



Tool No. 2: Forced labour and related concepts



This tool explains the similarities and differences between important forced labour related concepts such as trafficking, slavery or worst forms of child labour.

Legal definition of forced labour

Article 2(1) of the ILO Forced Labour Convention, 1930 (No. 29) defines forced labour as:

“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 [or herself] voluntarily”.

According to this definition, there are four legal elements to forced labour:

(i) Work or service

“All work or service” refers to any type of work, service and employment, occurring in any activity, industry or sector, including in the informal economy. It also encompasses activities that may be illegal or not considered as “work” in certain countries, such as begging or prostitution. Forced labour can occur in both the public and private sectors.

(ii) Any person

“Any person” refers to all human beings, adults and children, nationals and non-nationals, including migrants in irregular situations.

(iii) Menace of any penalty

The “menace of any penalty” should be understood in a very broad sense. It covers penal sanctions as well as a wide range of means of coercion used to compel someone to perform work or a service against their will. These include various forms of direct or indirect coercion, such as the actual or credible threat of:

- ▶ physical, psychological or sexual violence against a worker or family or close associate;
- ▶ retaliation;
- ▶ imprisonment or other restriction of movement;
- ▶ financial penalties;
- ▶ withholding wages or other promised benefits;
- ▶ withholding valuable documents, such as identity documents or residence permits;
- ▶ debt bondage or manipulation of debt;
- ▶ denunciation to authorities (such as police or immigration) and deportation;
- ▶ dismissal from current employment;
- ▶ exclusion from future employment;
- ▶ exclusion from community and social life;

- ▶ removal of rights or privileges (such as promotion, transfer, access to new employment, social benefits);
- ▶ deprivation of food, shelter or other necessities;
- ▶ shift to even worse working conditions; and
- ▶ loss of social status.

The threat must be understood from the point of view of those affected. A child, for example, will be more easily deceived into believing a threat is credible. Migrant workers not speaking the language of the country may be more easily led to believe that they will be deported if they complain to the police. Some threats also use the victim's religious or cultural beliefs, as observed in some cases of voodoo threats used against Nigerian women trafficked for sexual exploitation.

(iv) Lack of voluntary offer

In the definition, the term "not offered himself/herself voluntarily" refers to workers not having given their free and informed consent to enter into an employment relationship and/or their inability to withdraw their consent at any time; that is to say to freely leave the employment. The free and informed consent to work must exist throughout the labour relationship. Certain practices may have an impact on the nature of the labour relation and vitiate the consent that was initially given. An employer or recruiter, for example, could interfere with this freedom by making false promises to induce a worker to take a job that they would not otherwise have accepted. Another example would be a worker who did accept to work freely but was prevented from revoking the initial consensual agreement. Circumstances that potentially give rise to involuntary work include, among others:

- ▶ birth or descent into "slave" or bonded status;
- ▶ physical abduction or kidnapping;
- ▶ sale of person into the ownership of another;
- ▶ physical confinement in the work location, in prison or in private detention;
- ▶ psychological compulsion, such as an order to work backed up by a credible threat of a penalty for non-compliance;
- ▶ induced indebtedness (for example by falsification of accounts, inflated prices, reduced value of goods or services produced, or excessive interest charges);
- ▶ deception or false promises about types of work, terms of work, activities or employers;
- ▶ withholding and non-payment of wages;
- ▶ retention of identity documents or other valuable personal possessions; and
- ▶ no or limited freedom to terminate the work contract.

The Forced Labour Protocol reaffirms the validity of the broad definition of forced labour under Convention No. 29 outlined above and specifies that action to combat forced labour must also include specific action against trafficking in persons (Article 1, Paragraph 3).

Exceptions:

Convention No. 29, in Article 2(2), also provides for exceptions to the definition of forced labour by specifically referring to five situations in which compulsory labour may be imposed:

- ▶ work of a purely military character exacted in virtue of compulsory military service;
- ▶ normal civic obligations;
- ▶ work or service exacted from any person as a consequence of a conviction in a court of law, carried out under the supervision of a public authority;
- ▶ work exacted in cases of emergency, such as wars or natural calamities; and
- ▶ minor communal services in the direct interest of the community involved.

Each of these exceptions is subject to the observance of certain conditions that define their limits. If these limits are not respected, this can amount to a situation of compulsory labour imposed by the State.

State-imposed forced labour

The ILO Abolition of Forced Labour Convention, 1957 (No. 105) complements Convention No. 29 and prohibits Member States from having recourse to any form of compulsory labour, including compulsory prison labour, in five specific circumstances:

- ▶ as a means of political coercion or as a punishment for expressing political views;
- ▶ as a sanction for participating in strikes;
- ▶ as a means of labour discipline;
- ▶ as a means of racial, social, national or religious discrimination; and
- ▶ as a method of mobilizing labour for economic development purposes.

Forced labour, trafficking and slavery

“Forced labour”, “human trafficking” (also called “trafficking in persons”) and “slavery” are terms that are often used interchangeably. However, while these concepts do have significant overlap, they are conceptually distinct and each has a clear definition in international law.¹

What is trafficking in persons?

The definition of trafficking in persons, provided by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (UN Protocol), in Article 3(a), encompasses three elements:

- ▶ **Acts:** Recruitment, transportation, transfer, harbouring or receipt of persons.
- ▶ **Means:** The means that are used to accomplish one of the prohibited acts; namely, the use of threat or 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.

1- The terms “human trafficking”, “trafficking in human beings” and “trafficking in persons” refer to the same realities. This Toolkit uses “human trafficking”, unless reference is made to an official text that uses the term “trafficking in persons”.

- ▶ **Purpose:** Whether this act, using the above means, was conducted for the purpose of exploitation. The UN Protocol provides that “exploitation” includes “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”.

What is slavery?

“Slavery” is defined under Article 1(1) of the League of Nations Convention to Suppress the Slave Trade and Slavery (the Slavery Convention), 1926, as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Slavery is an institution of complete ownership, in which an individual is subjected to the full control of the slave owner who can make decisions for this individual on education (attending school or not), work (type and conditions) or even private life (who to marry). The prohibition of slavery in international law has achieved “jus cogens” status, meaning that all states accept it as a principle that cannot be derogated from.

Nevertheless, and although slavery is prohibited by law in most countries, the practice or its vestiges remain in certain countries. In most cases, people subjected to slavery will find themselves in a situation of psychological, economic and social dependence. They have no option than work for their “master” and will fall under the definition of forced labour provided by the Convention No. 29.

What are the relations between the different concepts?

Based on the definitions provided by the related international treaties, there is a significant overlap between forced labour, human trafficking and slavery. It is important for stakeholders involved in developing and implementing NAPs to understand these concepts and their precise scope.

The diagram below illustrates the links between these concepts:



Note: The relative size of each area in this figure does not reflect the number of persons impacted by the issue, nor the degree of overlap.

Forced labour and trafficking

Based on the definitions provided by the international treaties, there is a significant overlap between forced labour and trafficking in persons. In particular, trafficking in persons for labour or sexual exploitation are forms of forced labour. However, some forms of trafficking are not forced labour (such as trafficking for the removal of organs), and, conversely, some forms of forced labour are not trafficking (such as inherited debt bondage, forced labour as means of political coercion, etc.). Taken together, the Trafficking in Persons Protocol and the ILO forced labour instruments seek to prohibit the most severe forms of exploitation.²

The Forced Labour Protocol and Recommendation No. 203 offer a comprehensive framework to address all forms of forced labour and require countries to take effective measures to prevent forced labour, protect victims, and ensure their access to justice, including remedies. These measures should include specific measures to target trafficking in persons.

What is modern slavery / contemporary forms of slavery?

Unlike forced labour, trafficking in persons and slavery, “modern slavery” is not defined in international law. It generally refers to a wider range of situations of severe exploitation where a person is heavily dependent on another and cannot escape because of mechanisms of control and coercion, violence, deception or abuse of power. In such situations where there is a threat and absence of freedom to leave work, modern slavery can constitute forced labour as defined in Convention No. 29.

In 2007, the UN Human Rights Council considered that “the mandates of existing Special Rapporteurs [did] not adequately cover all slavery practices, and that the issue of contemporary forms of slavery [needed] to be given greater prominence and priority within the United Nations system if these practices were to be eradicated once and for all”. As a consequence, the Council decided to appoint a Special Rapporteur on contemporary forms of slavery, including its causes and its consequences.³

The Rapporteur’s mandate encompasses “forced labour, debt bondage, serfdom, children working in slavery or slavery-like conditions, domestic servitude, sexual slavery, and servile forms of marriage”.⁴ Likewise, the UN Voluntary Trust Fund on Contemporary Forms of Slavery considers that “modern forms of slavery include serfdom, forced labour, debt bondage, the worst forms of child labour, the sale of children, forced and early marriage, the sale of wives and inherited widows, trafficking in persons for exploitation and sexual slavery”.⁵

Adopting legislation on modern slavery

Some countries have adopted, at national level, legislation on “modern slavery”. In the **United Kingdom**, the Modern Slavery Act 2015 does not define modern slavery but lists the offences covered by the Act, namely “slavery, servitude, forced or compulsory labour” and “human trafficking”.

*See: www.legislation.gov.uk/ukpga/2015/30/part/1/crossheading/offences/enacted.

2- For more details on the links between the legal concepts of forced labour and trafficking in persons, see paragraphs 297 to 299, ILO, *Giving globalization a human face, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, (Geneva, 2008). Available at: www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf.

3- UN, Special Rapporteur on contemporary forms of slavery, Resolution 6/14, Human Rights Council, 21st meeting, September 28 (Geneva, 2017). Available at: https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_14.pdf

4- OHCHR, *Mandate of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, leaflet (Geneva). Available at: www.ohchr.org/Documents/Issues/Slavery/SR/Leaflet_SR_Slavery_en.pdf.

5- OHCHR, *The human faces of modern slavery*, United Nations Voluntary Trust Fund on Contemporary Forms of Slavery (Geneva). Available at: www.ohchr.org/Documents/Issues/Slavery/UNVTCFS/UNSlaveryFund.pdf.

The 2030 Agenda for Sustainable Development uses the term under target 8.7, which aims to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”

In the 2017 Global Estimates,⁶ “modern slavery” is used as an umbrella term to focus on two main issues: forced labour in its various forms (including debt bondage and the relevant forms of slavery, slavery-like practices and human trafficking) and forced marriage.

Forced labour and child labour

Forced labour affects adults and children alike. Forced labour of children is one of the worst forms of child labour. However, children can be in child labour without being in forced labour.

What is child labour?

Child labour is work performed by children that is mentally, physically, socially or morally dangerous and harmful to children, affecting their health and personal development, or that interferes with their compulsory schooling. It is important to note however that not all child labour is forced labour.

What are the worst forms of child labour?

The ILO Worst Forms of Child Labour Convention, 1999, (No. 182) identifies the worst forms of child labour in its Article 3 as:

- a. “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties;
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

What is forced labour of children?

Forced labour of children corresponds to:

- i. work performed for a third party (other than his or her own parents), under threat or menace of any penalty either on the child directly or the child’s parents; or
- ii. work performed with or for his or her parents, under threat or menace of any penalty applied by a third party either on the child directly or the child’s parents; or
- iii. work performed with or for his or her parents where one or both parents are themselves in a situation of forced labour.

6- ILO, Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, in partnership with the International Organization for Migration (IOM) (ILO, Geneva, 2017). Available at: www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

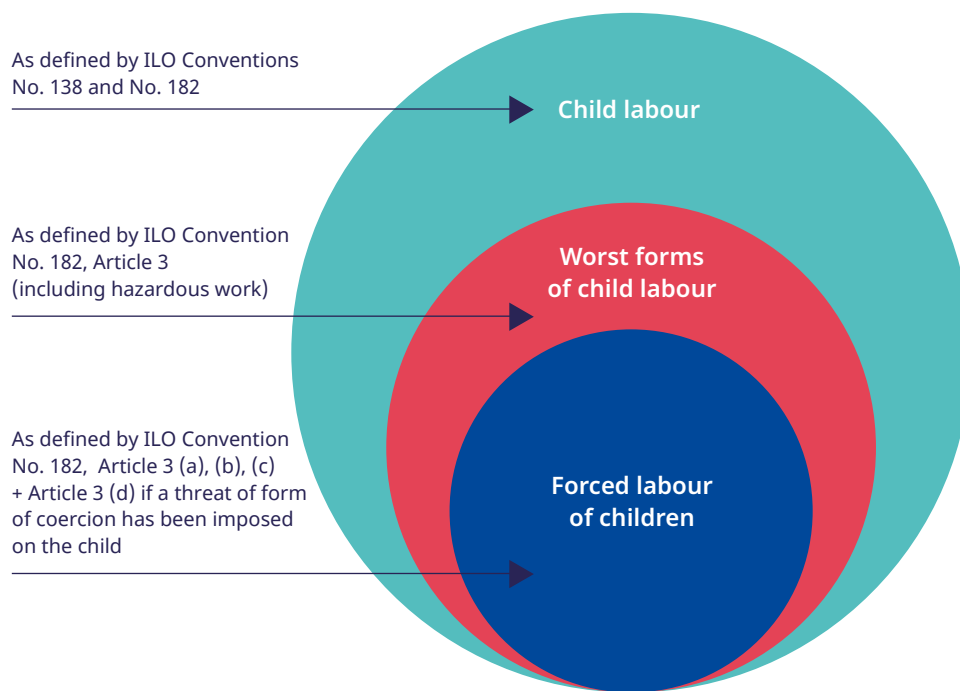
The threat or coercion may take place during the child's recruitment to force the child or his or her parents to accept the job. It may also occur once the child is working, to force him or her to do tasks that were not part of what was agreed to at the time of recruitment, or to prevent him or her from leaving the work.⁷

It is important to keep in mind that children are more vulnerable because of their age and their dependency on adults, which means they can be more easily coerced or deceived than adults. Consequently, further investigation is required to check whether their consent to work is indeed free and informed.

What are the relations between the different concepts?

Any situations envisaged by the Convention No. 182, in Article 3 (a), (b) and (c) are, per se, forced labour of children, as the consent of a child is deemed irrelevant in this situation. Hazardous work of children,⁸ defined in Article 3 (d) might not be forced labour per se. However, it can constitute forced labour if a threat or a form of coercion has been imposed on the child.

The diagram below further illustrates the links between child labour, the worst forms of child labour and forced labour of children, according to Convention No. 182 definitions:



Note: The relative size of each area in this figure does not reflect the number of persons impacted by the issue.

7- From: ILO, *Ending Child Labour by 2025: A review of policies and programmes*, Second edition (Geneva, 2018), p. 19. Available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_653987.pdf.

8- Hazardous work is a conditional worst form of child labour and its danger depends on the circumstances/sectors in which it is carried out, unlike the other three worst forms of child labour that are unconditional worst forms, no matter what the age of the child or what the circumstances are in which they are carried out.

The following diagram can help identify situations of forced labour of children, and constitute a useful tool for frontline responders, law enforcement authorities or social services, as well as for statistical purposes:

