

## **Regional Implementation Initiative 2017 on Preventing & Combating Human Trafficking 'Re-Branding Human Trafficking: The Interface of Migration, Human Trafficking and Slavery'**

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### **Modern Day Slavery versus Human Trafficking: Understanding the Effects and Consequences of Policies and Agendas behind different Concepts**

It is less than two decades since diplomats sat down here in Vienna to draft what became the UN Protocol on trafficking in persons, sparking off all sorts of changes discussed at previous Round-Tables.

So it might appear premature to be overthrowing the anti-trafficking system and replacing references to trafficking in human beings by a less legalistic concept of 'modern slavery'. However, this is what numerous organisations and States are now pushing for. As the new term gets media attention mainly in English, and relatively little in Europe, I want to brief you on what is going on. Although I was director of an NGO called 'Anti-Slavery International' until 2002, I want to explain why I consider the term 'modern slavery' inappropriate and divisive.

The term was first proposed back in the 1970s, when it was considered and rejected for a minor UN working group that ended up with the more lugubrious title of 'Working Group on Contemporary Forms of Slavery'. The term was put to use elsewhere, as in the title of the NGO Committee for the Eradication of Modern Slavery (CEEM) set up in France in the mid-1990s to work for the release of migrant domestic workers held in virtual captivity in Paris.

However, after the UN Trafficking Protocol was adopted in 2000, an academic whom I'd worked with, Kevin Bales, went on telling everyone who would listen that patterns of extreme exploitation around the world should be called 'slavery'. He was one of the trustees of the NGO where I was director. He subsequently set up an NGO in the USA, Free the Slaves. His break-through came when he met an Australian mining billionaire, Andrew 'Twiggy' Forrest, who was inspired to invest millions in eradicating 'modern slavery'. He established the Walk Free Foundation in Perth (Australia) in about 2011. Bill Gates reportedly advised him it was important to measure whatever you try to eradicate. So, despite much advice to the contrary, in 2013 Walk Free published the first edition of its Global Slavery Index to say how many people were in 'modern slavery'. The same year Mr Forrest announced that he would contribute US\$10 million towards what was planned to be a \$100 Million 'Freedom Fund to Combat Modern-Day Slavery', matched by \$10 million each from Humanity United, a charity set up by the founder of E-Bay, and Legatum, set up by a New Zealand financier. The Freedom Fund was given the job of supporting NGO initiatives against modern slavery, established its headquarters in London, and has succeeded in persuading other business philanthropists to donate further vast amounts.

In 2014 Mr Forrest proposed setting up a public-private Global Fund to End Slavery and offered US\$200 million to start this, if governments would match his funding. Initially

governments were wary, but the International Labour Organization (ILO) took the proposal seriously. Finally this month (September 2017), the money starting flowing in. The US government allocated US\$25 million and the United Kingdom £20 million to set up this Fund, totalling €43 million. It is intended to finance national plans to eradicate modern slavery in 50 countries with the worst patterns of slavery, starting, it was suggested, with Ghana and Nepal. In announcing the grant, the US Secretary of State referred to ‘modern slavery’ instead of the term in previous use in US government circles, “TIP”. The ILO’s support comes in the form of Alliance 8.7 and last week 37 States at the UN General Assembly backed a UK ‘Call for action to End Forced Labour, Modern Slavery, and Human Trafficking’ (only the UK and five others were EU states – Belgium, Denmark, Italy, Malta and Spain).<sup>1</sup>

You probably know that Walk Free published further editions of the Global Slavery Index in 2014 and 2016, substantially increasing its estimate each time of the number of people in ‘modern slavery’.<sup>2</sup> This month the Global Slavery Index has cooperated with the ILO to produce a new global estimate of the number of people in forced labour and forced marriage, a total of 40.3 million people—24.9 million in forced labour and 15.4 million in forced marriage.<sup>3</sup>

While numbers are always newsworthy, I don’t want you to be dazzled by them, for the organisations started by Mr Forrest are having influence in many other ways. Furthermore, two governments have embraced the concept of ‘modern slavery’: the United Kingdom, which consolidated its existing legislation on human trafficking in a Modern Slavery Act in 2015 and persuaded the UN, at the last minute, to include a reference the same year to modern slavery in Sustainable Development Goal 8.7; and Australia, which has been holding hearings about adopting a similar law.

Now I’d better explain what is meant by ‘modern slavery’, given that it is not a term used in international law. Further, I’d better admit my involvement, for at the time of the adoption of the UN Trafficking Protocol in 2000, I was involved in preparing a review of international law on contemporary forms of slavery, published by the UN in 2002.<sup>4</sup> This referred to the UN’s two conventions on slavery and practices similar to slavery (1926 and 1956), the ILO’s conventions on forced labour and child labour, the new UN Trafficking Protocol (2000), and also to an earlier 1949 UN convention on the exploitation of the prostitution of others.<sup>5</sup>

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<sup>1</sup> Accessed at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646246/CALL\\_TO\\_ACTION.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646246/CALL_TO_ACTION.PDF)

<sup>2</sup> The increases were from 29.8 million in 2013 to 35.8 million in 2014 and 45.8 million in 2016.

<sup>3</sup> Replacing the ILO’s previous estimate in 2012 of 20.9 million in forced labour.

<sup>4</sup> Anti-Slavery International and David Weissbrodt (2002), *Abolishing Slavery and its Contemporary Forms*. United Nations.

<sup>5</sup> One UN human rights specialist said this year, “[T]he practices encompassed by the term ‘contemporary forms of slavery’ cover traditional slavery; the institutions and practices similar to slavery, such as debt bondage, serfdom and forced marriage; and forced labour” (Urmila Bhoola. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, UN doc. A/HRC/36/43 of 2 August 2017). This paper points out that, “A hierarchy in international law exists among slavery and other forms of exploitation, with slavery being the most severe type of exploitation. The element of control of the person or

What then is the harm of using the term 'modern slavery', if it is just an alternate way of referring to what the UN calls 'contemporary forms'? Let me list a few of my personal concerns:

- i. Westerners seem happy to apply the term to a wide range of practices in developing countries, while human rights defenders in many developing regions think it is inappropriate. For example, in South Asia bonded labour is rife but activists do not believe that condemning it as 'slavery' will hasten its demise.
- ii. The term 'slavery' implies that the countries said to have large numbers in modern slavery are allowing something awful to occur. So, instead of the development/cooperation paradigm that was dominant in the second half of the 20<sup>th</sup> Century, with richer countries supporting efforts to bring about social and economic change in poorer ones, we revert back to the 19<sup>th</sup> Century notion that some countries are uncivilised, requiring pressure from outside to abandon unacceptable practices. Even if I buy into the idea that extreme forms of exploitation are completely unacceptable, I don't support the suggestion that evangelising missionaries from a small number of rich countries are an appropriate method to bring about change.
- iii. Using the term 'modern slavery' precipitates us into 'Name and Shame' mode, i.e., pointing the finger at governments or businesses which tolerate it or are not deemed to take adequate action to stop it. This is appropriate occasionally, but not a sound basis for international cooperation (as I think we've already learnt from the experience of the US TIP report).
- iv. In the minds of people in Western Europe and the Americas, the term 'slavery' refers to the trans-Atlantic slave trade and the 400-year period when Africans were taken captive, transported across the Atlantic with high mortality rates and enslaved and routinely tortured, worked to death or killed. There is a real danger that using the term to refer to levels of exploitation which do not meet the legal definition of slavery has the effect of trivialising or relativizing historical slavery and thereby reducing any sense of responsibility for the countries that profited from slavery. This fits neatly into the agenda of white supremacists.
- v. This brings me to one of my deepest worries, that the governments that have decided to use the term 'modern slavery' (Australia, the UK and the USA) are ones which appear keen to abandon conventional approaches to development and happy to seek to impose change from above. Further, this year Australia and the UK started using bullying tactics to persuade others to follow their usage, notably when there was a

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his/her labour is present in the various forms of exploitation to different degrees, and the most extreme form of control is manifested when it exhibits powers attached to ownership. This accounts for a distinction between slavery and other lesser exploitive practices, such as forced labour, servitude and the institutions and practices similar to slavery. However, such practices can also constitute 'slavery' in law and can be prosecuted as such if they manifest any or all of the powers relating to the right of ownership or if the control exercised over the person subjected to the practices is equivalent to possession of the person." In addition, various topics are the responsibility of other UN special rapporteurs, such as sale of children, the commercial sexual exploitation of children, forced child labour, and some of the other 'worst forms of child labour' defined by ILO Convention 182 (1999).

debate at the UN Security Council last March about trafficking, slavery and forced labour in the context of armed conflict and modern slavery.<sup>6</sup>

- vi. This is linked to the question of human rights. The rich philanthropists who finance anti-slavery organisations do not appear keen on human rights and certainly do not feel bound to implement anything called a human rights approach. Mr Forrest has been relatively outspoken on this point, though more so in the context of action concerning indigenous Australians. Concerning charitable donations to indigenous Australians, earlier this year he reportedly said: “We’ve been heavily influenced by the macabre mirage of the human rights argument as opposed to do what we know is better for Australia and our people” and “We tolerate any activist who says forced marriage is a human right of cultures; I say take your culture back to where it came from. Because here in Australia, forced marriage is just another form of slavery”.<sup>7</sup> I agree with his condemnation of harmful practices that are condoned by some as ‘culture’ or ‘tradition’, but I’m afraid his use of words reminds me of how various dictatorships that I visited in the 1980s used to play with the term ‘human rights’ in order to belittle fundamental human rights principles.
- vii. Three years ago, when the Modern Slavery Bill was being prepared in the UK, I wrote a blog saying that “Apart from questions of legal terminology...the use of the term ‘modern slavery’ has potentially damaging consequences for the very people whom a new law is supposed to protect. The prime problem is that the term implies a degree of exploitation that is so extreme as to fall outside the ordinary world of work. It also implies that such exploitation cannot be solved by any of the techniques that have been traditionally used to combat work place abuse, such as regulation, work place inspections and the formation by workers of associations to defend themselves against abuse (and trade unions)”.<sup>8</sup>
- viii. This fear, that the term ‘modern slavery’ puts a focus on exceptional situations, such as the vile enslavement practised by Da’esh in Iraq and Syria, rather than considering more routine patterns of forced labour and forced prostitution around the world, was borne out once the UN Security Council had its first debate about trafficking and slavery in December 2015 (focusing on Da’esh). Further, introducing the new term also reignited Cold War battles at the UN, this time with the former Soviet faction leaping to the defence of the term ‘trafficking in persons’, in which Belarus, in particular, had invested, and defending the right of the UNODC to be the main UN agency active on this issue. Hence my feeling that moving on from the term

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<sup>6</sup> During the debate, representatives of 13 states (out of the 60 who spoke) invoked the term ‘modern slavery’: UK, US, Uruguay, Australia, Spain, Colombia, Liechtenstein, Hungary, Cambodia, Slovakia, Ireland, Israel, Nigeria (in the order in which they spoke: see <https://www.un.org/press/en/2017/sc12571.doc.htm>).

<sup>7</sup> ‘Andrew Forrest driven to an end modern slavery throughout the world’, Walk Free Foundation, 27 January 2017, accessed at <https://www.walkfreefoundation.org/news/andrew-forrest-driven-end-modern-slavery-throughout-world/>

<sup>8</sup> ‘Some implications of using the term ‘modern slavery’’, Trafficking Research Project, 28 February 2014, at <http://thetraffickingresearchproject.wordpress.com/2014/02/28/some-implications-of-using-the-term-modern-slavery/#more-556>

'trafficking' has opened Pandora's Box (with the ILO challenging the UNODC and trying to increase its influence by organising SDG Alliance 8.7).

Let me conclude here by saying that I've been an ardent critic of the way the concept of human trafficking has developed, so it's not that I'm in favour of one term over the other. However, having seen a poor legal definition (of human trafficking) oblige me to spend years explaining what it meant, I'm loath to see yet more time and money wasted on disputes about concepts, instead of investing in action to stop unacceptable exploitation and to assist the victims. For the moment, the solution I propose is to invest as much effort as possible in developing effective methods to stop extreme forms of exploitation, but also to avoid supporting terminology which sounds imperialist and potentially racist. Primarily, this means encouraging measures by governments to amend existing policies that allow or even encourage extreme exploitation to occur.

Thanks for your attention.