

Online Discussion Report

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

AP-Forced Labour Net
22 April – 2 May 2014

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1. INTRODUCTION

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 22 April 2014, the AP-Forced Labour Net hosted its first public online discussion forum on ***What is forced labour, human trafficking and slavery? Do definitions matter, and why?*** from 22 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 forced labour, human trafficking or slavery. 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.

The online discussion on the AP-Forced Labour Net¹ was framed around the following three questions:

1. Forced labour, human trafficking and slavery are concepts defined in international law.² 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?

The online discussion was moderated by Marja Paavilainen, Chief Technical Adviser of the ILO Forced Labour Action in the Asian Region project (FLARE).

2. DISCUSSION CONTRIBUTORS AND AUDIENCE

During the 11 discussion days, from 22 April to 2 May 2014, a total of 2006 visits were made to the AP-Forced Labour Net site and the discussion page was viewed by 664 Members and other readers. Altogether 48 comments were posted on the discussion site by 15 different contributors representing UN agencies, civil society organizations, bilateral development programmes, independent experts and ILO constituents. The number of visits to the discussion page shows that the discussion did reach a broad readership, even if the number of contributions and contributors remained relatively low.

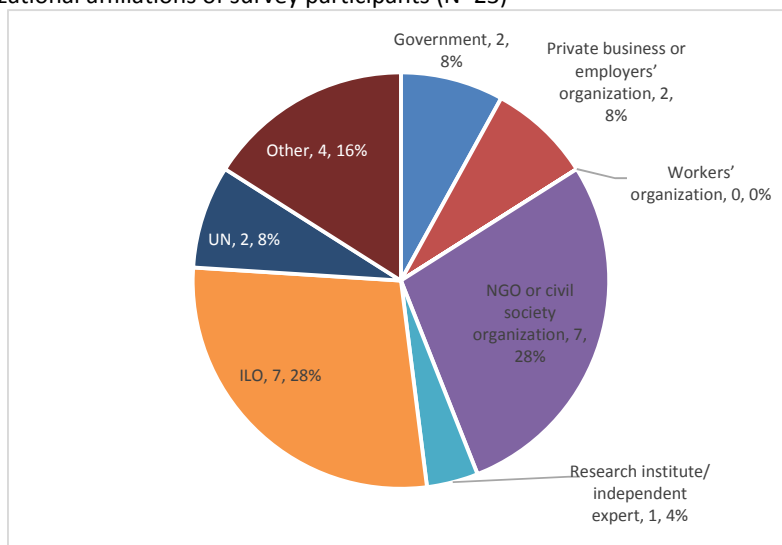
¹ AP-Forced Labour Net, Online discussion “What is forced labour, human trafficking and slavery? Do definitions matter, and why?”, <http://apflnet.ilo.org/discussions>

² AP-Forced Labour Net, Glossary of international legal definitions, http://apflnet.ilo.org/discussions/Glossary_of_international_legal_definitions.pdf

Majority of contributors in the first public online discussion were development practitioners from the Asia-Pacific region and beyond, while participation of ILO constituents was low. This was however to be expected, as the technical and fairly academic topic for the first public online discussion was primarily selected to attract attention to the AP-Forced Labour Net within the development community.

As part of the online discussion, a survey was organized on the AP-Forced Labour Net from 30 April to 1 May. Total 26 persons participated in the survey to share their views on some key questions emerging from the online discussion. Composition of survey participants is presented in Chart 1.

Chart 1. Organizational affiliations of survey participants (N=23)



3. SUMMARY OF KEY DISCUSSION POINTS

3.1. Concepts of forced labour, human trafficking and slavery

3.1.1. Distinct definitions, overlapping concepts

Moderator Marja Paavilainen, ILO, initiated the online discussion by posting a case example from a Brazilian farm³ and inviting participants to share their views on whether the case constitutes forced labour, human trafficking or slavery, and whether distinguishing between these concepts is necessary. Several participants noted that on paper distinguishing between these concepts is relatively easy, but in practice it is much more complicated as the concepts are partly overlapping.

Jonathan Martens, IOM Bangkok, and Aurélie Hauchère Vuong, ILO SAP-FL Geneva, noted that key definitional elements of forced labour, human trafficking and slavery are different:

- Slavery is about ownership attributes: It is determined by the nature of the relationship between the slave and owner and involves exercise of power attached to the right of ownership.

³ Federal Public Ministry v. Gilberto Andrade, 2008, summarized in ILO. 2009. Forced labour and human trafficking: Casebook of court decisions, SAP-FL (Geneva).

- Forced labour is about working under coercion: It is defined by what somebody does (work or service) and why (menace of penalty).
- Human trafficking is most often understood as a process including the transport (international or national) of a person in order to exploit him/her at destination. (*See also legal debates below.*)

Several participants – including Od Busakorn Suriyasarn, Aurélie Hauchère Vuong, Jonathan Martens and representatives of the UN-ACT – noted that in practice distinguishing between forced labour, human trafficking and slavery is much more complicated. Aurélie Hauchère Vuong, ILO, noted that forced labour is one of the aims of trafficking, while trafficking is one of the forms of forced labour. In addition, some trafficking and forced labour situations have slavery-like elements. Jonathan Martens, IOM, also reminded that not all forced labour cases involve slavery, and neither are all slaves subjected to forced labour.

The question of whether trafficking in persons is simply a process by which someone arrives in a situation of exploitation, or a form of exploitation in and of itself, is a question that is currently still debated by practitioners and scholars. Jonathan Martens, IOM, noted that this was one of the key questions discussed during the legal debate convened by the IOM, ILO, OHCHR, UNHCR, and the Government of Switzerland, in Geneva last October. Some of the other key questions included: Is 'movement' essential to trafficking in persons? Are slavery, servitude, and forced labour, and perhaps trafficking in persons, different in degree or in kind? And is the notion of a 'continuum of exploitation' helpful in distinguishing between them?⁴ Jonathan Martens noted that considerable confusion still exists between the concepts of forced labour, human trafficking and slavery, and it has an impact on the response of the international community.

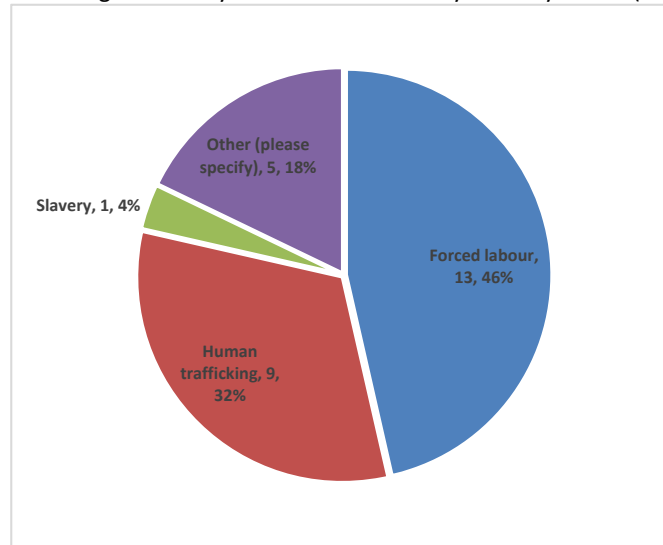
Claire Falconer, Focus on Labour Exploitation (FLEX), UK, noted that each of the concepts of forced labour, human trafficking and slavery – and the international law and policy frameworks that have developed around them – have something to offer in addressing human exploitation.

- The trafficking framework provides a strong basis for international cooperation and for victim protection, particularly through the development of regional instruments subsequent to Palermo Protocol.
- The forced labour framework provides a more contextual, collective and systemic approach that allows greater focus on prevention rather than solely on prosecution.
- The slavery concept provides the historical and emotive power that is currently being deployed to awaken public consciousness and motivate governments to act.

Claire Falconer concluded that a more cohesive approach that draws on the strengths of each of these is the ideal, and is what her organization FLEX is working towards.

⁴ Swiss week against trafficking in persons: Panel Discussions, <http://www.youtube.com/watch?v= 2PmPOWNzkk>.

Chart 2. Which one of the following terms do you use most often in your daily work? (N=25)⁵



3.1.2. Country level definitions and different legislative approaches

Moderator Marja Paavilainen, ILO, noted that several countries in Asia are currently considering different approaches to strengthen their national legal frameworks against forced labour, human trafficking and slavery, and requested discussion participants to share country level experiences.

Yen from Viet Nam noted that at country level the priority is to establish clear definitions and criminal sanctions for forced labour, human trafficking and slavery. In her view effectiveness of national law can only be measured in the results achieved in implementing it. Currently, Vietnamese Law on Prevention and Suppression of Human Trafficking defines concepts of forced labour, sexual slavery and sexual exploitation. Viet Nam is currently preparing for a Penal Code reform to establish matching penal sanctions.

Different countries have chosen different legislative approaches to combatting forced labour, human trafficking and slavery. According to Aurélie Hauchère Vuong, ILO, some common approaches include:

- National laws, policies and action plans only on one of the three concepts, i.e. slavery, human trafficking or forced labour.
- One law, policy and action plan for each of the concepts. For instance, the UK had a law on trafficking and later adopted one on forced labour.
- Laws, policies and action plans covering related concepts relevant in the national context. Examples include laws, policies and action plans on 'slave labour' in Brazil, 'bonded labour' in India, and 'working and living conditions contrary to human dignity' in France.

Claire Falconer, FLEX, shared experiences from UK on different legislative approaches to addressing forced labour, human trafficking and slavery. The UK Modern Slavery Bill, currently under discussion in the UK Parliament, brings together existing disparate legislation on forced labour and trafficking for

⁵ 'Other' answers include: Framework of labour protection and empowerment; trafficking in persons; sexual abuse and/or exploitation; trafficking/unsafe migration and forced labour; and labour migration.

sexual and other exploitation. In her view this attempt demonstrates a sentiment that current international definitions and distinctions are not working, or at least are too complex, and a desire to move towards broader umbrella concepts of 'exploitation' and 'modern slavery' as these are perceived to be easier to understand and apply. Claire Falconer however noted that whether these broader concepts are easier to understand or apply is uncertain and remains to be seen, if the Bill is adopted.

Moderator Marja Paavilainen, ILO, agreed with Aurélie Hauchère Vuong's point on different national approaches to criminalizing forced labour, human trafficking and slavery. She noted that from the perspective of the ILO Forced Labour Convention No. 29 it does not matter if forced labour is criminalized as such, or as part of slavery or trafficking crime, as long as all forms of forced labour are covered. She however noted that if only human trafficking is criminalized, this may leave some forms of forced labour outside the scope of criminal prosecution, including, among others, cases involving no movement of people or cases involving state-imposed forced labour.

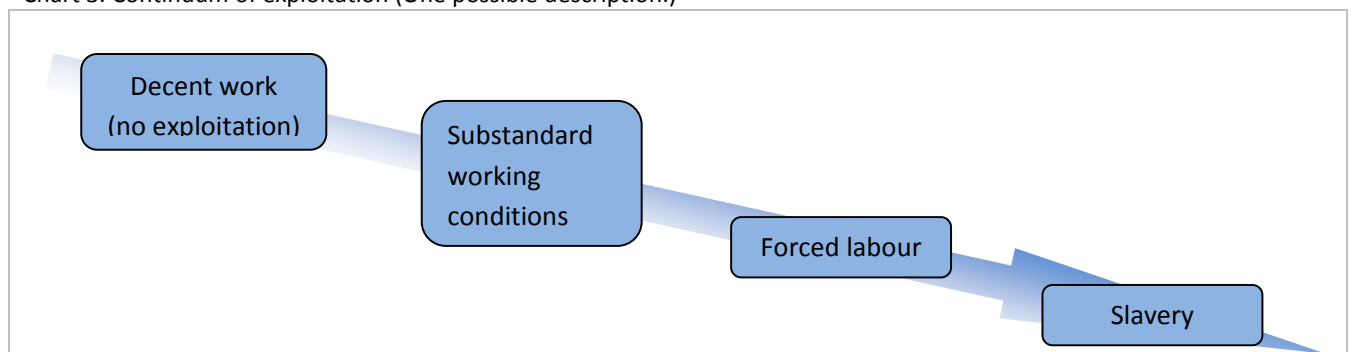
3.1.3. Continuum of exploitation

Jonathan Martens, IOM, introduced the notion of 'continuum of exploitation' to the discussion. The question whether this notion is helpful in clarifying linkages between forced labour and slavery (and perhaps human trafficking) was one of questions discussed during the recent legal debate convened by the IOM, ILO, OHCHR, UNHCR and the Government of Switzerland in Geneva. In the AP-Forced Labour Net online discussion, several participants – including Od Busakorn Suriyasarn, EMPOWER, Nelien Haspels and Claire Falconer – noted they find the notion of 'continuum of exploitation' useful.

The notion of a 'continuum of exploitation' is linked to the question of whether slavery and forced labour (and perhaps human trafficking) are different in degree or in kind. If they are seen as different in degree, they can be placed in the same 'continuum'. Jonathan Martens noted that slavery as the most extreme (and the only non-derogable) form of exploitation is at the farthest end. Representatives of EMPOWER, a Thai sex workers' organization, noted that in their view the opposite end the 'continuum' should start with the positive objective, i.e. decent work.

Claire Falconer, FLEX, noted that the notion of a 'continuum' is not only useful in explaining how exploitation develops and manifests, but also in plotting various interventions along the scale from labour rights violations to forced labour and slavery. She also noted that the 'continuum' is useful to counter the popular political message of forced labour and slavery that sees these practices as an aberration committed by deviants, rather than something that largely grows from working conditions supported by economic and political structures.

Chart 3. Continuum of exploitation (One possible description.)



On the other hand, if concepts of forced labour and slavery are seen as different in kind, not in degree, the notion of a 'continuum' may not be useful in distinguishing between these concepts. Jonathan Martens, IOM, noted that a continuum does not allow for perfect distinctions because the concepts are framed differently (i.e. comparing apples and oranges). Particularly he noted that human trafficking does not seem to fit on the same 'continuum' – neither when seen as a process leading to exploitation, nor when seen as a distinct form of exploitation. Claire Falconer, FLEX, also noted that the definitional elements of these concepts are different in their nature and therefore the concepts should not be placed in the same continuum. (See *key definitional elements* above.)

3.1.4. Linkages with related concepts – Servitude, child labour, forced marriage and other institutions and practices similar to slavery

The online discussion focused on concepts of forced labour, human trafficking and slavery, but several contributions by participants highlighted linkages of these concepts to other related concepts, including 'institutions and practices similar to slavery', 'servitude', and 'worst forms of child labour'.

Piyamal Pichaiwongse, ILO Yangon, highlighted linkages between the concept of forced labour and practices prohibited in the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. These include debt bondage, serfdom, forced marriage and the delivery of a child for the exploitation of that child. She noted that in some forced marriage cases, the person's labour is exploited and she may become trapped in a lifetime of slavery. Piyamal also noted that colonial legacy type of forced labour, which has linkages to land rights and is very close to serfdom or slavery, has become an issue that effects many people's lives in Myanmar.

Jonathan Martens, IOM, shared that the concept of servitude was also discussed in the above mentioned legal debate convened by the IOM, ILO, OHCHR, UNHCR, and the Government of Switzerland, in Geneva last October. The questions discussed included: Is the notion of servitude a non-derogable norm of international law? Has servitude added value to the discussion on human trafficking, forced labour and slavery? The concept of servitude was left undefined in international law, and for this reason considerable confusion exists about its scope and definition.

Od Busakorn Suriyasarn from Thailand shared a case example of a young ethnic Karen girl reported in Thai media,⁶ which highlights the linkages between forced labour, child labour, slavery and child trafficking. The girl was abducted when she was seven years old and kept as a house slave for five years by a Thai couple. She was brutally abused and tortured before she eventually managed to escape in February 2013. The couple was charged with multiple crimes – including abduction, child kidnapping, illegal detention, assault, slavery, forced labour, child labour and human trafficking – but skipped the bail. The Thai public was shocked, but according to Od Busakorn Suriyasarn not much was mentioned about child labour and forced labour in the news. The case highlights not only the importance of effective enforcement, but also the need to ensure that the media can correctly and effectively use concepts such as forced labour, child labour, slavery and child trafficking, and thus build general public's awareness on identifying such crimes.

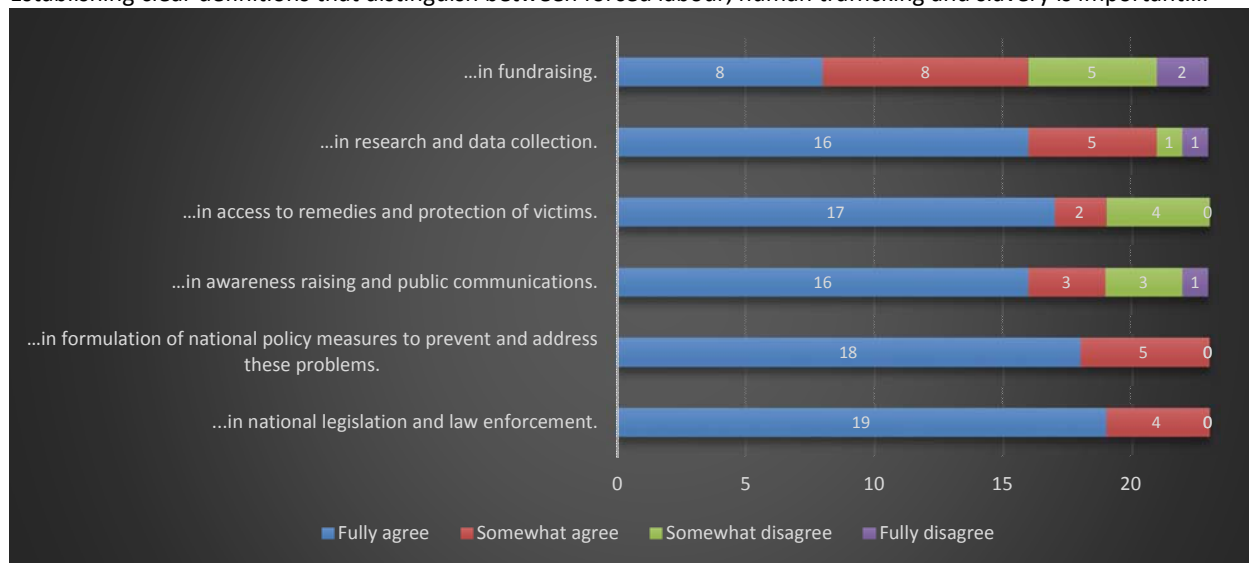
⁶ <http://asiancorrespondent.com/97357/shocking-plight-of-tortured-karen-girl-tests-thai-social-protection-and-justice-systems/>

3.2. Do definitions matter in the formulation of interventions against forced labour, human trafficking and slavery?

Among discussion participants, there was an overall consensus that there is a need for better and wider understanding of what the concepts of forced labour, human trafficking and slavery actually mean. It was noted that misunderstandings among both law makers and frontline agencies about the scope of forced labour, human trafficking and slavery limits their ability to address the problems. The responses given by the survey participants on importance of distinguishing between concepts of forced labour, human trafficking and slavery in different intervention areas are summarized in Chart 4.

Chart 4. Which of the statements below best reflect your personal view? (N=25)

Establishing clear definitions that distinguish between forced labour, human trafficking and slavery is important...



Specific points made by online discussion participants in relation to the need for conceptual clarity in different intervention areas are outlined below.

3.2.1. Research and data collection

David Feingold, former head of the UNESCO HIV/AIDS and trafficking program for the Greater Mekong Sub-region, noted that sloppy definitions lead to sloppy research, which in turn leads to sloppy and ineffective policy implementation. Therefore, conflation of different phenomena such as forced labour, human trafficking and slavery in research is counterproductive. He noted that definitions do matter, and encouraged new research to build upon the considerable body of sophisticated academic research available on forced labour, slavery and related concepts.

Moderator Marja Paavilainen, ILO, noted that the need to formulate systematic approaches and survey guidelines for forced labour research was recently discussed in the 19th International Conference of Labour Statisticians, hosted at the ILO in Geneva in October 2013. The Conference concluded a resolution recommending that the ILO sets up a working group with the aim of sharing best practice on forced labour surveys.

3.2.2. National legislation and law enforcement

Representatives of the UN-ACT (United Nations Action for Cooperation against Trafficking in Persons, formerly UNIAP) noted that on the national level, clear legal definitions of what constitutes trafficking or forced labour are absolutely crucial for law enforcement officials in their pursuit of prosecuting criminal activity. Such definitions provide law enforcement with the legal justification to conduct their work, and the guidance to direct investigations effectively and provide the judicial system with a tool for effective prosecutions. Hence, precise definitions are necessary to prosecute and convict offenders of trafficking in persons, forced labour and slavery. In UN-ACT's view improving these definitions is an area which requires significant improvement in both quality and quantity.

Tim De Meyer, ILO, noted that definitions are seldom used by public authorities in order to not have to do something. This may be either because action would involve a judgement call that can backfire later, or sometimes also because of a misguided sense of neutrality. He concluded that definitions matter, but noted that "no one is more deaf than (s)he who does not wish to hear". Moderator Marja Paavilainen, ILO, agreed with Tim's point that sloppy definitions can sometimes be used to justify inaction. She noted that a well-coordinated and integrated approach to prevent and address forced labour, human trafficking and slavery is the best way to ensure that no forms of coercion fall through the cracks.

Mark Taylor, AAPTIP, noted that at country level crimes identified as forced labour may not always be given the serious criminal justice weighting that human trafficking crimes are assigned. In his view, if the forced labour crime is assigned a human trafficking tag, the results are far more significant in terms of criminal prosecutions and jail time imposed on those successfully convicted. Moderator Marja Paavilainen, ILO, supported Mark Taylor's points emphasizing the importance of effective criminal prosecution and ensuring that crimes such as human trafficking, forced labour and slavery need to be given serious criminal justice weight. She however noted that different countries have taken different legislative approaches to this (*see above section 3.1.2*).

3.2.3. Policy responses

Several discussion participants noted that blurring conceptual distinctions between trafficking, forced labour and slavery risks blurring the policy responses. Reiko Harima from the Mekong Migration Network (MMN), a sub-regional network of civil society organizations and research institutes collectively promoting rights of migrant workers in the Mekong region, noted that on many occasions discussion and policy responses to migration (especially undocumented migration), trafficking, and sex work are all mixed up. As a result, policies that aim to protect victims of trafficking do not meet the policy objectives and instead are used to control people's mobility, to crack down on undocumented migration, or to suppress sex workers. In her view, there is a concern that similar problems will be faced if the conceptual distinction between trafficking, forced labour and slavery are not well-defined. In order to promote accurate use of terms and to help improve the quality of discussion on labour and migration, the MMN has developed *Speaking of Migration: the Mekong Vocabulary on Migration*⁷, which includes definitions of key terms on labour and migration in English and in all Mekong languages. The MMN has also developed a list of "terms to avoid", which includes among others the word "slave".⁸

⁷ Speaking of Migration: the Mekong Vocabulary on Migration, <http://www.mekongmigration.org/vocab/index.html>.

⁸ Terms to avoid, http://www.mekongmigration.org/vocab/terms_to_avoid.html.

Claire Falconer, FLEX, shared experiences from the UK, and noted that the current UK legislation and the Draft Modern Slavery Bill reflect and reinforce the misunderstanding of trafficking as restricted to movement, and thus the conception of trafficking as an immigration issue. This has consequences for the identification of victims and the central role of immigration agencies, and disengagement of migrant groups from the trafficking response. These misunderstandings, and frustration with the perceived complexity of the legal concepts, stimulate the search for 'easier' concepts like 'modern slavery' and 'exploitation', as demonstrated by the report of the Joint Committee on the Modern Slavery Bill and the title of the Bill itself.

Several participants – including Od Busakorn Suriyasarn, EMPOWER and Nelien Haspels – also noted that abuse and misuse of terms can have negative impact on the individuals involved in cases of exploitation and abuse.

3.2.4. Public communication and fundraising

Discussion participants had somewhat divided perceptions on the need for clear distinction between concepts of forced labour, human trafficking and slavery in public communication and fundraising. The UN-ACT representatives noted that social media promotion, fundraising and general awareness may be areas where definitions can be temporarily set aside or 'de-prioritized' and broad and encompassing terms umbrella terms such as "modern slavery" may prove more manageable. UN-ACT however noted that clear definitions are nonetheless required as fundamental baselines serving to reinforce such publicity campaigns, and root them in concrete terminology and structure.

Od Busakorn Suriyasarn supported the view that language used in communicating with the public by media and in awareness raising or advocacy can be different from the language used in policy design, implementation and law enforcement. In her view putting a wide range of situations put under "modern slavery" by the media is not necessary bad, as public communication should be simple and digestible. To avoid misunderstandings, she however suggested developing a list of accessible definitions to communicate accurate definitions to media, and to policymakers, law enforcers and practitioners. Nelien Haspels, ILO, supported views presented by Od Busakorn Suriyasarn.

Representatives of the EMPOWER were against mixing concepts of forced labour, human trafficking and slavery together in publicity and fundraising campaigns. In their view mixing these concepts can increase stigma and inaccuracy of images, especially of non-white women as passive helpless victims and sex work as inherently exploitative. In EMPOWER's view forced labour, human trafficking and slavery are three different situations, and they believe that the general public can also understand these differences. They also noted that definitions really matter, and those impacted by them must have input into these definitions.

3.3. Stakeholders and composition of task forces

Several discussion participants also noted that definitions of forced labour, human trafficking and slavery and choice of terminology in national policymaking have an impact on roles and responsibilities of different authorities and other stakeholders in preventing and addressing these forms of coercion. Aurélie Hauchère Vuong, ILO, noted that the role of labour inspectors, who are instrumental in detecting abuses at the workplace, is often stressed in policies against forced labour, whereas often ignored in policies about human trafficking.

Claire Falconer, FLEX, called for stronger engagement of migrant groups in the trafficking response, and noted that in the UK misconception of trafficking primarily as an immigration issue has led to the central role of immigration agencies. EMPOWER, a Thai sex workers' organization, highlighted the importance of involving those most impacted in defining what constitutes forced labour, human trafficking or slavery.

Aurélie Hauchère Vuong, ILO, also highlighted the important role of employers and business in keeping supply chains free from forced labour. Moderator Marja Paavilainen, ILO, supported this point and asked AP-Forced Labour Net members representing business, employers' organization and trade unions to share their experiences in combatting forced labour, human trafficking and slavery. Two representatives of employers' organizations contributed to the discussion by participating in the survey.

Survey respondents' views on who should be part of a response to prevent and address forced labour, human trafficking and slavery at national and local level are summarized in Chart 5.

Chart 5. In your view, who should be part of a response to prevent and address forced labour, human trafficking and slavery at national and local level? (N=27)



3.4. How to strengthen efforts to prevent and address forced labour, human trafficking and slavery?

3.4.1. Need for a labour approach

Several discussion participants emphasized the need to address the governments' hesitance in using a labour approach to preventing and addressing human trafficking and slavery. Anna Olsen, ILO, noted that the criminal justice approach allows governments to distance their parties and states from the existence of these crimes, finding individuals at fault rather than recognising the systemic space in which

these activities occur within their economies. In her view, a similar tendency is also clear in migration policies that focus on the security, rather than economic and business models.

Claire Falconer, FLEX, supported Anna Olsen's point. She noted that a criminal justice approach allows governments to remove the political economy from the equation by finding individuals at fault rather than recognising the systemic and structural issues that give rise to exploitation. She referred to the notion of 'continuum of exploitation' (*see above*) and highlighted the need for a cohesive approach that addresses the connection between labour practices and criminal exploitation.

Reiko Harima, Mekong Migration Network (MMN), commented that in order to achieve an integrated response, it would be essential that all the parties involved first acknowledge that labour exploitation is the underlying problem, and that all the workers must be protected and free from labour exploitation. In her view, currently, governments seem to have a dual response to labour issues: Governments tend to prioritize the business sectors' demands over the needs of workers, and to only take action to protect workers' when certain cases constitute criminal forced labour, trafficking or slavery. Such dual responses are likely to leave very limited political and social space for workers to struggle for their rights and better protection, and leave ample opportunities for those who want to exploit the policy gap to take advantage of workers.

Representatives of EMPOWER noted that authorities seem to prefer using human trafficking law rather than labour law to address issues related to sex work and sex workers. They noted that under human trafficking law sex workers can be arrested detained and deported (under the pretence of 'rescue') without focusing on the sex industry as such or labour standards. Improved labour conditions, social security, and occupational safety and health (OSH) are not part of the human trafficking strategy, so working conditions of sex workers are largely left unchecked. The EMPOWER called for recognition of Thailand's 300,000 sex workers as part of the workforce, instead of perceiving them as victims and criminals. They noted that if sex workers can organize themselves, they can help address any forced labour and trafficking in the sex industry.

Moderator Marja Paavilainen, ILO, noted that the added value of the draft texts of the proposed ILO Protocol and Recommendation to supplement Forced Labour Convention No. 29 is that the proposed instruments establish a broad labour approach to preventing and addressing forced labour and human trafficking. The proposed instruments involve a wider range of stakeholders in the fight against forced labour and human trafficking, especially in promoting the greater participation of labour market institutions. The proposed instruments tackle factors that may contribute to the occurrence of forced labour and human trafficking, and address the existing gaps.⁹

3.4.2. An integrated approach or separate responses?

Even if discussion participants and survey respondents generally agreed that forced labour, human trafficking and slavery are closely related and partly overlapping concepts, they had somewhat divided views on whether these forms of coercion should be addressed separately or through an integrated multi-stakeholder approach. The UN-ACT supported a multi-pronged approach as a progressive and necessary strategy to combat these issues from a perspective grounded in international human rights law. However, representatives of the UN-ACT noted that in order to develop a common understanding

⁹ **Note:** The Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 were adopted by ILO member States on 11 June 2014.

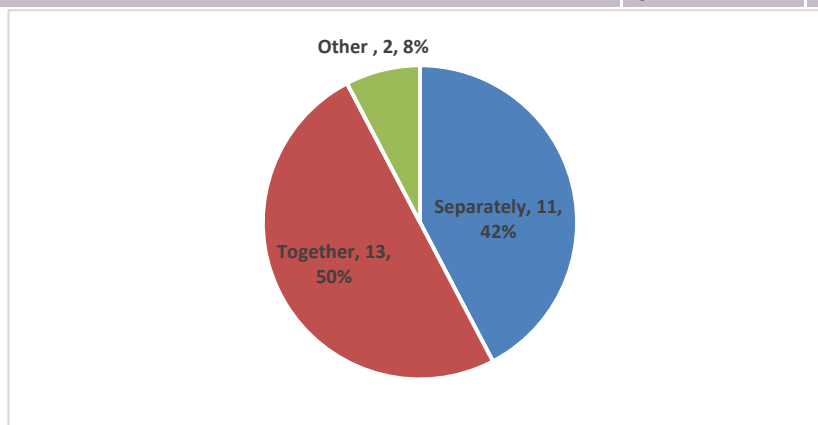
and further identify common ground and shared objectives, it is first necessary to have clear and unambiguous definitions of each issue in order to effectively draw comparisons, integrate initiatives and develop a coordinated, holistic response to these human rights abuses.

Some participants voiced their support to adopting a cohesive approach not just to address criminal practices such as forced labour, human trafficking and slavery, but to address the whole continuum of exploitation (see section 3.1.3 above). Claire Falconer, FLEX, called for a cohesive approach that highlights and addresses the connection between labour practices and criminal exploitation. Moderator Marja Paavilainen, ILO, noted also that the ILO highlights these linkages by promoting complementary approaches to criminal and labour justice. This means better integration of labour and criminal justice to ensure availability and accessibility of appropriate remedies for both violations of labour law and criminal practices such as forced labour. She also noted that, even in cases of criminal forced labour, criminal prosecution may sometimes be impossible, for example due to evidentiary issues. In those cases the best alternative is ensuring that victims have access to remedies and compensation under civil/labour law, which often requires lower burden of proof.

The survey results showed divided views among respondents on the question whether or not forced labour, human trafficking and slavery crimes should be addressed together through integrated policy measures and practical initiatives. 42 per cent of the respondents supported addressing forced labour, human trafficking and slavery crimes separately through different policy measures and practical initiatives, while 50 per cent voted for an integrated response (see chart 6 below).

Chart 6. Which of the statements below best reflect your personal view? (N=26)

	Response Count	Response Percent
<i>Forced labour, human trafficking and slavery should be addressed...</i>		
<i>...separately, through different policy measures and practical initiatives.</i>	11	42%
<i>...together, through integrated policy measures and practical initiatives.</i>	13	50%
<i>Other</i>	2	8%
Total	26	



3.4.3. Elements of a comprehensive approach

Several discussion participants shared their views on what the elements of a comprehensive approach to preventing and addressing forced labour, human trafficking and slavery can look like. Aurélie Hauchère Vuong, ILO, noted that a comprehensive approach to forced labour, human trafficking and slavery requires a whole institutional framework. For example, Brazil's response against slave labour includes not only criminalization in the penal code, but also a national action plan, mobile inspection unit, supply chain studies, national pact of employers, etc. She noted that at the end of the day, the only thing that matters is efficiency and enforcement of fundamental rights.

Nelien Haspels, ILO, highlighted that measures are needed from many angles; criminal, labour and social protection laws and enforcement mechanisms, but also trade and other economic policies, large scale awareness raising of the general public, including possible perpetrators and watchdogs. Most important in her view however is the social and economic empowerment of those who have been subjected to labour and other exploitation.

Yen shared her experiences from Viet Nam. She noted that forced labour, human trafficking and slavery require each country to have a specific action plans for prevention, elimination and remedying these violations. Awareness raising among workers and building institutional capacity of competent authorities is also essential for effective implementation of action plans. In addition, she emphasized the importance of international cooperation and coordination among those countries that share a common border.

3.4.4. Prevention – Addressing root causes

Moderator Marja Paavilainen, ILO, asked the discussion participants also to share their views on prevention of forced labour, human trafficking and slavery. She shared some perspectives from the proposed Protocol and Recommendation to supplement ILO Forced Labour Convention No. 29, and asked the participants to share their views on whether these proposed measures are what is needed to prevent forced labour, human trafficking and slavery.

The measures to prevent forced labour and human trafficking outlined in Article 2 of the proposed Protocol include:

- a) educating and informing people, particularly those especially at risk;
- b) broadening the coverage of labour law to all workers and all sectors of the economy, and strengthening the labour inspection services;
- c) protecting workers who use recruitment and placement services, particularly migrant workers, against abuses and fraudulent practices.

Further prevention measures suggested in Article 3 of the proposed Recommendation include awareness-raising campaigns; skills-training programmes; programmes against discrimination; the promotion of freedom of association and collective bargaining; steps to ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy; that conditions of work are specified in a language understood by the worker; basic social security guarantees; pre-departure orientation for migrants; coherent employment and labour migration policies; cooperation

with other countries to guarantee migration in acceptable conditions and to prevent trafficking in persons; and efforts to reduce trade in and demand for goods and services.¹⁰

Representatives from the UN-ACT expressed their support to the proposed Protocol noting that the prevention measures outlined are of value, though they may require further elaboration in order to be operationalized in the field. Based on its long experience in combatting human trafficking in the Greater Mekong Sub-region, the UN-ACT (formerly UNIAP) highlighted that educating and informing communities, particularly high risk groups, is essential, but needs to be accompanied with other types of support to provide alternatives to risky migration. Namely, awareness of risks does not always result in safe behaviour, particularly in the absence of viable alternatives. Further efforts are also needed to properly understand different vulnerability factors of people and communities. The UN-ACT also emphasized the importance of ensuring effective labour legislation, improved migration management systems and closer monitoring of recruitment agencies as key to effective preventative anti-trafficking work.

The UN-ACT representatives emphasized that anti-trafficking work must address the root causes of such crimes and strive to nip them in the bud, remaining continually vigilant as new developments continue to arise. The UN-ACT believes that anti-trafficking work is fundamentally linked with development, and consistently seeks to strengthen its relationships with the development world in order to emphasize prevention, and combat this human rights abuse at its source.

3.5. Gender dimensions of forced labour and human trafficking

Sally Barber, ILO, added a particular focus on gender to the discussion calling for more elaboration of gender dimensions of the spectrum between decent work and forced labour (See *continuum of exploitation* above). She referred to earlier points raised by the EMPOWER that address the societal perceptions of feminized labour and the way they affect attitudes and protections against forced labour, trafficking and exploitation in jobs dominated by women. She particularly highlighted the experiences in sectors such as domestic work, entertainment, sex work and services. (*For discussion on sector specific issues, see sections 3.6.1 and 3.6.3 below.*)

Representatives of the UN-ACT supported Sally Barber's point and noted that gendered divisions of labour and associated attributes too often relegate women to the unpaid care economy, where they generally experience less recognition and protection of their rights. This marginalizes women from education, paid employment and resources, and renders them economically dependent on men and highly vulnerable in the event of a calamity or the withdrawal of support. Therefore, the UN-ACT called for further efforts to monitor the rights of workers in the informal economy, as well as those who seek opportunities through "legitimate" recruitment services which put them in particularly vulnerable situations, for instance, as isolated domestic workers.

¹⁰ Proposed texts of the Protocol and Recommendation are available at:

http://www.ilo.org/ilc/ILCSessions/103/reports/reports-to-the-conference/WCMS_239814/lang--en/index.htm.

Note: The adopted texts of the Protocol and Recommendation are slightly different from the proposed text, as they were amended during the ILC committee discussions. The adopted texts are available at:

http://www.ilo.org/ilc/ILCSessions/103/reports/WCMS_246188/lang--en/index.htm.

3.6. Sector specific issues

3.6.1. Sex work

Representatives of EMPOWER, a Thai sex workers' organization, joined the discussion to highlight importance of improving sex workers' labour protection. They noted that during the 30-year existence of EMPOWER, some sex workers have told EMPOWER they are in situation of forced labour and some have said they were deceived, i.e. their situation meets the definition of human trafficking. However, among those thousands and thousands of sex workers that EMPOWER has met no one has ever called themselves a slave, even if that name is often used in foreign books and documentaries. In the view of EMPOWER representatives, forced labour, human trafficking and slavery are different concepts, and misuse of these terms can increase stigma and promote inaccurate images especially of non-white women as passive helpless victims and sex work as inherently exploitative.

EMPOWER representatives noted that under human trafficking law sex workers can be arrested detained and deported (under the pretext of 'rescue') without focus on the sex industry as such or labour standards in the sector. Improved labour conditions, social security, and occupational safety and health (OSH) are not part of the human trafficking strategy, so working conditions of sex workers are largely left unchecked.

EMPOWER called for recognition of sex work as work, improving labour conditions in the sector, and right to organize for sex workers so that they can help address any forced labour in the sex industry. They noted that as long as sex work is kept outside the framework of work, it is difficult to distinguish whether this work is voluntary or forced. The exclusion also means that sex workers cannot claim their labour rights or access justice to seek remedies for violation of their rights.

The views presented by the EMPOWER were supported by several discussion participants, including among others Nelien Haspels, Sally Barber and Marja Paavilainen.

3.6.2. Fisheries

Tim De Meyer, ILO, shared a link to a recent BBC documentary on forced labour in Thai fishing industry.¹¹ Moderator Marja Paavilainen, ILO, thanked him for sharing the link and reminded that forced labour on Thai fishing boats has also been documented in a recent ILO study. The study found that 17 per cent of the 600 surveyed workers on Thai fishing boats were in forced labour.¹² These research findings inform the work of the ILO's GMS TRIANGLE project with the Royal Thai Government, employers and workers to strengthen protection for fishers. Initiatives underway include strengthening regulation of the fisheries sector, improving labour inspection and occupational safety and health, and development of a code of conduct and a good labour practices training programme for vessel owners and captains.

¹¹ Thailand's Slave Fishermen, <http://www.bbc.co.uk/programmes/p01q5cf4> (26 Jan 2014).

¹² Employment practices and working conditions in Thailand's fishing sector, http://www.ilo.org/asia/whatwedo/publications/WCMS_220596/lang--en/index.htm.

3.6.3. Domestic work

Sally Barber, ILO, highlighted domestic work as one example of the economic sectors where societal perceptions of feminized labour affect attitudes and labour protection. She asked discussion participants to share their experiences in improving protection of domestic workers against forced labour. Od Busakorn Suriyasarn from Thailand responded by sharing an example of a case of a young ethnic Karen girl who was abducted when she was 7 years old by a Thai couple and kept as a house slave for 5 years, brutally abused and tortured. (*See more on this case above in section 3.1.4.*)

Moderator Marja Paavilainen, ILO, noted that domestic work is an illustrative example of a sector vulnerable to exploitative labour practices, forced labour or even slavery. In many countries domestic work is not seen as work and therefore domestic workers do not enjoy protection of labour law. She noted that action needs to be taken to prevent forced labour by addressing those systemic factors that make domestic workers vulnerable to forced labour.

Marja Paavilainen continued that providing domestic workers with proper legal protection, mandating labour inspectors to inspect domestic workers' working conditions, strengthening regulation of recruitment agencies, and allowing domestic workers to form and join trade unions can go a long way in preventing abusive situations from emerging. She noted that these are exactly the type of preventive measures suggested in the proposed Protocol and Recommendation to supplement the Forced Labour Convention No. 29. As a positive development Marja Paavilainen noted that domestic workers in some countries in East and South-East Asia have succeeded in setting up their own organizations and are doing great work to protect rights of domestic workers.

4. CONCLUSIONS

Among the AP-Forced Labour Net discussion participants, there was an overall consensus that considerable confusion still exists between the concepts of forced labour, human trafficking and slavery, and this has an impact on the responses both at international and national level. Misunderstandings both among law makers and frontline agencies limit their ability to address the problem. Clear definitions are critical for law enforcement officials in their pursuit to prosecute criminal activity, but conceptual clarity is important also in other intervention areas. Namely, sloppy definitions lead to sloppy research, policy formulation and implementation. At worst, misuse of concepts forced labour, human trafficking and slavery can lead to stigmatization and harm those very persons they are intended to protect.

Several discussion participants emphasized the need for a labour approach to prevent and address forced labour, human trafficking and slavery. There was an overall consensus that addressing these criminal practices requires a comprehensive multi-stakeholder approach, which acknowledges labour exploitation as the underlying problem and seeks to address root causes of forced labour, human trafficking and slavery. The need for extending labour protection to all workers and all sectors of economy was discussed with specific references to sectors including domestic work, sex work and fishing.

Discussion participants and survey respondents generally agreed that forced labour, human trafficking and slavery are closely linked and partly overlapping concepts, but they had divided views on whether these forms of coercion should be addressed through one integrated approach or separately through

different policy measures and practical initiatives. Different views on this question can most likely be explained by different legislative approaches to forced labour, human trafficking and slavery adopted in different countries in the Asia-Pacific region.

Overall, the first online discussion succeeded in demonstrating that the AP-Forced Labour Net can serve as a useful platform for exchanging ideas and networking among experts and practitioners in different countries and regions. A total of 2006 visits to the AP-Forced Labour Net site and 664 views of the discussion page during the first 11 days following the launch of the platform also demonstrate that the AP-Forced Labour Net can reach a broad readership, including non-traditional ILO partners.

ANNEX 1. DISCUSSION PARTICIPANTS

To protect the privacy of discussion participants, details of those participants who did not introduce their full name and organization the discussion page are not disclosed here. Without a few exceptions, all discussion participants are known to the discussion moderator.

Moderator: Marja Paavilainen, Chief Technical Adviser, Forced Labour Action in the Asian Region (FLARE), ILO Bangkok

Participants:

UN-ACT (United Nations Action for Cooperation against Trafficking in Persons)

Anna Olsen, Technical Officer, Tripartite Action to Protect Migrant within and from the GMS from Labour Exploitation (TRIANGLE), ILO Bangkok

Aurélie Hauchère Vuong, Programme officer, Special Action Programme to Combat Forced Labour (SAP-FL), ILO HQ

Claire Falconer, Legal Director, Focus on Labour Exploitation (FLEX)

David Feingold, Ph.D., former head of the UNESCO HIV/AIDS and trafficking program for the Greater Mekong Sub-region

EMPOWER Foundation (Education Means Protection of Women Engaged in Recreation)

Jonathan Martens, Senior Specialist, Migrant Protection, Human Trafficking, Children, IOM Bangkok

Mark Taylor, Team leader, Australia-Asia Program to Combat Trafficking in Persons (APPTIP), Bangkok, Thailand

Nelien Haspels, Senior Specialist on Gender and Women Workers Issues, ILO Bangkok

Od Busakorn Suriyasarn, Thailand

Piyamal Pichaiwongse, Deputy Liaison Officer, ILO Yangon

Reiko Harima, Mekong Migration Network (MMN)

Sally Barber, Australian Youth Ambassador for Development, ILO Bangkok

Tim De Meyer, Director, ILO Country Office for China and Mongolia

Yen, Viet Nam

ANNEX 2. USEFUL MATERIALS SHARED BY DISCUSSION PARTICIPANTS

Asian Correspondent. 13 February 2013. *Thailand: Plight of tortured Karen girl shocks a nation*, <http://asiancorrespondent.com/97357/shocking-plight-of-tortured-karen-girl-tests-thai-social-protection-and-justice-systems/>.

BBC. 26 January 2014. Thailand's Slave Fishermen, <http://www.bbc.co.uk/programmes/p01q5cf4>.

Federal Public Ministry v. Gilberto Andrade, 2008, summarized in ILO. 2009. Forced labour and human trafficking: Casebook of court decisions, SAP-FL (Geneva), http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_106143/lang--en/index.htm.

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ILO, 2014, Fourth item on the agenda: Supplementing the Forced Labour Convention, 1930 (No. 29), to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour -- Report of the Committee on Forced Labour, http://www.ilo.org/ilc/ILCSessions/103/reports/WCMS_246188/lang--en/index.htm.

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IOM, 2014, Swiss week against trafficking in persons: Panel Discussions, <http://www.youtube.com/watch?v=2PmPOWNzkk>.

Mekong Migration Network (MMN). *Speaking of Migration: the Mekong Vocabulary on Migration*, <http://www.mekongmigration.org/vocab/index.html>.

Mekong Migration Network (MMN). "Terms to avoid", http://www.mekongmigration.org/vocab/terms_to_avoid.html.

Parliament of the United Kingdom, 2014, Draft Modern Slavery Bill Joint Committee, <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16602.htm>.

UNHCR, 2002, Recommended Principles and Guidelines on Human Rights and Human Trafficking, <http://www.unhcr.org/4bf6454c9.html>.