

## When it Comes to Modern Slavery, do Definitions Matter?

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On the 3rd of April 2015, Indonesian government officials visited the remote island village of Benjina.<sup>1</sup> This followed press reports by Associated Press (AP) that Burmese men were being kept on Benjina island in cages, beaten with stingray tails and paid little or nothing, to fish for a company that occupies the port on the island, Pusaka Benjina Resources.

As news of a possible rescue filtered around the island, AP reports hundreds of men 'weathered former and current slaves with long, greasy hair and tattoos streamed from their trawlers, down the hills, even out of the jungle, running toward what they had only dreamed of for years: Freedom.'

AP used the word 'slavery'. The reporters also described the men as having been 'trafficked'. Were these men 'slaves', or in 'forced labour', or had they been 'trafficked'? Is it important what we call them? Certainly organisations working on this issue spend an awful lot of time focusing and arguing about the finer distinctions between these terms. Some of this debate reflects overlaps and a lack of certainty about the meaning of parts of the legal definitions, while some of this debate reflects political differences.

Do the distinctions between the concepts of human trafficking, forced labour and slavery matter? When and why?

In some ways, even small differences in definitions are critically important. For example, from a political perspective, governments have negotiated and agreed with one another what these terms mean. As a result, they have made national laws to ensure these acts are criminalised. While important grey areas remain, internationally negotiated definitions provide a level of certainty that allows international legal cooperation on this crime type. In theory, those responsible for the Benjina abuses can be prosecuted for roughly equivalent crimes in either Indonesia or Thailand.

From a legal perspective, it is important that investigators are able to lay charges that are commensurate with the severity of the offence and that they are able to find evidence to prove the elements of each offence. This is impossible without clear, functional definitions that can be translated into national laws. In this sense, definitions—and differences between terminology—are the foundation of a justice system that serves all: the community and, those most affected, victims of the crime.

However, in other ways, the finer distinctions between the concepts of forced labour, slavery or human trafficking have limited, if any, relevance.

Consider the perspective of the men involved. From media reports, it appears all had been subjected to violence and abuses, to contain them, to control them, to extract their labour against their will and prevent them from leaving their employment. Do you think they care if their experiences met the three-part definition of human trafficking found in the United Nations Trafficking Protocol?<sup>2</sup>

Consider the value of the investigative journalism that shone a light on this situation and ultimately led to these men being rescued. Does it matter to the average reader whether these men were slaves, in forced labour or trafficked? I expect not. What matters is that the general public understands that situations of this nature still occur even today and that they have the capacity to influence these situations through their

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<sup>1</sup> R McDowell and M Mason, 'AP Investigation Prompts Emergency Rescue of 300 Plus Slaves', AP, 3 April 2015, retrieved 23 July 2015, <http://bigstory.ap.org/article/197048ef871f4b56b4a129d0e3c0f129/fishermen-rush-be-rescued-amid-indonesian-slavery-probe>

<sup>2</sup> In full: United Nations General Assembly, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 12-15 December 2000.

consumer choices and pressure on governments who continue to be complicit through inaction or willful blindness.

In this regard, the Indonesian government is to be congratulated for responding to this situation swiftly and pragmatically. According to media reports, while Indonesian officials initially offered protection to a small group of men who talked openly about their abuse, confronted with the reality of the situation, the Indonesian command declared:

‘They can all come’, he said. ‘We don't want to leave a single person behind.’

This stands in direct contrast to the Thai delegation that had visited earlier that week, reporting that no abuses were occurring.

Definitions do matter in some contexts but we must not lose sight of the facts that they are not the end in itself, and insistence on technical definitions does not always serve a purpose. If definitions help law enforcement officials recognise victims, or if they help legal systems run more effectively, then they serve a purpose. However, if use of technical terms in public debate means we effectively speak to ourselves but fail to inform our audience, then definitions are not serving us well. Also, as a sector, we cannot let a focus on differences in terminology distract from some areas that are clearly within scope from any perspective. Few would disagree that the Benjina situation is both criminal and an appalling abuse of human rights. What we call this situation matters less than ensuring we focus on identifying these situations, getting help to people who need it, and that we hold governments, corporations and individuals involved to account for their role in these crimes.

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