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Editorial: What's in a Name? Distinguishing forced labour, trafficking and slavery

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Over the last fifteen years the parameters of anti-trafficking have shifted considerably. This shift has not been immediate or seismic. It has been a gradual shift, and what was once advocated for as a specific practice of trafficking is now associated with, and at times used interchangeably with, slavery and forced labour.

Why does this matter? It matters because the consequences are real. The slippage that occurs in the application and operationalisation of these labels for exploitation can have significant consequences for how we conceptualise, understand and respond to exploitation in legal and political (that is, advocacy) terms. It can transform the institutional response to victims and the extent to which we look to states or others (such as non-governmental organisations, trade unions, international organisations and corporations) to take responsibility and action. It matters because the outcome can be a broader international conversation that is confused and clouded by various stakeholders whose understanding of 'the problem' and how best to address it are informed by very different approaches. Is it possible, for example, for labour-focused advocacy, which may call for unionisation to protect workers, to sit alongside advocacy that problematises the label 'sex work' as a failure to recognise that this work is inherently gendered and exploitative? This is also a moment in which some stakeholders are leaving behind anti-trafficking's earlier core work of addressing sexual exploitation, and focusing instead on any sector *but* sex work.

Evidence of the shift away from the emphasis on sex work is the International Labour Organization's (ILO) Protocol of 2014 to the Forced Labour Convention, 1930[1] (Forced Labour Protocol) which, in part, recognises debt bondage, human trafficking and other forms of modern slavery as all forms of forced labour. Arguably such an approach recognises the interconnection between exploitative practices—namely the overlap of issues around citizenship, migration status, poor working conditions and/or absence of workplace protections. This may enable a more united global effort to address the broad contributing factors that lead to the occurrence of such exploitation. However, there is also the potential for an expansive approach, which allows labels to be used interchangeably, to result in a lack of focus. This Special Issue of the *Anti-Trafficking Review* highlights the importance of attending to what we mean when we talk about human trafficking, forced labour and slavery.

The scenario of a lacking focus or indeed a purposeful blurring of the boundaries of these exploitative practices has immediate and potentially devastating consequences. At the individual level the socio-legal definitions can result in either non-recognition or sensational and victimising labeling, as a result of (a non-citizen, most often) experiencing exploitation. More broadly, as highlighted in the Debate contribution by Chuang, a further consequence of a blurred definitional distinction between human trafficking, slavery and labour exploitation is the absolving of actors from tackling systemic causes of exploitation, thus avoiding change sustained in the long term, which in turn affects the more immediate impact of measures to protect, intervene and punish. Questioning the increasing interchangeability of these terms matters more to some than others. Some may argue that we should simply throw every possible legal and human rights intervention at exploitation that broadly encompasses non-citizen forced (or otherwise) labourers and hope that something, anything, will have an impact. However we wish to take stock and consider whether such an approach is useful, impactful and, importantly, whether it is able to uphold human rights.

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1 In full: ILO, *C029—Forced Labour Convention, 1930 (No. 29), Convention concerning Forced or Compulsory Labour*, 28 June 1930.

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The purpose of this Special Issue is to identify and articulate what we see as unresolved conflicts between varying definitional approaches to a broad range of exploitative practices and to identify the arguments for where lines should or should not be drawn. It calls for researchers and practitioners alike to be mindful of the specific nature of the exploitation to which they are drawing attention and the manner of doing so.

The call for papers for this issue set a challenge to contributors: to assist the broader academic and practitioner community to not only interrogate these issues but to try to identify comprehensive and durable solutions to some of these concerns. We wanted contributors to consider whether it is possible to relate forced labour and trafficking to such significant issues as global supply chains, regulatory frameworks, the informal economy, inequality in the design and implementation of migration controls, and how they interact to produce exploitative conditions. We were interested in considering where and how human rights and state responsibility intersect and what the role of non-state actors (civil society, trade unions, corporations) is in obstructing or pushing this gap to close. The papers in this volume consider these issues in a range of geographical contexts—specifically including Brazil, Indonesia, Italy, the United Kingdom (UK), the United States of America (US) and the Southeast Asia region—as well as examining different concerns and responses. The discussions look at the role and impact of labour and migration law, corporate regulation, as well as trade union's policies and actions taken by civil society. Critically the articles contribute to four important thematic areas of discussion and analyses pertinent to the consideration of forced labour, human trafficking and slavery, as outlined below.

The first thematic area is the examination of **structural inequities and systemic abuse involved in labour exploitation.** The inescapability of these concerns when considering the issues at hand are indicative of the close proximity of exploitation and inequality. Within this issue, several authors examine formal and informal labour sectors and consider obstacles to organising and regulating labour (see papers by Ford, Marks and Olsen, Plant). These concerns are compounded by gender, ethnicity, and caste (as raised by Prasad). As a remedy, intergovernmental bodies and international actors have recently suggested global solutions. Given their current weakness or inadequacy, however, strong and sustained coalitions/networks/alliances are required between unions in different locations, as well as between unions and non-governmental organisations or grassroots organisations, as a push 'from below'.

The second thematic area across the articles is analysis of **progressive and/or regressive policy measures**. These measures may be at the hands of governments. For example, on a global level, as noted above, 2014 saw the adoption of the Forced Labour Protocol. As Ford notes in her article, the Protocol recognises the high risk of forced labour faced by migrant workers (in all sectors), and emphasises the need for strengthened labour inspection. Papers in our volume note that in designing new legislation that passed in early 2015, the UK is following suit on the second point, though, unfortunately, not the first. Robinson shows how advocates managed to persuade politicians that there is indeed a connection between widespread labour abuses and severe labour exploitation, resulting in a renewed commitment, and importantly also funds, for labour inspection. Writing about one aspect of the same bill, Demetriou demonstrates that it also leaves much to be desired. There was a chance during the bill's drafting for domestic workers' visas to no longer be 'tied' to employers—a system known as *Kafala* in Middle East countries. *Kafala* systems in the UK and elsewhere restrict workers from changing employers or seeking redress when things go wrong. After debate, British policymakers decided to maintain the regressive visa system.

Looking comparatively at a different set of policy mechanisms that aim to address labour exploitation, Feasley examines Brazilian and American efforts to tackle forced labour in supply chains. Brazil's 'Dirty List' of companies with forced labour in their supply chains contrasts with the US federal-level outward-focus on 'conflict minerals' in supply chains and the state of California's sanction-less law requiring companies to disclose what they have done to address exploitation in their supply chains. Neither country's attempt to regulate corporations is straightforward, and corporate lobbying has complicated matters in both contexts, causing a *de facto* dismantling of the Dirty List in Brazil, and causing delays to implementation of laws in the US.

Progressive and/or regressive policy measures are also considered outside the governmental sphere. Specifically, trade unions' institutional policy must be considered when looking at issues of labour, migration and exploitation. Ford's paper highlights the risks and benefits for trade unions engaging in measures to counter forced labour and trafficking. Ford's contribution points to the need for unions in the global north to align with those in the global south and engage in 'union aid'. Marks and Olsen focus more specifically on two Southeast Asian nations, Thailand and Malaysia, and highlight the impact of union involvement in policy development and service provision. Critically, gender also needs consideration within the analysis of the potential for unionisation, given that women often work in sectors that are not

unionised and/or are hard to unionise, such as domestic work. This poses challenges beyond simply expanding current unionisation practices into new, informal sectors.

The third thematic area emerging from this collection is that of **migration pathways**. Varying forms of migration intersect with forced labour and with trafficking. People travel with agents who may take them through legal or illegal routes. They move in search of livelihoods or security. Lewis and Waite demonstrate in their contribution to this issue that refugees and asylum seekers must also be considered when looking at forced labour and trafficking, and that these groups can be and are subjected to exploitation. Employing an intersectional approach they argue that refugee and asylum seeking situations can lead to people facing 'hyper precarity' in work contexts.

Palumbo and Sciurba consider legal routes within the European Union (EU) and the relationship of those with forced labour and trafficking. They argue that contrary to expectations that EU citizenship should result in protections from abuse, intra-EU migration, in this case from Romania to Italian farms in circular seasonal migration patterns, carries a high risk of exploitation. Job market options are limited, and women's economic needs and family obligations are high. Women end up settling for isolated work in farms, often accepting work on them because farms are one of the only work sites to which they can take their children. Not only do women farmworkers earn a scant EUR 15–20 (USD 17–22) per day with long workdays, but they are at high risk of sexual abuse from employers.

This issue of the *Anti-Trafficking Review* also considers forced labour (and its clear distinction from trafficking) involving those who do not move physically from place to place or across international borders. Prasad, for instance, reminds us of the persistence of bonded labour in India in which caste and entrenched feudal systems continue to tie workers to employers for years, if not generations.

The fourth thematic area speaks to a key impetus for the Special Issue and is the central focus of the Debate Section; **the examination of terminology**. Five authors address the following debate question: **Should we distinguish between forced labour, trafficking and slavery?** The debate contributions reflect much of the breadth of interpretations of this central question and the extent to which this question is understood to be either relevant and/or a priority for our contributors in the contexts within which they work. The debate brings to the fore diverse perspectives: from a range of geographical and sociopolitical contexts and from advocates to academics.

Chuang kicks off the debate with a legal and sociopolitical challenge to what she describes as a 'rebranding' of anti-trafficking as 'modern-day slavery'. She argues the legally baseless term undermines prosecutions and trafficked persons' rights to remedy and assistance, as well as simplifying otherwise complex phenomena behind humanitarian discourse, leaving us free to ignore deep economic restructuring as a solution. David offers a clear counter argument. While recognising that internationally negotiated definitions are crucial to prosecutions, she notes that in the media and in public use, definitional distinctions have 'limited if any relevance'. David argues that media (when using wording like 'modern slavery') can raise attention to the level that public opinion then provides pressure for policy change, as well as effective attention to individual cases. Without using effective language, she says, we risk inaction. After tracing history of the terminology, Plant offers that debates should not centre around the definitions themselves, but around which problems need to be addressed through a law enforcement approach and which require careful and deep social and economic change.

Paavilainen also reframes the proposed debate question. Instead of asking *whether* we should distinguish between the varying terms, she questions *when* it is necessary to distinguish between them. Like others, she argues that precise definitional distinctions must be made in national legislation and for law enforcement purposes. She argues however that promoting safe migration, improving labour protection, and awareness raising are areas where terminological precision is less important. Finally, in a world in which these terms tend to be sweeping and ignore context specificity, our debate ends with a fifth argument from Prasad that the term 'bonded labour' must not be forgotten. Bonded labour, in India, is a concept specific to intersectional caste and indigenous discriminations. Prasad importantly notes that the efforts to turn terminology away from bonded labour and towards any of the other terminological options (which in any case are usually not legally or definitionally fitting) only feeds into a 'culture of denial of bonded labour'. Overall the Debate Section reflects a range of positions that speak to both the specificity of meaning in key contexts, and the way in which at the macro and micro level the decisions made about socio-legal definitions matter in many different ways.

What emerges from this Special Issue, we hope, is a revealing insight into some critical contemporary considerations. Yet, it is a partial contribution to an area of examination that requires ongoing attention.

There are some additional key themes that are pertinent, yet these were not addressed within the contributions included. In this sense the current issue is neither comprehensive nor final in its contribution. Some noticeably absent issues include, for instance, an analysis of prison labour and its intersection with forced labour and trafficking. For example in Thailand where it was suggested that making prisoners work on boats would reduce demand for trafficked and forced labour on Thai fishing boats[2] or China where prison labour is used extensively. These practices connect contemporary and historical practices (such as the 'convict labour' that occurred in the white settlement of Australia) as well as enabling the examination of the evolution of the global capitalist system and modern forms of labour standards.

Another largely absent consideration pertains to the importance of attending to labour sectors and the specific dynamics in different contexts. This was was alluded to by Ford but detailed discussion was only covered here in relation to domestic work (Demetriou), agriculture (Palumbo and Sciurba) and fishing (David). Other sectors such as sex work, construction or manufacturing are not considered specifically within the analysis offered in this volume and further specific and ongoing consideration is critical. One thing that is clear: all these sectors are labour intensive and/or isolated, often located within the informal economy and hence difficult to organise (but not impossible) because of geographical and social isolation, linguistic challenges and migrants' temporary status or mobility. Therefore old models of unionisation are not adaptable, nor is there a one-size-fits-all approach to achieving collective action of any kind.

Finally a note regarding methodology. What requires ongoing consideration is a careful analysis of methodologies for defining or assessing the linkages and/or differences between forced labour, trafficking and slavery. This is somewhat telling: It is hard to do and never clear-cut. While we perhaps hoped that the call for papers might elicit a brave effort to suggest a way forward, what is revealed instead is a diversity of positions in relation to whether we do *need* to make distinctions and a range of views regarding *how* these definitional distinctions should be made. Where we may have hoped to identify a clear answer, we instead suggest that the conversation continue, with the issues and concerns raised in this collection, including the debate, kept in mind when forming future positions on the best way forward.

The contributions and discussions raise two critical points. First that it *does* matter to be clear about what we are referring to, whether we are adopting expansive or narrower definitions, or whether we are being purposefully broad. We need to understand why a definition is being used and to be clear about what it captures (and what it does not capture). To be able to bring research and advocacy together that is focused on different practices of exploitation or specific vulnerable groups requires clarity of meaning. Having shared understandings strengthens our ability to identify how best to respond and how to assess outcomes. Clarity also enables cause and effect to be identified and addressed. Several contributions to this Special Issue highlight that mainstream discussion on forced labour, trafficking, and/or slavery tends to be quite apolitical as a result of the blurring of concepts, resulting in few calls for any real lasting change to the way the economy works. Being clear about meaning and about why a particular approach is adopted and how it is being operationalised is essential. Our view on this is that a main 'take-away message' from this Special Issue is that the forced labour framework, rather than the trafficking one, gives us a lot of room to argue for systemic change. It entails the fight for unionisation and labour standards. The framework allows for the demand that workers be paid properly and employers are held accountable, and it even opens the door for us to look at deeper inequalities within and between countries that drive macro-economic pushes for a race to the bottom—a bottom that is highly exploitative. This in turn can only be addressed by a bottom-up approach via political activism from the grassroots level, based on workers' experience and their understanding of what forced labour and a fair wage is.

The second and final point is that this discussion is *timely*. We must have these debates and conversations now—as we must identify the strengths and limitations of terminology as it is operationalised into everyday discourse, into law, into policy and advocacy. However, we hope this Special Issue highlights that the intention of engaging directly with definitional understandings is not to resolve what will be the ultimate universal language and meaning, rather to recognise and articulate both complexity and contradiction. There will never be one approach or understanding that is utilised internationally or locally. We must find a way to embrace the diversity of interpretations and understandings.

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2 Human Rights Watch (HRW), 'Thailand: Don't supply prisoners to fishing boats', HRW, 10 December 2014.

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