced labor, debt bondage or slavery. This is simply not the case as globalization, poverty, discrimination, corruption and other factors allow trafficking *and* forced labor, slavery and debt bondage to flourish.

STRATEGIES TO ADDRESS SLAVERY, FORCED LABOR, DEBT BONDAGE AND HUMAN TRAFFICKING

Bring conceptual clarity to the issues

Conceptual clarity is an essential tool for creating a shared understanding about each problem within its own legal, social, economic and political context and for formulating solutions to combat systems of labor-related abuses. Forced labor is not the same in every country or even in every region of each country. Slavery has a specific history and culture in each country where it still exists. Debt bondage differs from country to country and region to region and each one requires a specific response. Human trafficking into these conditions differs worldwide. This means that a

¹² The emphasis on trafficking into the sex sector has led to misconception that trafficking equals prostitution. Some anti-prostitution groups have promoted this erroneous viewpoint.

'one size fits all' solution does not exist. A strategy to stop slavery in Mauritania may not be appropriate for Niger and a strategy to stop debt bondage in India may not be appropriate for Nepal.

Conceptual clarity requires complex understandings of historical, factual, legal, social and economic differences between slavery, forced labor, debt bondage and trafficking. It is essential for the development of targeted and effective, rights-protective programs, laws, policies and services. Any foggy thinking or confusing concepts that are tossed out by experts, politicians, funders and NGOs should be quickly met with requests for explanations backed up by reliable research and/or data. In other words, a healthy dose of skepticism is required at all levels.

Conceptual clarity and rigorous analyses of the problems and possible solutions can move programs beyond short-term law enforcement initiatives that have no impact on root causes. Long-term strategies must be grounded in local realities in order to address the local and global forces that render people vulnerable to exploitation. Once everyone accepts that the solutions for forced labor, debt bondage, slavery and trafficking differ and must be adjusted to the local context, then it will be possible to move beyond gross generalizations and global confusions to work together at the local and regional levels on ways to reduce the vulnerability of people to these crimes.

Insist upon accurate data and research

Bad data makes it difficult for governments, inter-governmental agencies (like the UN) and NGOs to develop effective programs and policies to address forced labor, debt bondage, slavery and trafficking.¹³ At present, data is rarely challenged and numbers are repeated as though they are fact. So, it is important to question the methodology and objectivity of *all*

¹³ For more about inflated data, see Issue Paper 3 on fact or fiction.

data (including the ILO data cited in this Paper). All experts, governments and agencies claiming to 'know' the scope of the problem must be able to support their claims with evidence and their data with a clear methodology.

Although it may never be possible to collect completely accurate global or regional data, it is possible to collect data locally that can be used to support targeted, effective, rights-based responses. For example, the UN Inter-Agency Project on Human Trafficking conducted replicable research at the Thai-Cambodia border in which they interviewed people being deported to Cambodia. They developed a reliable estimate on the scope of trafficking from Cambodia into Thailand and identified routes, 'hot spots' and situations that differ from previous anecdotal assessments of the problem (UNIAP 2008).

Once the root causes, social, economic, cultural, and other factors are identified, as well as the 'hot' spots where the problems exist, then projects can be developed to address the local situation. For example, as a result of the UNIAP research, governments, donors and NGOs can more carefully tailor their programs to the regions and the populations at risk in Cambodia as well as the employer/enforcers abusing workers in Thailand.

Adopt and enforce international standards

Most governments have signed and ratified the international conventions discussed in this Issue Paper and also regional human rights conventions. Ratification status for all countries is available on the internet (see Ratifications links in References). All countries that have ratified conventions must have national laws implementing convention provisions.

In particular, advocates should ensure that their governments have ratified these important conventions and adopted domestic laws criminalizing forced labor, debt bondage, slavery and trafficking. Most importantly, advocates could undertake campaigns to demand that governments actively enforce

these laws to ensure that all slaves, victims of forced labor, debt bondage and trafficking are freed, and all slave holders, employer/enforcers and traffickers are prosecuted and required to pay damages to their victims. Advocates should also demand that their governments provide some level of support to all victims for recovery and reintegration.

Improve labor laws

While some people are forced into their situations by organized criminal networks, it is more often the case that people are put into forced labor or debt bondage by small groups of unscrupulous employers, placement agencies, or individuals. Moreover, some workers are at extra risk for exploitation as a direct consequence of significant gaps in labor laws that leave them without key protections. Employers take advantage of these legal gaps or lack of enforcement and rely on migrants' fear of deportation to exploit them. Minimal steps to address this problem include:

- A guarantee of labor rights for all workers (without regard to nationality or immigration status) in all sectors - including domestic, agricultural, contract and sex work - and equal protection under the law. Even though governments have the right to determine which non-nationals can enter the country, they should not claim the right to create a two-tiered system of justice for people within the country. Undocumented immigrants can, of course, be deported but they cannot be denied their right to access the system of justice and laws on the same basis as other persons in the country. The labor rights of domestic, agricultural, contract, sex and informal sector workers are not adequately covered by labor (and other laws) in many countries, leaving workers without redress for unpaid wages, rape, assault, unlawful detention and other abuses.
- Laws that are in compliance with international labor standards, including written contracts, minimum wage,

overtime, weekly day of rest, limited workday, rest periods during the day, a safe and healthy workplace, benefits, and effective penalties for violating the law, as well as freedom of association and the right to organize.

- Regulating and monitoring work sites to ensure that laws are enforced. Government failure to monitor labor sites allows employers to abuse with impunity and failure to regulate some sectors facilitates egregious abuse and exploitation.
- Direct appropriate agencies to ensure that multinational corporations headquartered in one country and investing in another are held accountable for trafficking and forced labor in their supply chains. Governments can adopt laws regulating the trade in goods made in violation of international human rights norms and support trade and investment frameworks that contain measures to review the human rights practices of corporations.

Address harmful immigration laws

Immigration policies may also increase the risk of abuse of migrant workers. Most governments do not permit migrant workers a legal means to take jobs that cannot be filled with the local labor force. Despite the widespread use of undocumented and vulnerable migrant workers, governments simply refuse to develop humane, rights-protective immigration policies permitting migrants to work legally. Instead, most governments have a 'policy' of ignoring undocumented workers in order to provide businesses with cheap, exploitable labor.

Even laws that permit a limited number of workers to enter a country can be harmful. *"For example, several countries impose 'security bonds' on employers, penalizing them if their migrant domestic worker runs away"* (Varia 2007, 19). In order to avoid paying the bond, some employers lock up *legally* employed migrant domestic workers and reduce them to

forced laborers. Others simply hired undocumented workers.

In some countries, laws require workers to work only for one employer, which gives employers a great deal of power. For example, most migrant domestic workers who leave their employers (even abusive or exploitative ones) lose their legal right to remain in the country. In the United States, guest workers in certain industries do not have the right to change jobs and, if they complain, they may be threatened with deportation or some type of retaliation (SPLC 2007, 2).

Countries of destination should, at a minimum:

- Develop a rational immigration policy to permit sufficient migrant workers to enter the country to meet the unmet demand for labor. This will lower the risk of migrants having to go underground to unlicensed recruiters and smugglers.
- Ensure that migrant labor laws (a) require employers to demonstrate the lack of local laborers before issuing visas for migrant workers and (b) allow workers to change

employers without having to seek the permission of the current employer.

- Reform immigration policies to ensure that migrants are able to access courts or another mechanism for seeking justice.
- Develop guides for migrant workers about their rights and the legal responsibilities of employers and recruiters. Help governments launch informed public awareness campaigns, using all media to disseminate the information.
- Enact regulations to monitor labor recruitment agencies and eliminate recruitment fees for migrant workers.

Develop personal strategies or activities

Be careful to purchase goods free from the taint of forced labor. Conscientious consumers can be careful to purchase, for example, fair trade coffee, Rugmark rugs, and other products sold by companies ensuring fair labor conditions in the factories and fields of production.

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