

The cost of coercion



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# The cost of coercion

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on Fundamental Principles and Rights at Work

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## List of abbreviations

ACFTU	All-China Federation of Trade Unions
ACWF	All-China Women's Federation
ADB	Asian Development Bank
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
ASEAN	Association of Southeast Asian Nations
ASICA	Association of Steel Industries in the Region of Carajás (Brazil)
AWU	Kyrgyz Agricultural Workers' Union
BWI	Building and Wood Workers' International
CCEM	Committee against Modern Slavery (France)
CGTP-IN	General Confederation of Portuguese Workers
CIETT	International Confederation of Private Employment Agencies
COMENSHA	Coordination Centre Human Trafficking (Netherlands)
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CONATRAE	National Commission for the Eradication of Slave Labour (Brazil)
COTU	Central Organization of Trade Unions (Kenya)
CSR	corporate social responsibility
DWCP	Decent Work Country Programme
EBRD	European Bank for Reconstruction and Development
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
ETI	Ethical Trading Initiative
ETUC	European Trade Union Confederation
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLA	Fair Labor Association
FLSA	Fair Labor Standards Act (United States)
FNV	Dutch Trade Union Federation
FTUB	Federation of Trade Unions Burma
GLA	Gangmasters Licensing Authority (United Kingdom)
GSEE	General Confederation of Greek Workers
GFJTU	General Federation of Jordanian Trade Unions
IALI	International Association of Labour Inspection
ICC	Citizens' Coal Institute (Brazil)
ICEM	International Federation of Chemical, Energy, Mine and General Workers' Unions

IG–BAU	German Trade Union for Building, Forestry, Agriculture and the Environment
IGT	Inspectorate-General for Labour (Portugal)
IMF	International Metalworkers' Federation
IOE	International Organisation of Employers
IOM	International Organization for Migration
IPAR	Institute of Policy Analysis and Research (Kenya)
ITF	International Transport Workers' Federation
ITGLWF	International Textile, Garment and Leather Workers' Federation
ITUC	International Trade Union Confederation
JGATE	Jordan Garments, Accessories and Textiles Exporters' Association
Kommunal	Swedish Municipal Workers' Union
KSPI	Indonesian Trade Union Congress
MDG	Millennium Development Goal
MNE	multinational enterprise
MRCI	Migrant Rights Centre Ireland
MSI	multi-stakeholder initiative
MSPA	Migrant and Seasonal Agricultural Worker Protection Act (United States)
MTUC	Malaysian Trades Union Congress
NAPTIP	National Agency for the Prohibition of Traffic in Persons and other Related Matters (Nigeria)
OCLTI	Central Office to Combat Illegal Work (France)
OSCE	Organization for Security and Co-operation in Europe
PES	Public Employment Service
POEA	Philippine Overseas Employment Administration
PRS	Poverty Reduction Strategies
PSI	Public Services International
QIZ	qualified industrial zone (Jordan)
SAI	Social Accountability International
SAP–FL	Special Action Programme to combat Forced Labour
SAWS	State Administration of Work Safety (China)
SIPTU	Services, Industrial, Professional and Technical Union (Ireland)
SMEs	small and medium-sized enterprises
SUB	Seafarers' Union of Burma
TGWU	Transport and General Workers' Union
TUC	Trades Union Congress
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNI	Union Network International
UNIAP	United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region
UNODC	United Nations Office on Drugs and Crime
USDOL	United States Department of Labor
ZZPR	Polish Agricultural Workers' Union







## Introduction

**1.** Forced labour is the antithesis of decent work. The least protected persons, including women and youth, indigenous peoples, and migrant workers, are particularly vulnerable. Modern forced labour can be eradicated with a sustained commitment and resources. Addressing this concern with vigour is a concrete way to give practical effect to the vision of social justice for a fair globalization, set out in the Declaration adopted by the International Labour Conference in June 2008. Progress can be made through a multi-pronged strategy, attacking the criminal practices of forced labour at the bottom of the ladder, rescuing and rehabilitating its victims, tackling other aspects of labour exploitation, and promoting opportunities for decent work for all women and men.

**2.** The previous Global Report on forced labour, published in 2005, provided figures to show the truly global scope of the problem, which affects virtually all countries and all kinds of economies. Some 12.3 million persons worldwide were in some form of forced labour or bondage. Of these, 9.8 million were exploited by private agents, including more than 2.4 million in forced labour as a result of human trafficking. The highest numbers have been found in Asia, some 9.4 million, followed by approximately 1.3 million in Latin America and the Caribbean, and at least 360,000 in the industrialized countries. Some 56 per cent of all persons in forced labour were women and girls. The annual profits, from human trafficking alone, were at least US\$32 billion.

**3.** Where do things stand four years later? Most countries have legislation that deals with forced labour as a serious criminal offence but it still survives. The systemic factors behind such a serious human rights abuse on the world's labour markets need to be clarified further. Governments, law enforcement agents, labour authorities, employers' and workers' organizations, recruiters, consumers and

others have to assume their respective responsibilities for eradicating forced labour. Knowledge has to be shared about good practices that can guide future efforts.

**4.** A repeat of the first global estimate would be premature. The methodology, which involved extrapolations from real cases of forced labour reported over a ten-year period, meant that repeating the exercise so soon afterwards would have limited value. Instead, this Report captures the basic trends of forced labour over the past four years, including the main patterns and geographical incidence of forced labour abuse, and also the law and policy responses, and presents the main challenges to be faced in the years ahead.

**5.** At the policy level some progress has been made over the period. While many cases of forced labour escape investigation, the issue itself is no longer hidden or taboo. There has been a spate of new laws and policy directives or declarations, of new regional instruments in particular against human trafficking, of new commissions and action plans. Some of these specifically concern forced labour, others deal with trafficking for labour or sexual exploitation, slavery or slavery-like practices. There has been a steadily growing provision of social protection for persons or groups at particular risk of forced labour and trafficking, in particular vulnerable migrants in an irregular situation.

**6.** The world's media have been instrumental in keeping the spotlight on forced labour, raising awareness and stimulating action. There is steady growth in action against forced labour and trafficking by ILO constituents: employers' and workers' organizations, labour inspectorates, labour judges and others. The International Trade Union Confederation (ITUC) adopted at its 2007 General Council a three-year action plan to build a Global Trade Union Alliance

against Forced Labour and Trafficking. Following a series of high-level meetings, involving employers' organizations and business leaders on different continents, including an Asia-wide conference of employers' organizations in June 2008, the International Organisation of Employers (IOE), in early 2009, issued its own policy guidance on forced labour.

**7.** As regards law enforcement, labour administrations worldwide have taken up the challenge of fighting forced labour, identifying their own role in both prevention and prosecution, and working together with other law enforcement agencies to tackle abuses. A handbook for labour inspectors on forced labour and trafficking was launched in Geneva and Lima respectively in June 2008, first at the 12th Congress of the International Association of Labour Inspection, then at a special conference of labour inspectors from Latin America.

**8.** Judges and prosecutors are being alerted to the new tasks ahead of them, as more and more criminal codes are being amended to include the offences of trafficking and forced labour exploitation, and there is a steady, albeit still slow, increase in cases coming before criminal, labour and civil courts. Judges are having to grapple with sometimes novel concepts of debt bondage, slavery-like practices and labour exploitation. Often the burden of interpreting new legislation is passed on to the judiciary, and where there may be little if any precedent, in either common law or civil law countries, they must learn from each other. To guide judicial practice, ensuring that ILO instruments on forced labour are taken into account in future judgements, a casebook on forced labour for judges and prosecutors was first published in 2009.

**9.** Many building blocks are thus in place, preparing the world for intensified action against forced labour in the years to come. However, if countries and the international community are to take up the challenge of freeing the world of forced labour over the next decade, then the present momentum needs to be increased. Targeted action against forced labour must become a centrepiece of human rights, anti-discrimination, poverty reduction and development programmes. To achieve this aim, all concerned actors must have the clearest possible understanding of their roles and responsibilities and act accordingly if they are to contribute to this common endeavour of ending forced labour.

**10.** In addition, there is a need for more rigorous assessment and understanding of the systemic issues which not only permit the continuation of patterns of forced labour in the poorer developing countries, but may also be propagating new forms of coercive

labour exploitation throughout the world. In 2001, our first Global Report warned that trafficking of vulnerable migrants for labour exploitation constituted the "underside" of contemporary globalization. This alarm was sounded a few months after UN member States adopted, in December 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) to the United Nations Convention against Transnational Organized Crime. The stage had been set for an intensive process of law and policy-making, to curb trafficking for both labour and sexual exploitation, as a growing number of States became signatories to this Protocol, which entered into force in December 2003.

**11.** The 2005 Global Report discussed policy concerns with regard to forced labour and the global economy. Competitive and cost pressures, which could have an adverse impact on employment conditions and, in extreme cases, could lead to forced labour, had been accompanied by two other trends which have contributed to forced labour: the increased supply of migrant workers and a deregulation of labour markets in ways which can blur the boundaries between the formal and informal economies. In addition, strong pressures to deregulate labour markets and to downsize labour inspection services may have allowed the proliferation of unregistered employment agencies operating beyond the boundaries of state control.

**12.** Serious concerns have been expressed with regard to the substantial profits made by a range of recruiting intermediaries, from informal labour brokers to registered agencies, at the expense of migrant and other workers whom they recruit or contract. It is not easy to determine the circumstances in which the recruitment of migrant workers could lead to forced labour and merit sanctions under criminal law. Certainly, there has been considerable attention to the potentially criminal aspects of labour exploitation, as more and more countries amend their penal laws to recognize the criminal offence of trafficking for labour exploitation and provide stronger penalties. Moreover, we estimate that the "opportunity cost" of coercion to the workers affected by these abusive practices, in terms of lost earnings, now reaches over US\$20 billion. This presents a powerful economic argument, as well as a moral imperative, as to why governments must now accord higher priority to these concerns.

**13.** The present Report aims to set out the challenges facing the key actors and institutions involved in a global alliance against forced labour. There are daunting conceptual, political, legal, juridical,

institutional and other challenges. The Report shows how such challenges have so far been met, often with the support or involvement of the ILO's technical cooperation programmes. There is now a substantial amount of good practice that can guide future efforts to tackle forced labour in all its forms.

**14.** The first chapter of the Report discusses the concept of forced labour, as linked to related abusive practices of slavery and slavery-like practices, debt bondage, trafficking and labour exploitation. Understanding this definition is necessary in the light of the surge of national law and policy-making since the last Report, particularly regarding human trafficking. As forced labour can assume many subtle forms in today's economy, it is important to remember that it is a serious criminal offence punishable by law. A recent General Survey<sup>1</sup> helps to clarify the meaning of forced labour in present-day circumstances.

**15.** The second chapter assesses the state of knowledge of forced labour and examines recent trends. Some analysis is undertaken by region, showing where there has been ground-breaking research on forced labour, its causes and consequences. Given the particular concerns expressed over the past four years, this Report focuses on certain thematic issues, including the vulnerability to forced labour and trafficking of persons recruited through labour contractors, and particular problems experienced by professional groups including seafarers and domestic workers. A final section represents an initial effort to estimate the cost of coercion, and puts forward ideas for future research on this critically important issue.

**16.** Chapter 3 is concerned with the role of governments, from legislators and policy-makers to administrators, law enforcement bodies and service providers. The chapter discusses the way in which, at a time of considerable dynamism on the subject, legislators have captured modern forms of coercion through new laws on forced labour, trafficking or even broader concerns of exploitation. It then reviews the various mechanisms for implementing the law, with a particular focus on the role of labour administration and labour inspectorates. It also covers the

preventive role of labour inspectors and their contribution to victim protection.

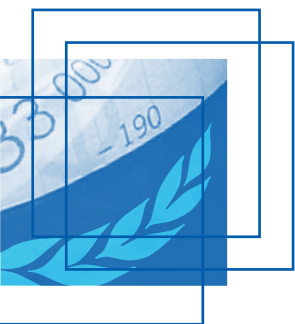
**17.** Chapter 4 is concerned with the role of employers' and workers' organizations against forced labour. Both have steadily increased their engagement against forced labour over the past few years, and this Report documents a substantial amount of good practice by both enterprises and trade unions. There are growing allegations that forced labour practices penetrate the supply chain of major mainstream industries, and there are increasing pressures to identify the specific goods that are, or may be, produced under forced labour conditions. In order to take appropriate remedial action, and to provide suitable guidance for their employees and associates on the means to prevent forced labour in supply chains, enterprises require the clearest possible guidance on what is and what is not forced labour. They also expect governments to assume their responsibilities in enacting clear legislation on such issues as fee charging by recruitment agencies. For trade unions, there can be questions as to the extent to which they should reach out beyond their traditional membership to other workers, including migrants. Several trade unions have taken innovative measures, some of which involve cooperation between trade unions in sender and destination countries. Forced labour concerns should figure prominently in the dialogue between governments and the social partners. Governments should provide clear policy guidance on the "grey areas" of labour exploitation that may spill over to forced labour.

**18.** Chapter 5 reviews aspects of the ILO's own technical cooperation programme against forced labour over the past four years. This chapter focuses either on activities which are believed to constitute particularly good practice, or on the outstanding obstacles to effective action, also identifying challenges for future technical cooperation. This sets the stage for a final chapter, identifying a new plan of action through which the ILO can intensify its own efforts and help lead global action against this unacceptable practice.

1. ILO: Report III (Part 1B), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), ILC, 96th Session, Geneva, 2007.







# Chapter 1

## The concept of forced labour: Emerging issues

**19.** Before discussing recent global trends, it is important to clarify the use of the term forced labour itself and to review some of the ongoing discussions concerning the relationship between the legal concept of forced labour and related abusive practices (including human trafficking, slavery and slavery-like practices, debt bondage or bonded labour, and labour exploitation). While these matters have been discussed in our earlier Global Reports on forced labour, they have to be revisited here for two major reasons.

**20.** First, in 2007, the ILO's Committee of Experts on the Application of Conventions and Recommendations published its first general survey since 1979 on the ILO's two forced labour Conventions. This contains important observations with regard to present-day problems in the implementation of these Conventions, covering such concerns as: slavery, slavery-like practices and other illegal forms of compulsion to work; trafficking in persons for the purpose of exploitation; forced or compulsory labour imposed by the State for the purposes of production or service; privatization of prisons and prison labour; community work sentences; compulsory work as a condition for receiving unemployment benefits; and the obligation to do overtime work under threat of a penalty.

**21.** Second, the past four years have seen a steady growth of law and policy-making on the subject of human trafficking, covering trafficking for labour or sexual exploitation. This has taken the form either of new regional instruments or of significant amendments to criminal law and other pertinent legislation at the national level, as well as the adoption of new policies and implementation mechanisms.

### Forced labour: The ILO definition

**22.** In the Forced Labour Convention, 1930 (No. 29), the ILO defines forced labour for the purposes of international law 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 voluntarily" (Article 2(1)). The other fundamental ILO instrument, the Abolition of Forced Labour Convention, 1957 (No. 105), specifies certain purposes for which forced labour can never be imposed, but does not alter the basic definition in international law.

**23.** Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives. Forced labour represents a severe violation of human rights and restriction of human freedom, as defined in the ILO Conventions on the subject and in other related international instruments on slavery, practices similar to slavery, debt bondage or serfdom.

**24.** The ILO's definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily. The work of the ILO supervisory bodies has served to clarify both of these elements. The penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take many different forms. Arguably, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when

their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.

**25.** As regards “voluntary offer”, the ILO supervisory bodies have touched on a range of aspects including: the form and subject matter of consent; the role of external constraints or indirect coercion; and the possibility of revoking freely-given consent. Here too, there can be many subtle forms of coercion. Many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.

**26.** While forced labour situations may be particularly widespread in certain economic activities or industries, a forced labour situation is determined by the nature of the relationship between a person and an “employer”, and not by the type of activity performed, however hard or hazardous the conditions of work may be. Nor is the legality or illegality under national law of the activity decisive in determining whether or not the work is forced. A woman forced into prostitution is in a forced labour situation because of the involuntary nature of the work and the menace under which she is working, irrespective of the legality or illegality of that particular activity. Similarly, an activity does not need to be recognized officially as an “economic activity” for it to constitute forced labour. For example, a child or adult beggar under coercion will be considered to be in forced labour.

**27.** Forced labour of girls and boys under 18 years old is also one of the worst forms of child labour, as defined in the ILO’s Worst Forms of Child Labour Convention, 1999 (No. 182). Child labour amounts to forced labour not only when children are forced by a third party to work under the menace of a penalty, but also when the work of a child is included within the forced labour provided by the family as a whole.

## The concept and definition of human trafficking

**28.** The 2005 Global Report discussed the growing global concern with trafficking in persons and its forced labour outcomes. This has in some cases prompted member States to give attention to the concept and definition of forced labour in their criminal or other legislation. In recent years, the national legislature in many countries has emphasized penal provisions on human trafficking with law enforcement against human trafficking covering both sexual or labour exploitation. There has been a continued momentum since the Palermo Protocol to the United Nations Convention against Transnational Organized Crime entered into force in 2003. All of the States parties are required to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the definitional article (Article 3), which specified inter alia that: “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use 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, for the purpose of exploitation. Exploitation shall include, 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”. Regarding children less than 18 years old, none of the illicit means set forth needs to be present: the recruitment, transfer or receipt of a child for the purpose of exploitation constitutes the offence of child trafficking.

**29.** As States grapple to adopt suitable national legislation, or amend existing laws to conform to the provisions of the Palermo Protocol on trafficking, a number of questions have arisen. The language of Article 3 of this Protocol suggests that trafficking into forced labour is only one form of labour-related exploitation, together with slavery or practices similar to slavery, or servitude. And as for the legal concept of exploitation, which underpins the definition of trafficking in the Palermo Protocol, there is almost no precedent in international law, nor is there much national legislation.

**30.** The United Nations Office on Drugs and Crime (UNODC), as the custodian within the UN system of the Convention against Transnational Organized Crime and its protocols, has issued a legislative guide for their implementation. It explains that

the main reason for defining the term “trafficking in persons” in international law was to provide some degree of consensus-based standardization of concepts. Moreover, the obligation is to criminalize trafficking “as a combination of constituent elements and not the elements themselves”. Trafficking, as defined in the relevant Protocol, is seen to consist of three basic elements: first, the action (of recruitment, etc.); second, the means (of the threat or use of force or other forms of coercion, etc.); and, third, the purpose of exploitation. Thus, any conduct that combines any listed action and means and is carried out for any of the listed purposes must be criminalized as trafficking. Individual elements such as abduction or the exploitation of prostitution do not necessarily have to be criminalized (although in some cases supplementary offences may support the purposes of the Protocol, and States parties are free to adopt or maintain them if they so wish). None of the individual elements, such as forced labour or slavery-like practices, is further defined in the Protocol itself.

**31.** These issues were considered by the ILO Committee of Experts two years ago, in its most recent General Survey on the application of the forced labour Conventions. The Committee observed that a crucial element of the definition of trafficking is its purpose, namely, exploitation, which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation. The notion of exploitation of labour inherent in this definition therefore allows a link to be established between the Protocol and the ILO Forced Labour Convention, 1930 (No. 29), and makes clear that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour provided under the Convention. This facilitates the task of implementing both instruments at the national level.

**32.** The definition of human trafficking given in the Palermo Protocol is complex. It should therefore come as no surprise that, over five years after its entry into force, jurists and lawmakers continue to debate certain issues surrounding the definition. There has been, for example, considerable debate as to whether trafficking must involve some movement of the trafficked person, either within or across national borders, together with the process of recruitment, or whether the focus should be only on the exploitation that occurs at the end. A further issue has been whether trafficking for the purposes of exploitation necessarily involves coercion.

**33.** On some of these issues, the 2007 ILO General Survey has provided some useful clarifications. One is the concept of voluntary offer for work or

service, and how constraint and coercion can be imposed. An external constraint or indirect coercion interfering with a worker’s freedom to “offer himself voluntarily” may result not only from an act of the authorities, but also from an employer’s practice, for example, where migrant workers are induced – by deception, false promises and retention of identity documents – or forced to remain at the disposal of the employer. Such practices represent a clear violation of ILO Convention No. 29. However, neither the employer nor the State are accountable for all external constraints or coercion existing in practice.

**34.** As is also observed in the General Survey, the Palermo Protocol on trafficking has important implications for interpreting the concept of consent in a work or service relationship. It contains a qualifying provision to the effect that the consent of a victim of trafficking to the intended exploitation is irrelevant if means of coercion such as the threat or use of force, abduction, fraud, deception, abuse of power or of a position of vulnerability, are used, each of which definitely excludes voluntary offer or consent. As the means of coercion are not in any case relevant in the case of children, the question of consent does not arise.

**35.** The ILO Committee of Experts made further use of the concept of “abuse of vulnerability” in the General Survey in order to examine the circumstances in which an obligation to do overtime work under threat of a penalty could be inconsistent with Convention No. 29. Although workers may, in theory, be able to refuse to work beyond normal working hours, their vulnerability means that, in practice, they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs.

### **Forced labour, modern slavery and vulnerability to exploitation: Conceptual and policy challenges**

**36.** A fundamental principle established in Convention No. 29 is that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any ratifying member State to ensure that the penalties imposed by law are really adequate and are strictly enforced.

**37.** By far the highest rate of forced labour today occurs in the private economy, and goes largely unpunished. The requirement that States which ratify the Palermo Protocol should address trafficking for both sexual and labour exploitation as a serious criminal offence has provided an impetus for both legislative and judicial action against those abusive

practices covered by the ILO's forced labour Conventions. In this sense, legislative and judicial action against forced labour and against human trafficking can serve the same goals and be mutually supportive. To this end, States should legislate against trafficking in the broadest sense, giving full attention to all aspects of forced labour, in addition to sexual exploitation, and making provision for identifying and prosecuting the offence of forced labour as defined in the ILO Conventions.

**38.** Forced labour consists essentially of exploitation in the place where the work or service is provided. It may be possible to identify different factors, for example abusive recruitment practices, which negate freedom of choice by the worker. Intermediaries who carry out such practices with the deliberate intent of placing persons in a situation in which forced labour can be exacted from them can certainly be considered as accomplices to forced labour. But any judicial action against forced labour would normally take as its starting point the ultimate conditions of work or service, paying less attention to the range of factors that created or exacerbated the vulnerability of workers to the exploitation.

**39.** In assessing such vulnerability, a key element is understanding the concept of debt bondage. Debt bondage is one aspect of the slavery-like practices defined in a 1956 United Nations instrument, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. This identified what were then considered contemporary forms of slavery. It called on all States parties to abolish progressively, and as soon as possible, such practices as debt bondage and serfdom. Debt bondage is defined as the "status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of these services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined". This instrument was designed to capture the bonded labour and servile labour practices that were then quite widespread in the developing countries.

**40.** ILO research has consistently shown that the manipulation of credit and debt, either by employers or by recruiting agents, is still a key factor that traps vulnerable workers in forced labour situations. Poor peasants and indigenous peoples in Asia and Latin America may be induced into indebtedness, through accepting relatively small but cumulative loans or wage advances from employers or recruiters at a time of scarcity. Alternatively, aspirant migrants may have to pay very large amounts to the agents who help

them secure work overseas and facilitate their travel, borrowing from moneylenders and other sources in order to meet these costs. The 2007 General Survey included in its forced labour typology unlawful practices of debt bondage, under which labourers and their families are forced to work for an employer in order to pay off their actually incurred or inherited debts, noting that these practices still affect a significant number of people. It notes that legal action is required to declare such bondage unlawful and to provide for penal sanctions against those employers who hold their workers in bondage. Yet, there can be difficulties in applying the legal concept of debt bondage to the situation of workers who find themselves in severe debt, particularly in the case of migrant workers whose indebtedness is to recruiting agents rather than to the final employer in the destination country.

**41.** The recent focus on the concept of "exploitation" has generated some keen debates as to how it can be captured as a specific offence, how to determine the gravity of the offence, and how it can be punished. Moreover, the lessons of experience point to a very thin dividing line between coerced and non-coerced exploitation. While the ILO definition of forced labour places much emphasis on the involuntariness of the work or service relationship, the Palermo Protocol and the subsequent policy debates have emphasized the means by which initial consent can be negated, through different forms of deception along the path towards the employment relationship, as well as within it. At the same time, the ILO Committee of Experts in its 2007 General Survey has recognized the importance of the international instruments on human trafficking which are seen to fall within the scope of the ILO Conventions.

**42.** Only the courts of individual States can determine, in the final instance, when an individual act should be punished as forced labour, or as trafficking, through the imposition of severe criminal penalties. There has been a tendency in some States to approach the question of human trafficking from the perspective of working conditions that are perceived as intolerable, as comprising slavery-like circumstances, or as being incompatible with the dignity of a human being. It may be argued that these circumstances do not constitute forced labour, as defined in the ILO's 1930 Convention.

**43.** The present Report does not duplicate the work of the ILO supervisory bodies, and for this reason it does not offer an opinion on when individual or specific actions constitute forced labour. It accepts, as does much analysis on this subject, that there is a continuum including both what can clearly be identified as forced labour and other forms of labour

exploitation and abuse. It may be useful to consider a range of possible situations with, at one end, slavery and slavery-like practices and, at the other end, situations of freely chosen employment. In between the two extremes, there are a variety of employment relationships in which the element of free choice by the worker begins at least to be mitigated or constrained, and can eventually be cast into doubt.

**44.** In this respect, the ILO established the important principle that each member State shall pursue an active policy to promote full, productive and “freely chosen employment”, in its Employment Policy Convention, 1964 (No. 122). The concept of “freely chosen employment” broadens the ILO’s field of concern beyond the imposition of forced labour to encompass all those situations in which a worker’s freedom of choice of employment is somehow constrained. Such situations may well also involve other wrongs, such as infringement of labour legislation on wages or working time or breach of the employment contract, while not necessarily amounting to

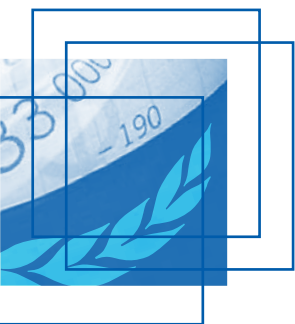
the severe violation of human rights represented by forced labour. These situations clearly need also to be identified and resolved using appropriate legal and other remedies.

**45.** Another relevant instrument is the ILO Employment Relationship Recommendation, 2006 (No. 198). This instrument, noting that situations exist where contractual arrangements can have the effect of depriving workers of the protection they are due, suggests various measures that member States can take through national policy to enhance the protection afforded to workers in an employment relationship. The ILO multilateral framework on labour migration is another valuable tool, along with the ILO Conventions on migrant workers<sup>1</sup> and many others. While none of these approaches alone provides immediate or simple solutions, when taken together with the ILO instruments on forced labour, they provide guidance on how the various emerging issues related to forced labour, including human trafficking, may effectively be addressed.

1. Migration for Employment Convention (Revised), 1949 (No. 97), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the respective accompanying Recommendations Nos 86 and 151.







## Chapter 2

# Forced labour: Capturing the trends

### Introduction

**46.** This is our third effort over a nine-year period to present a “dynamic global picture” of forced labour in the world today. A first review in 2001 placed the emphasis on different thematic concerns that might be tackled through a future programme of technical assistance. To this effect it presented a typology of modern forms of forced labour, covering such issues as: the continuing problem of slavery and abductions; compulsory participation in public works; forced labour in agriculture and remote rural areas, including coercive recruitment practices; domestic workers in forced labour situations; bonded labour, particularly in the South Asian region; forced labour exacted by the military, with a particular emphasis on Myanmar; forced labour related to trafficking in persons, depicted as the “underside of globalization”; and forced prison labour.

**47.** Analysis in the 2005 Report was based on the global and regional estimates of forced labour, including the forced labour abuse that results from human trafficking. A broad distinction was drawn between three main forms of forced labour in the world today, namely: forced labour imposed by the State for economic, political or other purposes; forced labour linked to poverty and discrimination in the developing countries; and forced labour that arises from migration and trafficking across the world, often associated with globalization. The data and analysis served to highlight two principal messages. First, the abolition of forced labour represents a challenge for virtually every country in the world, whether industrialized, transition or developing. Second, most forced labour today is exacted in the private economy, rather than directly by the State, and mainly in the informal economy of the developing countries. But the Report also sounded a warning that, with

the growing deregulation of labour markets and the trend towards outsourcing and ever more complex forms of subcontracting, there were signs that forced labour abuse was also penetrating the supply chains of mainstream companies in the formal economy.

**48.** What changes can be detected over the past four-year period? Ideally, our 2005 global and regional estimates would have encouraged governments to carry out their own national estimates of forced labour. Although some pilot initiatives have been launched, this process has hardly begun in most countries. However, a number of qualitative surveys continue to enhance understanding of the main forms of forced labour, their causes, and the appropriate policy response. In other cases, a deliberate policy by governments to strengthen law enforcement against forced labour, including trafficking for sexual or other forms of economic exploitation, has brought to light forms of abuse that hitherto went undetected.

**49.** While an ever-growing number of agencies, organizations, pressure groups and individuals have expressed concern about forced labour, the conceptual issues discussed in the previous chapter mean that there have been some complex debates concerning what is or is not forced labour, what should be done about it, and by whom.

**50.** This chapter begins by assessing the knowledge base on forced labour, including recent experience with the collection and analysis of data. It then attempts a brief review of the issues by region, before turning to certain thematic concerns which have been attracting attention since our last Global Report.

## Improving the knowledge base: Data collection and analysis

**51.** The ILO's global and regional estimates of forced labour, including the forced labour that results from human trafficking, have been quoted very extensively. They have served an important purpose – to indicate the main forms of forced labour around the world as well as its composition by age and gender, and to demonstrate that forced labour remains a truly global problem. Yet there remain significant gaps in understanding the quantitative dimensions of forced labour. The few available national estimates are generally calculated on the basis of secondary information.

**52.** Can national estimates of forced labour be considered reliable? How should data be gathered, and criteria established? In December 2006, the ILO convened a meeting of experts to a technical consultation on this matter, to examine ways of improving indicators and data on forced labour, including the forced labour outcomes of human trafficking, with a view to promoting better law enforcement and monitoring the impact of national and international policies. Participants discussed: (a) a set of criteria for identifying forced labour situations, including the forced labour outcome of trafficking; (b) systems of national data collection and analysis on victims and perpetrators; (c) methodologies for national estimates and for the monitoring and evaluation of policies and trends; (d) a global database of reported cases on forced labour and human trafficking; and (e) the development of appropriate methodologies to assess global and regional progress in detecting cases of forced labour and human trafficking.

**53.** Since then, there have been increasing calls for reliable and comparable data on forced labour and trafficking. In some regions, perhaps most notably in Europe, initiatives are under way to develop common standards and approaches. However, while data on criminal prosecutions may be available, very few countries have made rigorous efforts to estimate the likely number of persons in forced labour situations. In recent years it is the offence of trafficking, for either sexual or labour exploitation, which has caught most of the attention. There have been pioneering efforts, such as those of the Dutch National Rapporteur on Trafficking in Human Beings and the Coordination Centre Human Trafficking

(COMENSHA), both to identify registered and possible victims of trafficking on an annual basis, and to identify suitable methodologies for gathering better information.<sup>1</sup> These efforts have been able to capture some important trends, indicating for example that the number of possible trafficking victims has grown annually, from 424 in 2005 to 579 in 2006, with 716 notifications in 2007.

**54.** Yet the Dutch Rapporteur has also stressed the difficulties in obtaining reliable figures, asking whether it is indeed possible for researchers to estimate the size of populations of trafficking victims. An exhaustive 2006 study by the US Government Accountability Office likewise questioned the accuracy of US estimates of global trafficking, citing methodological weaknesses, gaps in data and numerical discrepancies.<sup>2</sup>

**55.** As regards quantitative estimates, there are two main challenges. One is to gather and reconcile data from existing sources and databases, ensuring where possible that these are comparable. There are a range of sources for such efforts, including police records, criminal databases, labour inspection reports and court decisions. The second challenge is to estimate the *likely* number of persons in forced labour or trafficking, knowing that large numbers escape identification and criminal prosecution, and that official records and databases can therefore present only a partial picture.

**56.** The ILO's 2005 estimate was based on an extrapolation exercise using over 5,000 reported cases of forced labour worldwide (each of which was carefully validated) in order to obtain global and regional estimates. While this has shed light on the gravity of the problem, and built momentum for intensified action against it, the next step has been to develop the capacity for robust national estimates.

**57.** When countries have attempted to provide such broad estimates, as for example the United States in the case of trafficking, critics have been quick to point to the differences between the overall estimates and the number of cases identified. It has been argued that the problem of human trafficking in the United States may have been greatly exaggerated, given the discrepancy between the number of trafficked persons actually identified since the year 2000 (1,362), and the official government estimates which were more than ten times that figure.<sup>3</sup> Similarly, in Canada, whereas the Royal Canadian Mounted Police

1. See Fifth Report of the Dutch National Rapporteur on Trafficking in Human Beings, Bureau NRM, The Hague, 2007; and Sixth Report of the Dutch National Rapporteur: Supplementary Figures, Bureau NRM, The Hague, 2008.

2. *Human trafficking: Better data, strategy and reporting needed to enhance US antitrafficking efforts abroad*, United States Government Accountability Office, GAO-06-825, Washington, DC, July 2006.

3. *The Washington Post*, 23 Sep. 2007.



### Box 2.1

#### The Delphi method: Building expert consensus on indicators of human trafficking

Following the definition of human trafficking in the Palermo Protocol, experts were first asked to provide a list of typical elements of deception, exploitation and vulnerability which they considered to be relevant to cases of human trafficking in Europe. In a second round of consultations, the experts were asked to rank all the proposed indicators in order of relevance, ranging from the highly significant to the insignificant. Altogether 68 experts, 39 women and 29 men, from 23 European countries participated in the survey. As a result of this process, the experts agreed on a list of 67 indicators, each of them falling within six major elements observed in cases of human trafficking. These were:

- Deceptive recruitment 10 indicators
- Coercive recruitment 10 indicators
- Recruitment by abuse of vulnerability 16 indicators
- Exploitative conditions of work 9 indicators
- Forms of coercion at destination 15 indicators
- Abuse of vulnerability at destination 7 indicators

While the indicators cover all the severe forms of abuse commonly associated with human trafficking (e.g. abduction, violence and physical confinement), they also go further. The combination of these indicators can provide useful guidance on ways to understand the variety and complexity of forms of modern trafficking. For example, the full list of indicators suggests that trafficked persons, rather than experiencing severe physical forms of abuse, may be: deceived during the recruitment stage about the wages they will be paid (Indicator 1); deceived about their legal status in the country of destination (Indicator 2); or even deceived about the type of work or service they are expected to provide (Indicator 3). Once at the place of destination, they may have their passport confiscated (Indicator 4); their employers may withhold their wages (Indicator 5); or they may be threatened with denunciation to the authorities (Indicator 6).

As some indicators are considered stronger than others, the 67 indicators were classified as strong, medium or weak. While a small number of strong indicators are considered sufficient to identify a likely situation of human trafficking, an accumulation of larger numbers of the weak indicators can lead to the same result. The final set of indicators can easily be translated into a practical assessment guide for any organization that supports potentially trafficked persons, or into questionnaires for survey specialists and researchers. The expectation is that the Delphi approach, by improving understanding of the complexities of human trafficking, will both heighten understanding of the scope of the problem and, most importantly, enable member States to detect a larger proportion of the victims of human trafficking.

has estimated that at least 800 women are trafficked into the country every year, a recent study found that only 31 cases had been reported to immigration authorities in the two years after May 2006, when data were first collected on the exploitation of foreigners in the sex trade and forced labour.<sup>4</sup>

**58.** In Europe, several initiatives have now been undertaken in order to develop guidelines for the collection of data on trafficking, including comparable indicators. Under one such project, led by the International Organization for Migration (IOM) and the Austrian Government, a conference on European Approaches towards Data Collection on Trafficking in Human Beings was held in September 2008. Participants identified the need to build consensus

on the various forms of trafficking, including child trafficking, trafficking for labour exploitation and other forms.

**59.** On the latter issue the ILO, in cooperation with the European Union (EU), has made a particular contribution. ILO efforts seek to promote agreement as to what constitutes human trafficking, developing indicators to cover all the often subtle elements of deception, coercion and exploitation involved. To this effect, the ILO and the EU jointly undertook an electronic survey of experts from all EU Member States, from government agencies and labour inspectorates, employers' and workers' organizations, national police forces, academia, and civil society groups. The survey used a methodology

4. University of British Columbia Public Affairs: *UBC legal expert releases Canada's first statistics on foreign human trafficking victims*, 28 Oct. 2008.

**Box 2.2**  
**Measuring forced labour: The need for representative samples**

Given the nature of forced labour, careful consideration has to be given to the sampling techniques. Simple techniques, such as the random selection of households in a particular region, will not produce the required results when forced labourers are hidden or clustered. In such cases, simple random sampling is likely to miss all the persons affected, and erroneously conclude that there is no forced labour or trafficking. Nevertheless, to ensure that sample survey results are applicable to a larger population of interest, two conditions must be met. First, every member of the population must have a non-zero probability of being selected. Second, the sample must be sufficiently large to ensure that the margins of error of the final estimates are reasonably low. In practice, however, persons in forced labour situations may not always be hidden or hard to detect. Bonded labourers in South Asia work openly in fields or informal sector enterprises, as do the indigenous peoples of Latin America, who are particularly vulnerable to forced labour. Migrant workers in destination countries often gather in clubs on their days off. In such cases, it is perfectly feasible to use simple sampling techniques. Migrants can also be surveyed about their experiences abroad, after they return to their home countries.

called the “Delphi method”, developed in the 1950s to reach consensus among a group of experts and used for a wide range of applications in the medical, political and social sciences.

**60.** On the basis of this approach, a limited number of countries have begun, with ILO assistance, to probe into the likely numerical incidence of forced labour and trafficking through innovative survey techniques. These efforts have had to face two major challenges: first, how to obtain a representative sample that can be used for extrapolation at the national level; and second, how to ensure that the information obtained from the sampled persons is accurate and useful.

**61.** A further difficulty is that of obtaining reliable information from the surveyed individuals, who may be reluctant to admit having been trafficked into forced labour including forced prostitution, and who may be equally reluctant to give details of their true situation for fear of reprisals. Moreover, it is essential that statistical enquiries should not place the persons interviewed at risk, either from police or from law enforcement authorities. Such quantitative surveys should therefore focus on sampling people who have been released from forced labour and trafficking, such as migrants who return to their countries of origin. Rather than confront them with direct questions on forced labour, it is preferable to pose indirect questions which may then be used as indicators of forced labour and trafficking. In the process of designing a methodology for national estimates of forced labour, an extensive literature review was made of existing

statistical methods used to estimate hidden phenomena, such as the number of drug users. A methodological guide on this subject was developed by the ILO in early 2009.<sup>5</sup>

***Pilot survey in the Republic of Moldova***

**62.** A national survey in the Republic of Moldova has assessed the extent to which migrant workers are subject to trafficking for forced labour in destination countries. The National Bureau of Statistics added a module on labour migration to its Labour Force Survey in 2008, in which over 12,000 households were sampled and 846 migrants interviewed. Interviews were conducted in over 2,500 additional households that had reported at least one family member working abroad in 2007. Altogether, the survey covered 3,631 migrants currently working abroad and 2,084 returned migrants. The results permit a robust estimation of the proportion of migrant workers who had experienced severe coercion and of those who had suffered some form of exploitation. The survey estimated that a total of 328,300 migrants were working or looking for work abroad in the year to April 2008. Of these, 75,000 had returned during the period, some of them only temporarily. Based on the assumption that the responses of these returned migrants are representative of all migrants, it is estimated that, in this period, 60 per cent of Moldovan migrants (196,900) were successful (that is, not subject to deception, coercion or exploitation), 24.2 per

5. ILO: *Estimating forced labour: A manual on survey methods*, SAP-FL, forthcoming.

cent (79,600) were exploited, and 8 per cent (26,300) were both deceived and exploited. The remaining 7.8 per cent (25,500) were victims of trafficking for forced labour. The main means of coercion used included the withholding of salary by the employer, being forced to perform tasks against the worker's will, threats of violence or denunciation to the authorities, and the confiscation of travel or personal identity documents.

### Regional perspectives

#### Africa

**63.** Forced labour in Africa has perhaps received less attention than in other regions. Forced labour abuses, some of a serious nature, may even implicate overseas investment companies in conflict areas. In one such case in August 2008, the UK-based company Afrimex was censured by the British Government for its activities in a war-torn region of the Democratic Republic of the Congo for applying insufficient diligence in sourcing minerals from mines that use forced and child labour.<sup>6</sup> There has been continued attention to the plight of child soldiers in these areas affected by conflict.

**64.** Slavery-related practices remain a contentious issue in certain countries of West Africa. In Niger, civil society groups continue to maintain that slavery is widespread, while the government holds that, although the phenomenon of slavery has not been totally eradicated, its extent has been exaggerated. In 2006, in line with ILO recommendations, the Minister of Labour set up a National Commission to combat vestiges of forced labour and discrimination, charged with developing and implementing an action plan. A small-scale, ILO field study found no evidence of outright slavery, but rather indications of strong social stratification, leading to continuing relations of dependency between slave descendants and their former masters.<sup>7</sup> In 2008, the findings of an investigation by the National Commission on Human Rights and Fundamental Freedoms proved inconclusive with respect to perceptions of the extent of

forced and child labour in the country. The Court of Justice of the Economic Community of West African States (ECOWAS) recently, in the case of a woman who had been a "slave" for nearly ten years before being released by her "master", found Niger to be in breach of its laws and international obligations to protect its citizens from slavery.<sup>8</sup>

**65.** In Mauritania, a fact-finding mission noted a number of positive measures which illustrated the Government's commitment to combat vestiges of slavery, no longer considered a taboo subject. Soon afterwards, the National Assembly adopted a new Act criminalizing and penalizing slave-like practices.<sup>9</sup>

**66.** In northern Ghana, a baseline study<sup>10</sup> in several districts focused on seasonal and longer-term migration as a mechanism for coping with poverty in single-cropping areas. It found that persons migrating for seasonal work in southern Ghana were susceptible to forced labour, with young men and women in particular working in abusive conditions. Many instances were reported of employers refusing to pay the migrant workers, or of intermediaries and agents cheating them of their wages.

**67.** A further issue of concern has been the exaction of forced labour from forest-dwelling peoples including Pygmies in several countries of the Central African region. A series of studies have been undertaken in the context of a project to promote ILO policy on indigenous and tribal peoples. The research in countries including the Congo, Gabon and Cameroon led to similar findings that Pygmies and their families are under the effective control of non-indigenous persons, who can determine the wage, if any, paid for their labour.<sup>11</sup>

**68.** Several African countries have adopted new anti-trafficking legislation, examples being Mozambique in April 2008, and the United Republic of Tanzania and Zambia later that year. These are comprehensive legal instruments, providing a good basis for intensified future action against trafficking. There has also been a growth in high-profile meetings in the region, to draw more attention to the concerns of forced labour and trafficking. In South Africa, for example, at the launch of a "human trafficking week" in September 2007, it was agreed that

6. Final statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd, 28 Aug. 2008. The statement was made in response to a complaint brought in 2007 by Global Witness, a UK-based civil society organization that investigates the links between natural resource exploitation, armed conflict and corruption.

7. PACTRAD Etude diagnostique 2006.

8. CEDEAO Arrêt No. ECW/CCJ/JUD/06/08 of 27 Oct. 2008.

9. CEACR: Individual observation concerning the Forced Labour Convention, 1930 (No. 29), Mauritania (ratification: 1961), published in 2008.

10. PATWA: Report of Baseline Study on Human Trafficking and Forced Labour in Northern Ghana, ILO, 2005, unpublished.

11. Series of studies conducted by Dr Albert K. Barume under the ILO project to promote the Indigenous and Tribal Peoples Convention, No. 169 (1989), forthcoming.

**Box 2.3**  
**Forced labour, trafficking and labour exploitation in Zambia**

In early 2006, the Zambian Ministry of Labour and Social Security (MLSS) approached the ILO for help in determining whether forced labour existed in Zambia. The MLSS was concerned especially about the operations of some “labour brokers” in the mining sector, who were accused of exploiting the jobseekers they placed by retaining a significant portion of their wages as a fee.

The research covered: recruitment agencies and their practices; labour exploitation as recorded in complaints lodged in MLSS offices and the Human Rights Commission; and forced labour, trafficking and migration through field-based research. In the analysis of labour complaints, 1,542 cases were recorded, almost all from Zambian nationals. Complaints were registered in 21 sectors, including agriculture, construction, hospitality and tourism, security and transport. Complaints related mainly to unpaid wages and terminal benefits; threats of dismissal, or dismissal if the worker complained; deception as to the nature of the work; withholding of personal documentation; excessively low wages; transportation to a distant work site and non-repatriation; and very poor conditions of service. Some workers had not been paid for months on end and, in a few instances, several years. Three sectors emerged in which workers were particularly vulnerable to exploitation due to the informal nature of the work, or the use of intermediary labour contractors, namely: mining, domestic work and agriculture. Workers in all three sectors were especially prone to non-payment of wages, among other exploitative practices. While non-payment of wages alone does not necessarily constitute forced labour, it does indicate that exploitative practices are occurring that may amount to forced labour.

In summary, the study found evidence that forced labour and trafficking do exist in Zambia. In response, the Government has developed an anti-trafficking policy and new legislation, and set up an inter-agency committee on human trafficking. The Victim Support Unit of the Zambian Police Service has received training on the investigation of trafficking cases, while the government social welfare departments offer counselling, shelter and protection to trafficked victims. The MLSS is reviewing the legal and institutional provisions for the regulation of private employment agencies.

cooperation between the ILO, IOM, UNICEF and UNODC could provide better support to the South African region as a whole, enhancing cross-border working agreements between the individual countries. In June 2008, a regional anti-trafficking conference in the Ugandan capital of Kampala brought together police chiefs, immigration officers and aid workers from 11 East African countries.

**69.** In July 2008, an Africa regional workshop on forced labour and trafficking, organized by the ITUC in Nairobi, served to highlight some of the challenges. Forced labour was seen as a real problem, and generally increasing; women particularly were the most vulnerable social group; labour legislation against forced labour was in place, but insufficiently applied. Internal trafficking in persons was also considered widespread in Africa, and as serious as the external dimension. European, North American and Middle Eastern countries were cited as the main destinations of migrants trafficked from Africa. Despite this general awareness, there have been few systematic studies of patterns of forced labour

and its causes in individual African countries. One such study was undertaken by the ILO in Zambia, at the request of the Ministry of Labour and Social Security, and published in 2008.<sup>12</sup>

**70.** A study conducted for the US-based Solidarity Center in 2007 by the Kenyan Institute of Policy Analysis and Research (IPAR) addressed the Kenyan experience with regard to trafficking for labour exploitation.<sup>13</sup> Kenya was identified as a source, transit and destination country for women, men and children trafficked for forced labour and commercial sexual exploitation. Internal trafficking involves mostly children and young women being trafficked from rural to urban areas for domestic work and prostitution. There was also significant evidence of cross-border movement in East Africa for both female and male domestic work, and for prostitution, with Kenyan nationals trafficked to many other countries, mostly through deceptive practices by employment agencies. The study highlighted the important role of the Kenyan labour movement in combating trafficking.

12. C. Fox: *Investigating forced labour and trafficking. Do they exist in Zambia?*, Government of Zambia and ILO/SAP-FL, Lusaka, Sep. 2008.

13. *Trafficking in persons from a labor perspective: The Kenyan experience*, Solidarity Center, Washington, DC, Oct. 2007.

### Asia

**71.** In Asia, three issues remain of particular concern. One is the persistence of bonded labour systems, particularly in South Asia, although legislation to prohibit and punish these practices has long been in place, together with mechanisms to identify, release and rehabilitate bonded labourers. A second is the widespread incidence of trafficking of both children and adults, for both sexual and labour exploitation. A third is the persistence of forced labour exacted directly by the State and official institutions, notably in Myanmar.

**72.** One feature of Asia is the extensive movement of workers from the poorer to the wealthier countries within the region, as well as from Asian countries to the Middle East, Europe and the Americas. In the larger Asian countries, such as China and India, there have been similar large-scale movements within the country, from the poorer provinces to those with significant industrial growth and a consequent demand for temporary labour, and in some cases more permanent relocation of the workforce.

**73.** Recent research has shed further light on bonded labour systems in a range of economic sectors, including both those experiencing intense competitive pressures, such as handloom weaving and rice mills, and others, such as brick kilns and stone quarrying, which are undergoing expansion. Some research has focused on particular sectors, for example, on brick kilns in Tamil Nadu, India.<sup>14</sup> Here, much of the workforce is migrant labour, and a central feature of recruitment and labour force management is the payment by labour agents of wage advances during the rainy season at the workers' place of origin. The advances are substantial, often equivalent to between three and seven months of a family's earnings. Work is arduous, with extremely long hours, normally for six days per week. At the end of the season, workers are remunerated on a piece rate basis. Should part of the advance remain unpaid, as is often the case, the worker is obliged to return to work at the same kiln the following season. For their part, labour agents receive a commission from the kiln owner on every thousand bricks produced.

**74.** Unionization of brick kiln workers has led to improvements in some cases. In one case study, in which brick workers were members of the Bharatiya Mazdoor Sangh (BMS) union of brick workers in

Punjab, India, wages in the kilns where BMS was active were as much as one-quarter higher than the official wages, and worker had also been able to secure other entitlements such as provident fund and health benefits.<sup>15</sup> Other research points to the ambivalent role of the labour agents in mediating between employers and labourers.<sup>16</sup> They usually come from the same communities as the workers they hire and have strong social ties with them. As their commission sometimes depends on the amount of the piece rate, they stand to benefit from any increase. But there have been cases where kiln owners, on perceiving that labour agents were supporting the wage claims of workers, have responded by switching to other agents from different sender areas.<sup>17</sup>

**75.** Recognizing that payment of advances is a deeply entrenched system which needs urgently to be addressed, the Government of India, the state authorities in Tamil Nadu, and employers' and workers' organizations have recently embarked on a collaborative programme with the ILO. Among other objectives, the programme seeks to enhance the transparency of the advance system, developing some basic rules and approaches that will serve the interests of the parties involved.

**76.** In Nepal, attention has until recently been focused on a particular form of bonded labour known as the *Kamaiya* system, prevalent in agriculture in the western Terai region. Earlier legislation which provided for the rehabilitation of workers affected by this and related systems in agriculture, cancelling outstanding debts of these bonded labourers, also included in its scope other forms of bonded labour. For the most part these have been poorly researched and documented. One is the *Haliya* or "tiller" system, affecting an estimated 20,000 people in far western Nepal who are indebted to their landlords and receive little or no pay for their agricultural and household work. Bonded labour is also believed to exist in sectors including domestic work, brick kilns, embroidery workshops, tea shops and small restaurants. There is also evidence of trafficking of women and children to urban areas and other countries for commercial sexual exploitation. These forms of bondage are less well understood, although the Government is now giving more attention to these concerns. A labour and employment policy adopted in 2005 includes the elimination of bonded labour among its objectives, and in September 2008 the Government

14. I. Guérin: "Corridors of migration and chains of dependence: Brick kiln moulders in Tamil Nadu", in J. Breman, I. Guérin, and A. Prakash (eds), *India's unfree workforce. Of bondage old and new*, OUP, New Delhi, forthcoming.

15. A. Prakash: "How (un)free are the workers in the labour market? A case study of brick kilns", in Breman et al., op. cit.

16. D. Picherit: *Workers trust us! Middlemen and the rise of the lower castes in Andhra Pradesh*, in Breman et al., op. cit.

17. A. Prakash, in Breman et al., op. cit., p. 214.



announced that it was abolishing the *Haliya* system, a clear indication of commitment to comprehensive action against all forms of bonded labour.

**77.** Given the complex nature of Asian bonded labour, a targeted approach in particular sectors by region can be advisable. Such an approach has been taken by the Government of Punjab province in Pakistan which, with ILO support, envisages an integrated programme to combat bonded labour in brick kilns.

**78.** In China, at a time of intense economic transition, research conducted under ILO projects has focused on different forms of forced labour, and also sought to interpret and apply the concept of forced labour in the current Chinese context. It has identified three main dimensions. First, there is the forced labour imposed by confinement of workers, together with physical violence and threats, and other forms of coercion. These are the extreme situations, easy to identify but difficult to detect, mainly occurring in workplaces in isolated rural areas where labour inspection and other forms of inspection are lacking. A well-documented example is the forced labour detected in the brick kilns of Shanxi province in 2007. There have been similar convictions for forced labour in other provinces, for example in brick kilns and stone quarries producing materials for construction.

**79.** Second, employees have been forced into hazardous working conditions, especially in the mining industry. There have been cases where workers have had their wages withheld by mine owners, or been threatened with fines or dismissal, if they do not continue to work even where there are clear signs of danger or accidents. A serious example was a 2006 flood disaster in the Zuoyun mine of Shanxi province, which caused the death of 56 miners. In this case, workers had been threatened with fines if they refused to go down the mine. In response, the Penal Code was amended in 2006 to penalize persons forcing others to undertake risky operations. Third, there has been assessment of cases and circumstances in which compulsory overtime can amount to forced labour. In response to reports of excessive working hours in labour-intensive enterprises in south-east coastal areas, forced overtime has been addressed specifically in the Labour Contract Law adopted in 2007. More generally, the Government has adopted various measures to improve the social status of rural migrant workers, including

reforms to the *Hukou* system of household registration and measures to enable migrant workers to join trade unions.

**80.** Further issues have included the unlawful deduction or withholding of wages by employers and recruiting agents, also highlighting the need for improved monitoring of recruitment agencies. According to research carried out in 2006 in Zhejiang, Henan, Sichuan and Xinjiang provinces,<sup>18</sup> approximately one-third of workers in private enterprises experienced delays in wage payment. And in a third of these cases, delayed wage payment was seen as a deliberate action to prevent workers leaving the enterprise. ILO research has found that rural migrant workers, later subject to exploitation, had first been the victims of deceptive or abusive recruitment. Detection of these problems in the emerging private economy has prompted China to embark on law and policy reforms to address different forms of exploitation and forced labour, including promoting application of the Labour Contract Law and the establishment of wage guarantee mechanisms at local levels.

**81.** Myanmar continues to present special circumstances. Under a Supplementary Understanding reached between the Government of Myanmar and the ILO in early 2007, an ILO Liaison Officer has had the facilities to examine forced labour complaints objectively and confidentially, make a preliminary assessment as to whether the complaint involves a situation of forced labour, communicate these cases to the Government for its expeditious investigation, and report to the ILO Governing Body on the number and type of complaints received as well as their outcomes.<sup>19</sup> As of November 2008 a total of 120 complaints had been received, 70 of which were assessed as falling within the definition of forced labour. Of these, 21 were cases of forced labour under the instruction of civil authorities, ten involved forced labour under the instruction of military authorities, and 39 cases involved recruitment of minors into the military. The agreed objective is the elimination of the use of forced labour in all its forms. The complaints mechanism is a tool to this end, designed to support the application of national laws, to provide victims with access to justice including restitution, to apply appropriate punishment to perpetrators and to provide awareness raising on respective rights and responsibilities in changing behavioural patterns.

18. Survey on employment relations in private enterprises in Zhejiang, Henan, Sichuan and Xinjiang, Institute of International Labour and Information, China, June 2006.

19. The 2007 Supplementary Understanding extended the facilities and support made available to an ILO Liaison Officer under an original Understanding of March 2002.

### Box 2.4 Improved understanding of forced labour in Brazil

In Brazil, recent studies have shed more light on the profile of the individuals subjected to forced labour. One such study interviewed 121 workers in four states, mainly Para and Mato Grosso, who had been identified by the Mobile Inspection Unit as subject to forced labour, as well as seven recruiting agents. One finding was that most of the interviewees had been constantly on the move within Brazil, as only one-quarter still resided in the state where they were born. Almost all had started to work before 16 years of age, and over one-third before the age of 11, mostly to help their parents in farm work. Of the total sample, 48 had been recruited through a friend or acquaintance, and 33 through a recruiting agent or directly at the farm. The Government of Brazil has continued to publish its “dirty list” of individual property owners and companies that have been identified as using forced labour. This list is updated every six months, and made accessible to the public through the Ministry of Labour and Employment. The policy is to keep the name on the list for two years, and then remove it provided that the offence is not repeated and that wages are duly paid to the workers. As of July 2008, the list contained the names of 212 persons and entities, mainly in cattle raising. A significant portion of the activities were found to be linked to unlawful practices that have led to deforestation of the Amazon region. Indeed, many of these properties are of substantial size, up to 30,000 hectares or more.

Academic and civil society groups have used creative techniques to further understanding of forced labour. One example is the Brazilian Forced Labour Atlas, compiled by the NGO Amigos da Terra with the support of the Government, the Pastoral Land Commission of the Catholic Church, and the ILO. This uses databases from both governmental and non-governmental sources to pinpoint the incidence of forced labour in different geographical areas. Besides presenting geo-referenced data on regions of origin of forced labourers as well as those from where they were rescued, the study related forced labour incidence to other socio-economic conditions such as deforestation, the incidence of rural homicide, literacy rates and poverty. Using such information, an index of forced labour probability was developed. Government authorities can make strategic use of these findings to plan and direct public policies and assistance to these areas.

**82.** The ITUC has provided extensive information concerning the main forms of forced labour in Myanmar. In 2007 these were identified as: portering for military or paramilitary groups; construction or repair of military camps and facilities; other support for camps, as guides, messengers, cooks and cleaners; various infrastructure projects; and cleaning or embellishment of rural or urban areas.<sup>20</sup>

**83.** Research studies have shed new light on the existence of forced labour in different areas of Asian production, covering industries which have escaped earlier attention. An example is the shrimp industry and seafood processing plants. A 2006 report co-authored by the ILO and Bangkok’s Mahidol University identified forced labour practices in the Thai fishing and seafood processing sectors. In 2008, a follow-up report by the US-based Solidarity Center claimed to document forced labour conditions in the shrimp industries of Bangladesh and Thailand.<sup>21</sup>

### Americas

**84.** Latin American countries have seen a growing awareness of the risk of forced labour practices, particularly against migrant workers in underground “sweatshops”, or against vulnerable groups including domestic workers who migrate from their own communities. Forced labour has been detected in remote and deforested regions as well as in a range of industries, some of them export oriented, including charcoal, pig-iron, timber, and several agricultural sectors. Overall, ILO research suggests that the main pattern of forced labour is through debt bondage, whereby temporary workers are recruited through informal and unlicensed intermediaries who entice their recruits through the payment of advances, and then make their profits through a series of inflated charges. This process may take place either within or across national frontiers.

**85.** Forced labour in Latin America is closely linked to patterns of inequality and discrimination,

20. Communication of 31 August 2007, cited in Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Report III (Part 1A), ILC, 97th Session, Geneva, 2008.

21. *The true cost of shrimp*, Solidarity Center, Washington, DC, Jan. 2008.

particularly against indigenous peoples. Action against it therefore needs to be incorporated within a broader framework of measures and programmes to reduce poverty by fighting discrimination and promoting the rights of indigenous peoples, as well as improving the situation of the poorest workers in urban areas.

**86.** Although the ILO estimates that Latin America accounts for the second largest number of forced labourers in the world after Asia, only a few countries have made systematic efforts to investigate and document forced labour and its incidence. However, the strong efforts made by some countries, most notably Brazil and Peru, have improved understanding of contemporary forced labour and its underlying causes. These efforts have also been accompanied by policy and practical measures to coordinate the action of different ministries and institutions against forced labour, and to identify and release persons in forced labour. In November 2008, a Supreme Decree was approved by the Government of Bolivia providing that rural properties found to be using forced labour and debt bondage would be transferred to the State under the control of the National Institute of Agrarian Reform.<sup>22</sup>

**87.** In Peru, the first government investigation on forced labour was carried out by the Special Labour Inspection Group against Forced Labour, created in August 2008. This compiled information on recruiting practices and supply chains in the wood and forestry sector in the Amazon region of Loreto, confirming the existence of forced labour in logging camps. This study, the first of several that are now envisaged on forced labour in different sectors, was financed almost entirely by the Ministry of Labour and Employment, with technical assistance from the ILO.

**88.** In Argentina, trade unions have brought to the attention of ILO supervisory bodies allegations relating to trafficking for both labour and sexual exploitation.<sup>23</sup> These refer to the trafficking of Bolivian men, along with their families, for labour exploitation in garment factories in many provinces of Argentina. Coercive mechanisms have included the removal of identity documents, locking workers in factory premises, and compelling them to work for up to 17 hours per day. Following a particularly severe incident in March 2006, a fire that caused the death of several Bolivians in one factory, a programme of inspections resulted in the closure of more than half

the workshops inspected. A major campaign has since been organized by the local government of Buenos Aires to eradicate these clandestine workshops for textile production. A free hotline, entitled “Slave labour kills”, was opened in April 2006, and widely advertised on television and radio as well as through large posters on the streets.

**89.** Other issues in Latin America have included the imposition of compulsory overtime under menace of a penalty. In Guatemala, for example, the workers’ organization UNSITRAGUA has brought several cases of this nature, affecting both public and private sector employees, to the attention of the ILO Committee of Experts. Allegations relate mainly to cases where the employees have to work long shifts of up to 24 hours, and where refusal to work under these conditions may give rise to dismissal, and even to penal prosecution in the case of public employees.<sup>24</sup>

**90.** In the United States and Canada, there has been growing attention to the forced labour conditions that can be experienced by foreign workers in domestic service, agriculture and other sectors of the economy. In both countries the creation of new task forces and strengthened law enforcement against human trafficking has served to bring ever more cases to light (see later chapters). While many of those in forced labour are irregular migrants, concerns have been expressed that workers recruited by intermediaries under official “guestworker” programmes can end up in debt bondage situations when they are heavily indebted and when there are restrictions on their right to change employers.

### *Europe and Central Asia*

**91.** Throughout Europe, the spotlight has been mainly on forced labour as the outcome of irregular migration processes. While trafficking for labour exploitation has only recently received the attention of policy-makers, it is the predominant form of trafficking in the Russian Federation, and possibly in some Western European countries. Certain source countries of trafficked persons, such as the Czech Republic and Poland, now appear to have become destination countries following their accession to the European Union.

**92.** The new EU Member States in South-Eastern Europe, Bulgaria and Romania, remain countries of transit and destination for human trafficking. Several countries of Central and Eastern Europe have

22. Supreme Decree 29802.

23. CEARC, ILC, 2008, op. cit.

24. *ibid.*



**Table 2.1. Trafficked persons in Ukraine: Forms of exploitation**

Type of exploitation	2004	2005	2006	2007	First six months of 2008
Sexual	403	558	597	584	229
Labour	189	232	319	500	306
Mixed	24	28	15	33	4
Begging	9	10	5	4	8
Criminal activities	1	–	1	–	2

Source: IOM database of identified victims of trafficking.

recorded a growing number of victims of trafficking within their national borders. While the majority of identified victims are women trafficked for sexual exploitation, the number of identified cases involving men is now growing as more attention is given in this region to trafficking for forced labour.

**93.** A similar trend can be seen in Ukraine. In 2004, identified cases of trafficking for sexual exploitation were more than double those for labour exploitation. In 2007, by contrast, 584 persons were identified as trafficked for sexual exploitation compared with 500 for labour exploitation, and for the first six months of 2008 the number of labour exploitation cases was actually higher (see table 2.1).

**94.** Recent trends indicate that Ukraine is now a country of transit and destination, as well as origin, for persons trafficked for either labour or sexual exploitation. The majority of foreign nationals trafficked into or through Ukraine over the past six years have been from the Republic of Moldova (almost three-quarters of the total), followed by Kyrgyzstan, Uzbekistan and the Russian Federation. The Republic of Moldova continues to be a significant country of origin for persons trafficked to a range of Western European destination countries, as well as to the Russian Federation and Turkey.

**95.** In the Caucasus, ILO-sponsored research in Azerbaijan has detected some recent changes. With rising living standards in the country, the number of Azeri workers exposed to forced labour abroad appears to be decreasing. On the other hand, persons who expected to transit through the country to Europe with the help of intermediaries were instead taken to construction sites in Azerbaijan, and subsequently deported after detection by the authorities.

**96.** Recent data from the Russian Federation and other countries of the Commonwealth of Independent States point to a steady increase in the number of identified persons trafficked for labour exploitation. Between 2002 and 2006, 1,331 trafficked persons were identified by the IOM, half of these for labour exploitation. Information on trends in Central Asia remains scarce. In Kyrgyzstan, the State Committee on Migration and Employment has reported that the most widespread forms of forced labour are related to debt bondage and retention of wages of Kyrgyz citizens working in agriculture and construction abroad, mainly in the Russian Federation and Kazakhstan.<sup>25</sup> In Uzbekistan, following media reports of the use of forced child labour in the cotton industry, several major retailers and buyers stated that they would no longer purchase cotton from that country.

**97.** In Western Europe, an innovative study, carried out by Portugal's Ministry for Labour and Social Security with ILO assistance, provides a useful model for future research.<sup>26</sup> It addresses separately, first, immigrant labour exploitation in Portugal itself and, second, labour exploitation and trafficking of Portuguese emigrants in other European countries. The findings suggest that even regular migrants in Europe can be exposed to exploitation and forced labour. In the Portuguese case, most were poorly skilled people, including Roma minorities, who worked in agriculture or manufacturing. Informal recruiters and temporary employment agencies, which had tripled in number over the past few years, had played a key role in leading Portuguese workers into labour exploitation and forced labour situations.

25. B. Hancilova: *The dimensions of forced labour and trafficking in persons in Kazakhstan, Kyrgyzstan and Uzbekistan*, unpublished report prepared for ILO SAP-FL, Feb. 2008.

26. S. Pereira and J. Vasconcelos: *Human trafficking and forced labour: Case studies and responses from Portugal*, ILO, Geneva, 2008.

**98.** Almost all European countries have now turned some attention to the way in which forced labour practices can, to some degree, penetrate their own labour markets. In May 2007, the Government of Sweden hosted an exploratory seminar on trafficking for forced labour, bringing together experts from Denmark, Finland, Norway and Sweden. The consensus was that labour trafficking was a relatively minor problem in the Nordic countries compared with other regions that appear to be at higher risk. Participants nevertheless identified sectors and industries – construction, restaurants, domestic work, berry-picking in northern Finland and Sweden – where the incentives to hire irregular foreign workers can create a breeding ground for forced labour and trafficking. Speakers consistently emphasized the need for refined labour regulations, especially with regard to subcontracting, and to open up the well-regulated Nordic labour markets to new and non-national workers.<sup>27</sup>

### *Middle East*

**99.** Throughout the Middle Eastern region there has been a steady growth of reporting on matters related to human trafficking in particular and, to a lesser degree, forced labour. As several countries have adopted new laws against trafficking, sometimes backed by inter-ministerial coordination mechanisms, this has of necessity drawn more attention to concerns which, at least until very recently, were very seldom in the public eye. Our previous Global Report highlighted the conditions of some domestic workers in this region, given that the absence of safeguards in recruitment systems can, in some cases, expose them to trafficking.

**100.** Concerns have also extended to the lack of general safeguards in the recruitment and deployment of migrants for temporary contract work in this region. While the question of adequate safeguards affects all countries that rely on migrant labour for certain types of work, it is of particular importance for those like the Gulf States, in view of the high proportion of migrant workers in relation to their national populations. In recent years, a number of countries in this region have faced critical reports alleging, for example, very harsh conditions of work in their construction sector and garment industries, or suggesting that the *Kafeel* system of individual employer sponsorship for temporary contract workers is conducive to forced labour and trafficking. These are complex issues, on which governments of the region

have had considerable recent engagement with the ILO in the context of their efforts to promote fundamental principles and rights at work more generally, or to improve systems of migration governance. On the one hand, the level of awareness of the forced labour problem in the Gulf is low among the general public and many government officials, and there is some reluctance to accept that there are abuses which may indeed constitute forced labour and trafficking. There is still a need for many governments to take proactive measures to address the root causes of the problems and formulate appropriate recommendations, rather than only responding to pressure related to specific incidents and reports. On the other hand, some governments among the Gulf States and in the wider Middle Eastern region have taken positive steps in the form of training, analysis, law and policy reform, and implementation mechanisms.

### *Thematic concerns*

**101.** This section does not propose to cover all the thematic concerns of modern forced labour as reflected, for example, in the 2007 General Survey. It focuses instead on a limited range of concerns which have attracted considerable attention in recent years, and where there may be scope for the ILO to help address problems through future technical cooperation. A first issue is the contribution that can be made to the risk of forced labour by inadequate contracting and recruiting systems, including those for migrant workers. Other issues are the situation of seafarers and domestic workers.

### *Contract labour and recruitment*

**102.** Inadequate mechanisms for the recruitment and placement of workers can result in labour exploitation, including forced labour. The link between informal labour brokering and bonded labour systems in parts of Asia and Latin America has long been acknowledged. It is also widely accepted that workers who migrate through unlawful intermediaries, often finding only clandestine employment in destination countries, are at particular risk of forced labour.

**103.** In recent years, a new issue has attracted the concern of governments, employers' and workers' organizations worldwide, one which has also been debated in academic and policy literature. It is that workers who migrate through perfectly legal channels,

27. Nordic Expert Seminar on Trafficking for Forced Labour, Ministry of Employment, Government of Sweden, Stockholm, December 2007.

### Box 2.5

#### **Lured into bondage: A growing back channel of global trade tricks millions into forced labour (from *Newsweek*, 15 April 2008)**

This is a new chapter in the globalization story: a growing migratory work force trapped in conditions that verge on slavery. (...) Often the conditions these migrants work in make a sweatshop look relatively benign by comparison. Lured from their homes by labour brokers making false promises of high wages, the trafficked workers often find themselves in a land where they don't speak the language, are saddled with impossible debts and are deprived of the passport they need to get home. "The old way of slavery was that the boss really owned you", says Rene Ofreneo, Director of the Center for Labor Justice at the University of the Philippines in Manila. "But now legal recruiters and employers work in tandem to deceive workers who, vulnerable and isolated in a strange culture, are forced to accept harsh terms. It is in that context that you have endemic forced labour today."

perhaps using licensed recruiters to be hired through officially recognized work programmes in the destination country, can also be exposed to forced labour unless due safeguards are in place.

**104.** A number of trade union publications and NGO reports have addressed these matters. However, the points have been made most forcefully in a series of US Government reports, the annual "Trafficking in Persons" reports published by the US Department of State as part of its efforts to combat human trafficking worldwide. Its 2006 report aimed to shed greater light on "labour trafficking through legal recruitment", particularly in Asia and the Near East. It was argued that, after arrival, a proportion of migrant workers face unscrupulous labour agencies or employers who place them in a situation of involuntary servitude, and that "this can become forced labor or bonded labor, depending on the tools of coercion used to compel workers to enter into or continue in a state of servitude". The report identified certain abusive measures used, including: changing the conditions of employment from those stipulated in contracts signed before the workers left their home country; confiscating and holding travel documents; confinement; threatening physical force; and withholding wages. It observed furthermore that the high transaction costs imposed for working abroad could make migrant labourers highly vulnerable to debt bondage. When combined with exploitative practices by unscrupulous labour agents or employers in the destination country, these costs or debts, when excessive, became a form of debt bondage.

**105.** The State Department's 2007 report, in taking this analysis further, examined the linkages between sponsorship laws and forced labour. It examined ways

in which sponsors in destination countries could abuse such laws, for example, by threatening workers with arrest if they tried to complain about abusive conditions or prolonged non-payment of wages. The most recent 2008 report identified different strategies through which both origin and destination countries could counter the trafficking of transnational migrant workers, encouraging governments to "collaborate with the ILO, in the light of its mandate to eliminate forced or compulsory labor". The proposed strategies covered recruitment in both origin and destination countries, bilateral or multilateral labour agreements, and victim identification and complaints, together with preventing abuse of the legal system, in destination countries.

**106.** How has the ILO addressed these concerns? It has done so in several ways, through the combined efforts of its programmes on migration governance, forced labour and the application of standards. First, it has carried out research on the way these systems operate in practice in different parts of the world. Research has been conducted on private agencies and recruitment systems in areas and countries including Central Asia, the Caucasus and the Russian Federation. Studies were also commissioned in Bangladesh, India and Pakistan, mainly examining the experience of temporary contract workers from these countries in the Gulf States. Some findings were presented at a Gulf Forum on Temporary Contractual Labour, held in Abu Dhabi in early 2008.<sup>28</sup> Second, extensive capacity building has been provided for government officials including labour inspectors, as well as employers and trade unions. An example is the programme in Jordan, undertaken in response to allegations that Asian migrant workers had been subjected

28. R. Plant: *Temporary contract labour in the Gulf States: Perspectives from two countries of origin*, paper presented at Gulf Forum on Temporary Contractual Labour, Abu Dhabi, 23–24 January 2008.

to forced labour and trafficking in export industries. The Government has been assisted in drafting a new law on trafficking, in amending its Labour Code, and in establishing an Inter-Ministerial Committee on Trafficking. In October 2008, this Committee agreed to establish a joint unit combining the law enforcement powers of labour inspectors and public security officials to facilitate investigation of trafficking offences and their referral to the judicial authorities. The ILO has also engaged on these issues with labour inspectors, foreign service and public security officials in other countries of origin or destination for temporary contract workers, including China, several Gulf States, the United States and Viet Nam. It has also conducted a detailed desk review of the issues. The state of knowledge on these concerns can be summarized, in the light of ILO instruments on forced labour and other related topics, as follows.

#### *Fees for recruitment services and placement*

**107.** The ILO's Private Employment Agencies Convention, 1997 (No. 181), establishes the basic principle that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. In the interests of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to this principle in respect of certain categories of workers, as well as specific types of services provided by private employment agencies.

**108.** In certain regions, dialogue between governments and other stakeholders has produced more detailed guidelines. One example is the recommended guidelines for recruitment policy in practice in the Greater Mekong subregion, negotiated with various stakeholders as part of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT).

**109.** Importantly, the International Confederation of Private Employment Agencies (CIETT) recognizes in its own code of practice the principle of respect for free-of-charge provision of services to jobseekers. CIETT has also made specific commitments to the prevention of human trafficking.

**110.** In practice, many migrants pay placement fees that can be very high in comparison with anticipated earnings. A 2005 study by the US NGO Verité, based mainly on interviews with returned migrants from four Asian countries, found that, while the legal limits on fees were generally set at one month's salary, the

actual fees paid ranged from 1.8 to 4.8 months' salary. To finance these fees, loans were generally taken from different sources. With interest sometimes as high as 60 per cent, it could take between ten months and three years to pay off these loans.<sup>29</sup>

**111.** ILO research with returned migrants from the Gulf States, conducted in 2007 in Bangladesh and Pakistan, while concluding that the experience of most migrants had been positive, also found that the high costs of migration were making it less financially profitable for the workers. In Bangladesh, where the average costs were around US\$1,400 for men and half that amount for women, the total cost of migration had risen by more than 130 per cent over the 2000–07 period and had generally not been balanced by a rise in incomes. In Pakistan, the average total cost for persons employed overseas was US\$1,000, more than 12 times the ceiling set by the Government of Pakistan. Most Pakistani migrants paid all fees in advance, with approximately half financing migration costs from their own savings.

#### *Recruitment channels and mechanisms*

**112.** While some jobseekers use licensed recruitment agencies to look for employment in distant parts of their own country or abroad, very many do not. Initial recruitment is commonly through small-scale agents. The role of such intermediaries can vary, depending on whether or not there is free movement of labour, or visa requirements. Jobseekers from the Central Asian countries do not require visas to work in the Russian Federation, although they must register for residence and employment. In Tajikistan, for example, where the estimated annual flow of migrant workers exceeds half a million, private recruitment agencies place only a few thousand workers in employment abroad. Recruitment and job placement are conducted through a network of informal recruiters, often former migrants themselves with contacts among Russian employers. For a range of services, including registration and contact with employers, migrants can pay the intermediary a sum equivalent to half their salary over the initial months. A survey in the Russian Federation, covering groups including labour migrants considered vulnerable to trafficking, found that 90 per cent of migrants seek jobs through informal networks, while no more than 5 per cent use public or private agencies.

**113.** In South Asia, "sub-agents" commonly operate under the umbrella of larger and officially

29. *Protecting overseas workers*, Verité Research Paper, Dec. 2005.

### Box 2.6 Guidelines under COMMIT for the Greater Mekong subregion Fees for recruitment services

- Governments and recruitment agencies should try to minimize the costs of recruiting and hiring migrants that must be borne by workers and employers.
- Fees for recruitment agencies should be borne by employers. Where this is not possible, governments should regulate the maximum fee for services that recruitment agencies are allowed to charge workers in consultation with employers' and workers' organizations.
- Recruitment agencies should disclose all charges and terms of business to employers and workers, ensuring transparency about the costs (e.g. costs associated with documentation) and the recruitment service fees.
- Governments should regulate and monitor the way in which recruitment agencies are able to deduct fees from workers' salaries.
- Employers and recruitment agencies must obtain written consent from workers on the deductions from their salaries and ensure that workers have full access to their savings accounts at all times.
- Employers or recruitment agencies who manage salary deductions from workers should be required to issue written statements to workers about their gross salary and all deductions.
- Governments should promote the establishment by governments, financial institutions or other organizations of lending facilities to provide low-interest loans to workers who cannot afford recruitment agency fees.

recognized agencies. The local recruiting agents may simply hand the worker over to the larger agency in exchange for a fee; they may also provide other services, such as the acquisition of passports and identity documents, visas and other permits. In India, labour contractors operate in a largely informal labour market within the country, while as many as half the overseas migrants may rely on unregistered agents. In Bangladesh, Indonesia and Pakistan, migrants use a mix of channels, including family networks, registered recruitment agencies and a large number of informal labour brokers or "sub-agents". The latter may conduct recruitment on behalf of the licensed agencies, despite national regulations which prohibit this. But they may also carry out their own recruiting operations at the request of employers in certain destination countries, together with additional services including the provision of visas and tickets. Many of these arrangements escape the control of the official agencies responsible for the protection of migrant workers in the sender countries.

**114.** In China, an ILO study distinguishes between organized workers who migrate through legal channels, and those who use labour brokers or individual channels. When unlawful channels are used, the

fees to "snakeheads" can be as high as US\$70,000 for travel to the United States. Far lower amounts would be paid by those leaving for neighbouring Asian countries. Private enterprise has become increasingly more involved in labour exporting. The Government has made clear efforts to exercise more control over foreign labour placement, outlawing the charging of recruitment fees to workers, and including effective enforcement provisions. The proliferation of regionally based small and medium-sized agencies has nevertheless made it difficult to exercise adequate supervision.

### *Contracts of employment*

**115.** Many seasonal and migrant workers never sign written contracts, relying exclusively on verbal agreements with recruiters. In Bangladesh, a survey of cross-border migrants<sup>30</sup> found that as many as 90 per cent of respondents had not been issued a written contract prior to migration, irrespective of their type of visa. In Pakistan,<sup>31</sup> over 60 per cent of those who migrated through friends and relatives, and over 20 per cent of those with a direct visa, had only a

30. R. Afsar: *Unravelling the vicious cycle of labour recruitment: Migration from Bangladesh to Gulf countries*, unpublished ILO research, 2008.

31. G.M. Arif: *Recruitment of Pakistani workers for overseas employment: Mechanisms, exploitations and vulnerabilities*, Pakistan Institute for Development Economics, unpublished ILO research, 2008.



verbal contract. Other migrants sign contracts but are not permitted to keep them, or are provided with contracts in a language they cannot understand.

**116.** On arrival in destination countries, migrants in many cases find that the jobs and working conditions differ substantially from those set out in their original employment contracts, whether written or oral. A survey of returned migrants in India<sup>32</sup> found that in as many as 12 per cent of cases, employers had insisted on altogether new contracts. The compulsion was highest, at almost one-fifth, in the case of those who had migrated through recruitment agencies. From Pakistan, a survey<sup>33</sup> points to different ways in which new contracts have been signed upon arrival in Gulf destination countries. In the first case, a new contract with clear terms and conditions is prepared for the signature of migrants. In the second case, at the time of the first salary payment, migrants are provided with a contract and additional documents for their signature, but are mostly unaware of the contents. Overall, wage entitlements under the new contracts are estimated to be some 10 per cent lower than in the original contracts signed in Pakistan.

**117.** There have also been extreme cases of fraudulent recruitment, with tragic human consequences. A well-publicized case involved Nepalese workers originally recruited in 2004 on the understanding that they would work as kitchen staff in Jordan. Their passports were taken from them and they were sent to Iraq, where all but one were subsequently kidnapped and murdered. While such cases are exceptional, they represent a clear reason why strong safeguards must be taken against fraudulent practices.

### *Preventing constraint and coercion*

**118.** Coercive practices may begin in the country of origin itself. In certain Asian countries, recruitment agencies have maintained “holding centres” or training camps, where prospective migrants are placed between the time of their recruitment and their deployment abroad. There have been reports of restrictions on freedom of movement for the persons held in such centres, often women preparing for domestic service abroad. In Indonesia for example, migrant domestic workers commonly spend up to six months or more in such holding centres, at

times required to work for minimal or no payment. The agencies, which have incurred their own costs through payment to the informal labour brokers who carried out the initial recruitment, will not be paid themselves until the domestic worker has been placed in employment overseas; they appear to impose such restrictions in order to prevent a loss on their investment.

**119.** In destination countries, information about conditions in practice often remains piecemeal. There have been examples of constraint and coercion, under different kinds of temporary work arrangements. Very often the boundaries between lawful and unlawful practices are difficult to draw, because legally registered agencies can engage in unscrupulous practice on the margins of the law. It is striking, moreover, that so many countries have experienced some degree of problems with their mechanisms and special programmes for importing temporary workers. Even when official schemes are governed by laws and regulations, there have been documented cases of abusive practice by the agencies which provide the workers to employers.

**120.** It can be difficult to identify the exact relationship between those agents who are mainly concerned with recruitment and transport to the destination country, job placement in the destination country, and actual employment of the contracted workers. An independent review of a special visa scheme for temporary migrants, conducted for the Government of Australia in 2008, pointed to some of the dilemmas.<sup>34</sup> It found, for example, that migration agents can charge large fees offshore, often paid offshore, of which an employer may never become aware. It also detected many cases of deception by these agents, such as charging both employers and employees excessive amounts for the renewal of visas which were still valid, and identified other ways in which employers, who may themselves have incurred considerable charges in order to sponsor visa holders, may pass on the costs to the workers by making regular deductions from their wages. In these cases, the review was submitted to a consultative panel comprising representatives from state governments, business and industry groups and trade unions, to advise on future reforms.

**121.** A programme in the United States enables employers to take on foreign workers on short-term temporary visas, when they cannot find national

32. S. Rajan; V. Varghese; M. Jayakumar: *Overseas recruitment practices in India*, Research Unit on International Migration, Centre for Development Studies (CDS), Thiruvananthapuram, Ministry of Overseas Indian Affairs (MOIA), Government of India, 2009.

33. G.M. Arif, op. cit.

34. Visa Subclass 457 Integrity Review, by Ms Barbara Duggan, Ministry for Immigration and Citizenship, Government of Australia, Canberra, Oct. 2008.

workers to perform the available jobs.<sup>35</sup> Employers have made use of private agencies, located in Central America and elsewhere, over whose activities they exercise little if any supervision. In extreme cases, the treatment of these migrants has given rise to lawsuits. In response, draft legislation was introduced before the US Congress in 2007, requiring clear and accurate disclosure of terms of employment to recruited workers, outlawing the charging of recruitment fees to workers, and including effective enforcement provisions.

**122.** Sponsorship schemes confer significant control over the worker on the sponsor who possesses the work visa. One issue has been the illegal trade in these visas, a matter of some concern in the Gulf States, for example. Some employers are directly involved in this business; others outsource their recruitment work to labour placement companies, who in turn sell visas to recruitment agencies located in the sender countries. The costs are thus passed on to prospective migrants through inflated visa charges.

**123.** In any national situation, there is a need for careful assessment as to which aspects of a recruitment and employment relationship have coercive elements. It is overly simplistic to argue that forced labour pervades mainly unlawful activities, while lawful ones are of necessity free from coercion. In China, for example, where payments to recruiting agents are often the highest in the world, much of the literature on Chinese migration emphasizes the strictly voluntary and consensual nature of the process.<sup>36</sup> Despite the large payments resulting in severe indebtedness over a fixed period of time, this is often perceived as a rational choice in which overt coercion plays little if any part.

**124.** It is also important to assess the way in which these debts are customarily repaid. In many cases the migrant workers make the payment to recruiters in cash prior to migration, calling on their own savings, selling property and other assets, and borrowing from family members and others. In other cases, repayment of advances can be made through salary deductions.

**125.** Concerning the average amount of such payments, the manner in which these debts are repaid, and the identity of the beneficiaries of such repayments, some information is available from individual countries. In Indonesia, for example, domestic workers in the holding centres within the country sign documents before departure, indicating their willingness

to have salary deductions paid directly by the employer to the recruitment agency during the first few months of their employment. The repayments can cover debts for a wide range of transaction charges, including: labour broker's commission, accommodation and consumption in the holding centre, training, medical tests, passports and identity documents, recommendations from the Manpower Office, supply of work contract, tax exemption handling services, insurance, administration of tickets before departure, and associated fees. The deductions vary in accordance with a domestic worker's qualifications and expected salary. In the case of first-time and less well qualified workers, as much as 90 per cent of the salary can be deducted during the first five months of overseas employment, to cover agency fees. Moreover, in cases where the recruitment agencies receive advance payments from prospective employers as well as the migrants, it is common practice for employers to pass on these charges to the domestic workers through further deductions from their salaries.

**126.** In further work on these issues, it is important to build a more systematic understanding of the range of fees charged by both administrative bodies and private recruiters; their relation to anticipated earnings, including the minimum wage; the means by which these are repaid, including through deductions from salaries; and the way in which governments monitor such processes in order to provide safeguards against abuse.

### *Future challenges*

**127.** There is growing awareness that many present-day arrangements for recruiting temporary workers display serious deficiencies. In part, these derive from loopholes in the existing labour laws, which fail to articulate the respective responsibilities of recruiting agents and final employers in providing safeguards against abusive practices including forced labour. There are also many cases where detailed regulations on fee charging are simply not enforced and workers can, in practice, find themselves paying ten times or more the maximum amount provided for in national laws and regulations.

**128.** There has been some law enforcement against fraudulent or abusive practices, and calls for stronger enforcement. In most cases, however, greater clarity

35. The H-2 programme, introduced in 1986, has two components, namely the H-2A agricultural programme and the H-2B non-agricultural programme. The workers come predominantly from Mexico, followed by Guatemala and Jamaica.

36. See, for example, S.X. Zhang: *Chinese human smuggling operations: Families, social networks and cultural imperatives*, Palo Alto, CA, Stanford University Press, 2008.

is needed regarding the situation under national law before the law can be enforced more vigorously.

**129.** Criminal law enforcement, with the application of severe penalties, may be necessary in the most serious cases. However, before drafting laws and seeking their vigorous enforcement, it is essential to generate consensus on acceptable practices, through consultation between governments and representatives of employers' and workers' organizations. These are crucial, if difficult, challenges for the social partners, which seek not only to prevent forced labour in business operations and supply chains, but also to contribute to a regulatory framework that reconciles business efficiency with the protection of fundamental workers' and human rights.

**130.** The ILO standards on forced labour can provide certain indicators, to guide both policy and law enforcement. Most recently in 2007, the ILO Committee of Experts clarified its position on the indirect coercion to which migrant workers particularly can be subjected.<sup>37</sup> In some of the cases mentioned above, there has been unambiguous coercion. But this is usually not the case. The global picture seems to be one of a variety of agents using creative strategies, often acting on the margins of the law, in order to extract large amounts of money from a vulnerable workforce.

**131.** Whether individual cases amount to the penal offence of forced labour can only be determined through national prosecutions and court decisions, once some legal framework is in place to capture these cases of abuse. These questions are taken up in the following chapter, which examines the respective roles of criminal and labour justice.

**132.** The way forward is to negotiate the appropriate policy response, possibly including new regulations and monitoring arrangements, through tripartite social dialogue. It was social dialogue in the United Kingdom, for example, that led to consensus between different stakeholders on the need to license "gangmasters" in the agriculture and shell-fishing sectors. The recent Australian initiative, to create a tripartite consultative panel on its temporary worker visa programme, has also been highlighted above. At the more global level, there has also been important dialogue between employers and unions. In November 2008, the Union Network International (UNI) global union and CIETT corporate members – including such major companies as Adecco,

Kelly Services and Manpower – launched a global social dialogue to achieve fair conditions for the temporary work agency industry, inter alia to prevent unfair competition by fraudulent agencies and fight human trafficking. Both parties expressed support for the establishment of an appropriate regulatory framework for the industry.

**133.** Informed policy dialogue of this kind, backed by rigorous assessment of both the way in which these contract labour systems operate in practice and also the view of all parties to the employment relationship, will prepare the ground for better overall guidance on such contentious issues as excessive fee charging, which are at the heart of so many of the problems facing vulnerable workers today.

### *Seafarers and fishers*

**134.** More evidence is coming to light that seafarers and fishers can be at particular risk of forced labour and trafficking. In December 2007, an academic publication in Italy was devoted to the "Forced labourers of the sea", focusing on the situation of vulnerable groups that have so far escaped systematic attention.<sup>38</sup> The isolation and confined circumstances of this group of workers, together with frequent difficulties in identifying legal liabilities towards crews, can make them particularly vulnerable.

**135.** There are reported cases where deception was used, and the non-payment of wages has been deliberate practice. In one such case, reported by the ITUC and the International Transport Workers' Federation (ITF), a Filipino went unpaid for several months after contacting the union. Later investigations suggested that, whereas the original owners claimed to have sold the ship to another company which refused to cooperate with the ITF, there may in fact have been no genuine change of ownership. This is a case of deliberate deception, in which the owner had no intention of paying the wages due.

**136.** There have been ample reports of forced labour practices involving physical confinement in the fishing industry of Asian countries, notably in Thailand. The ITUC has furnished extensive information on behalf of its affiliate, the Seafarers' Union of Burma (SUB), several of whose members have reported forced labour practices on Thai fishing

37. As explained by the Committee of Experts, an external constraint or indirect coercion, interfering with a worker's freedom and voluntary offer, may result not only from an act of the authorities, such as a statutory instrument, but also from an employer's practice. Examples are "where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer"; such practices represent a clear violation of the forced labour Convention (2007 General Survey, para. 39).

38. V. Zanin: *I Forzati del Mare*, Rome, Carocci editore, 2007.



trawler boats. A United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP) has similarly portrayed this situation as one of human trafficking.<sup>39</sup> Testimonies have pointed to deceptive practices, either in Myanmar or among the Burmese migrant community in Thailand, in which recruitment is followed by limitations on freedom of movement, through physical confinement in guarded premises. Passport pictures are taken and false identity documents prepared, presenting the Burmese recruits as Thai nationals. Given that different names appear on the register, this practice would later enable boat owners to deny that these persons had been employed. Commissions to recruiting agents, subsequently deducted from wages, can be as much as three times the amount originally agreed.

**137.** A 2007 study by the US-based Solidarity Center<sup>40</sup> suggests that Thai nationals from rural areas can also be trafficked into forced labour in the fishing industry. The report, citing government sources, claims that over 10,000 workers may be trapped on these fishing trawlers.<sup>41</sup> In an extreme case documented by the ITF,<sup>42</sup> 39 Burmese fishers starved to death after being left without food and water for over two months.

**138.** There have been similar reports of coercion on fishing boats in European waters. The ITF cites a case of Indonesian fishers, who each paid a US\$500 fee to a recruiting agency to work on a Spanish-owned vessel and then received less than one-third of the wages originally offered.<sup>43</sup> Anecdotal reports of this kind suggest that more systematic research is now required on the mechanisms for recruiting and placing seafarers throughout the world, including restrictions in practice on their right to leave the vessels, and the charges or penalties which may be incurred if they seek to leave the vessel after experiencing deception and abusive employment practices.

### Domestic workers

**139.** Domestic workers, predominantly women, are another group at particular risk of forced labour because of their isolated circumstances within private

homes, and also because in many cases they are not protected by national labour law. While migrant domestic workers can be most vulnerable, often being thousands of miles away from their home communities and networks, these workers can of course also be exposed to forced labour within their own countries. In March 2008, the ILO Governing Body took a landmark decision to place the subject of decent work for domestic workers on the agenda of the 2010 session of its Conference. In the lead-up to these discussions, some of the circumstances in which domestic workers can be exposed to forced labour are reviewed below, as well as recent examples of remedial action in both law and practice.

**140.** In its 2007 Global Report on the elimination of discrimination at work, the ILO highlighted the “double burden” on women migrant workers, especially domestic workers. While recognizing that working conditions vary enormously, it pointed out that these workers are “particularly vulnerable to discrimination, exploitation and abuse of all kinds, including harassment, violence by employers and coercion by employment agencies, forced labour, low wages and inadequate social coverage”.<sup>44</sup> An NGO publication in 2006 provided a broad overview of abusive practices, including forced labour and trafficking, suffered by domestic workers. Drawing in part on ILO research, the report is based on case studies from countries in Africa, Asia, Latin America and the Middle East, as well as the United States.<sup>45</sup> Findings are divided into: principal criminal abuses common to all domestic workers; principal labour abuses common to all domestic workers and exclusion from labour law; and specific concerns of child domestic workers and migrant workers, respectively. The criminal abuses are listed as psychological and physical abuse, food deprivation, and sexual harassment and assault. The labour abuses linked to exclusion from labour law include wage exploitation (such as unpaid wages, the withholding of wages and lack of overtime pay), long hours and heavy workloads, inadequacy of rest days, health care and maternity leave, poor living conditions, and issues related to termination of contracts. Some useful recommendations are made for labour ministries, complementing those on criminal law enforcement. They could, for

39. *ibid.*, p. 1.

40. *Justice for all*, Solidarity Center, Thailand, Dec. 2007, p. 109.

41. *ibid.*

42. ITF: *Seafarers' Bulletin*, No. 22/2008.

43. *ibid.*

44. ILO: *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2007, p. 31.

45. Human Rights Watch: *Swept under the rug: Abuses against domestic workers around the world*, July 2006.

example: gather data on domestic workers in labour force surveys, including data on labour complaints and criminal cases involving domestic workers; create and publicize accessible complaints mechanisms for domestic workers; extend the powers of labour inspectors to investigate conditions of employment for domestic workers in private premises; and enact regulations to monitor labour recruitment practices and training centres, providing sanctions for those who commit abuses.

**141.** There have, however, also been examples of good practice, as governments become more aware of the need to protect their domestic workers from the worst forms of abuse. In Latin America, labour inspectors in Argentina and Uruguay have been given the power to enter private premises. In Bolivia and Peru, specific laws have been adopted on domestic work. In Asia, labour laws in Hong Kong (China) provide for the protection of domestic workers, while Singapore has increased the criminal penalties for certain offences if they are committed against domestic workers. The Philippines has taken measures to safeguard the rights of its domestic workers employed abroad, for example through a standard contract that includes a weekly rest day, and regulations which require employers to pay most recruitment and placement charges.

**142.** Nevertheless, evidence of highly abusive practices continues to emerge in all regions of the world. In Europe, civil society support groups have given special attention to domestic workers, particularly migrants. France's Committee against Modern Slavery (CCEM) has provided legal assistance and social support to migrant domestics, both girls and women. In the United Kingdom, the NGO Kalayaan has co-operated with the Trades Union Congress (TUC) to provide similar advocacy and support services to migrant domestic workers, also documenting cases of abuse. In 2006, based on the statements of some 250 persons registered with it, Kalayaan estimated that 70 per cent of domestic workers had no free time, 62 per cent were not allowed out of the house, 26 per cent had experienced physical abuse and 72 per cent, psychological abuse.<sup>46</sup>

**143.** In the Middle East and the Gulf States, a United Nations Special Rapporteur on human trafficking has given specific consideration to the situation of domestic workers. A visit to three Gulf States

in November 2006 identified many of the abusive practices referred to above, including: confiscation of passports and other identity documents, restrictions on freedom of movement, denial of leave, non-payment of wages and overtime work, and long working hours. There has also been a policy response in this region, with Jordan setting up a special hotline for migrant domestic workers, and the United Arab Emirates providing for, inter alia, criminal sanctions against sponsors who abuse their position with regard to domestic servants. In the United States, too, many of the recent forced labour prosecutions have involved the abuse of domestic workers.

**144.** As the ILO focuses its attention on the protection of domestic workers worldwide, it can draw on the lessons of its own operational work. For several years, a project in South-East Asia combating forced labour and trafficking of Indonesian migrant domestic workers has blended work on the policy and legislative frameworks, awareness raising and advocacy, with outreach and reintegration services. A key aspect has been to combine capacity building in Indonesia with parallel interventions in the destination countries of Hong Kong (China), Malaysia, Singapore and China. The project has provided key support for new legislative and regulatory frameworks, as well as local ordinances. It has also stimulated outreach by trade unions and other support groups to Indonesian domestic workers in the Asian destination countries.

### The economics of forced labour: Measuring the costs of coercion

**145.** Our last Global Report estimated at US\$31.7 billion the total illicit profits produced in one year by trafficked forced labourers.<sup>47</sup> Further ILO research at that time indicated that, worldwide, total illegal profits made from the 8.1 million forced labourers in economic exploitation, outside the sex industry, reached US\$10.4 billion.<sup>48</sup> It is equally important to address this question from a different angle. What, in addition to human suffering, are the financial costs of coercion to the people who work in forced labour situations? In other words, how much money is "stolen" from people in forced labour? Answering these questions requires some estimate of the

46. Kalayaan and OXFAM: *The new bonded labour: The impact of proposed changes to the UK immigration system on migrant domestic workers*, June 2008.

47. ILO: *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report 1B, ILC, 93rd Session, Geneva, 2005.

48. P. Belser: *Forced labour and trafficking: Estimating the profits*, ILO, Special Action Programme to Combat Forced Labour, ILO DECLARATION Working Paper No. 42, Mar. 2005.

### Box 2.7 Estimating the costs of coercion: The methodology

In the absence of reliable new regional estimates of forced labour since then, the number of victims in this estimate is derived from the data presented in the 2005 Global Report, adding the number of victims of forced economic exploitation, together with half the number of victims of mixed or undetermined forms of exploitation.

The underpayment of wages in a given region is estimated as the sum of the underpayment of wages for the main sectors of activity where forced labour is considered likely to occur, namely agriculture, industry and services. For each sector, underpayment is defined as the difference between the share of total value added of the sector accounted for by labour, and overall employment costs. Dividing this figure by the number of workers in the given sector, we can calculate the amount of underpayment per worker. As the economic data on value added and employment costs are available at the national level, the regional figures were calculated on the basis of two or three countries for each region.

We then assume that the distribution of forced labour in the three sectors of activity in the region can be extrapolated from the overall distribution of workers in the selected countries. The regional figures for underpayment of wages in each sector are calculated by multiplying the underpayment of wages per worker in each sector by the number of victims of forced labour in the given sector and region.

This method is based on four basic hypotheses:

- A regional estimate can be derived from an extrapolation of national figures from a selected number of countries in the region.
- In each selected country, the distribution of victims of forced labour in the various sectors of activity can be derived from the distribution of the total employed labour force.
- The share of labour in production varied from one-third to as much as 90 per cent, depending on the region and the sector of activity.
- In each selected country, the labour cost per worker in forced labour is taken to be equal to 80 per cent of the minimum wage of the country. This percentage is based on a series of case studies which indicate that forced labourers receive less than the legal minimum wage.

All of the above assumptions can be tested and refined in further research, leading to more precise data in the future.

“opportunity cost” of being in forced labour, namely the income lost through being in forced labour rather than in a free employment relationship.

**146.** The subject has, with rare exceptions, escaped attention in the literature on forced labour and trafficking. ILO research over the past few years suggests that the loss of income associated with coercion can be traced to two main sources. The first is the underpayment of wages. Indeed, it can be argued that economic exploitation is the main reason why some employers use coercion. In most cases, people in forced labour receive wages lower than the market rate, in some cases less than the subsistence minimum. People in forced labour often receive wages net of some artificial deductions imposed in a discretionary way by their employer. For example, victims may be overcharged for the cost of their accommodation – a cost which is often directly deducted from the victims’ nominal wage. Workers in bonded labour, who repay a loan through their work, may face deductions for food or housing, on

which employers charge a substantial premium over the market price. These deductions all contribute to further reducing the net payments received by people in forced labour.

**147.** Underpayment of wages includes forced overtime and other forms of “excessive work” which are not adequately remunerated. Forced labourers typically work longer days and longer weeks than free workers, sometimes up to 16 hours a day for seven days a week. This overtime is not remunerated at a higher rate than regular working hours; at best forced labourers receive their usual hourly wage. In addition to the longer working hours, the “excessive work” sometimes includes the work of family members, such as wives and children who contribute to the production of goods and services but receive no payment. All these forms of unpaid or underpaid “excessive work” should be taken into account when estimating the total cost of coercion.

**148.** The second source of lost income, which arises mainly in cases of human trafficking, is the financial

**Table 2.2. Estimating the total cost of coercion (in US\$)**

	Number of victims in forced labour exploitation	Number of victims trafficked	Total underpayment of wages	Total recruiting fees	Total cost of coercion
Industrialized economies	113 000	74 133	2 508 368 218	400 270 777	2 908 638 995
Transition economies	61 500	59 096	648 682 323	42 675 823	691 358 145
Asia and the Pacific	6 181 000	408 969	8 897 581 909	142 855 489	9 040 437 398
Latin America and Caribbean	995 500	217 470	3 390 199 770	212 396 124	3 602 595 894
Sub-Saharan Africa	537 500	112 444	1 494 276 640	16 994 438	1 511 271 079
Middle East and North Africa	229 000	203 029	2 658 911 483	551 719 286	3 210 630 769
<b>Total</b>	<b>8 117 500</b>	<b>1 075 141</b>	<b>19 598 020 343</b>	<b>1 366 911 936</b>	<b>20 964 932 279</b>

Note: Calculations exclude victims of forced commercial sexual exploitation.

costs associated with the recruitment process. Migrant workers trafficked into forced labour often incur a series of costs linked to their recruitment, including payments to a recruitment agency or a broker, funding a particular type of training necessary for being eligible for admission to the destination country, acquiring language skills, or payment for the visa and transportation. While all types of migrant workers incur such recruitment costs, our research points to a positive relationship between the amount spent during the recruitment process and the probability of becoming a victim of forced labour.

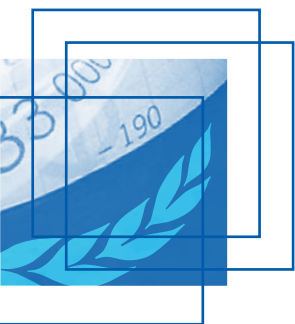
**149.** Can the global cost of coercion be estimated? At present, the data are still relatively scarce and much more research is needed in this area to obtain a precise and robust idea of the magnitude of the cost of coercion. Some benchmark figures can nevertheless be calculated, excluding victims of forced commercial sexual exploitation but covering the other economic sectors where the incidence of forced labour has been most widely documented. On the basis of available information, we estimate that the total amount of unpaid wages to people in forced labour amounts to

approximately US\$19.6 billion. The regional breakdown is shown in table 2.2 (column 3). The figures are obtained by multiplying the total number of victims (in column 1) by the estimated average underpayment of wages in different sectors (agriculture, manufacturing, construction and services). The latter, in turn, is estimated as the difference between the actual wage payments made to forced labourers and an estimate of what they should have been paid in light of figures of labour productivity in those sectors.

**150.** In addition, trafficked victims have been observed to pay recruitment costs which vary from US\$150 in poor regions to an average of more than US\$5,000 for securing a job in industrial countries (while in extreme cases the payments can be more than ten times this amount). When multiplied by the number of trafficking victims in each region (column 2), this represents a global sum of more than US\$1.4 billion. When added to the lost income due to unpaid wages, we estimate that the total cost of coercion to workers amounts to a benchmark figure of about US\$21 billion.







## Chapter 3

# National action against forced labour: The role of governments

### Introduction

**151.** This chapter is concerned with the role of governments in leading and coordinating national action against forced labour. First, it discusses basic approaches to guide this action, as reflected in national laws and policies. Second, it looks at the institutional mechanisms for implementing these laws and policies, reviewing some recent experience with law enforcement against forced labour and human trafficking. Third, it discusses national action plans and, finally, it addresses the particular role that can be played by labour institutions, including labour inspection and labour administration more generally, in strengthening state action against forced labour.

**152.** In presenting the recent national experience, some basic dilemmas should be recognized. As forced labour and trafficking are serious crimes, it is reasonable to assume that government action against them, at least as regards prosecution, should be led by criminal justice. At the same time there has been growing recognition that labour actors can be an important part of the law and policy response, whether for prosecution of offenders, the protection of actual or potential victims, or other preventive measures which may address the root causes of forced labour. In some countries and jurisdictions, labour inspection is an integral part of criminal law enforcement, seeking the application of criminal sanctions against offenders. In other cases, labour justice is separate from criminal justice, applying sanctions other than criminal penalties. On the one hand, labour inspectors can be motivated mainly by the concern to secure fair living and working conditions for workers, perhaps including compensation for any wrong suffered. On the other hand, they also have the power to apply sanctions against abusive employers, including fines or, in extreme cases, the closure of enterprises. There

are also cases, such as in Italy, where special combined units of the police and labour inspection have the powers to apply criminal, labour or other administrative sanctions, depending on the circumstances.

**153.** One thing is certain. As law and policy-makers have woken up to the risk of labour exploitation, including forced labour, in the private economy, sometimes affecting workers within the national territory and at other times those who migrate under precarious conditions overseas, there has been a rich and varied policy response with regard to both law-making and implementation mechanisms. These responses have often been driven by the global momentum against human trafficking, although, particularly in developing countries, they have also been motivated by the need to adapt the legal concept of forced labour to capture new forms of coercion during a time of economic transition.

### Approaches to law and policy-making on forced labour

**154.** Almost all countries now prohibit forced labour, in either their constitutional, criminal, labour or other administrative law. This is to be expected, given that the ILO's two Conventions on forced labour are now almost universally ratified. Some countries may not make explicit reference to "forced labour" as such, but may use other terms that capture its essence. Debates have nevertheless arisen over certain issues. One has been the relative gravity of offences, when forced labour has been covered in both criminal and labour law. Another has been whether or not substandard working conditions, as well as coercion, should be considered an essential feature of the offence of human trafficking, for labour as well as sexual exploitation.



**155.** In many countries the recent impetus has been the new laws against human trafficking, following the entry into force of the Palermo Protocol on trafficking. In some cases the specific offence of forced labour has been covered under such anti-trafficking legislation. One example is the 2000 anti-trafficking legislation in the United States, as amended in 2005 and 2008, which introduced a statute on forced labour, paving the way for a steady growth of prosecutions for forced labour in recent years.<sup>1</sup> In other cases, the conceptual entry point for defining the criminal offence of human trafficking may not be coercion in the sense of the ILO's instruments on forced labour. In Belgium and France, the offence of trafficking involves the imposition of living and working conditions considered "contrary to human dignity". In Germany, in the Penal Code as amended in 2005, the new offence of trafficking for labour exploitation includes the concepts of slavery-like conditions and debt bondage. The new article is applicable only to foreigners; and one criterion for the offence of trafficking for labour exploitation is the payment of wages markedly less than those paid to German nationals.

**156.** Other legislative approaches have mixed the concepts of coercion, on the one hand, and degrading conditions, on the other. An example of this can be found in Brazil, where a 2003 amendment to the Penal Code established the offence of "imposing upon a person a condition similar to that of slavery". This covers such actions as subjecting a person to forced labour or to arduous and degrading working conditions, or restricting mobility by reason of a debt contracted in respect of employers or their representatives. Any persons who retain workers at the workplace either by preventing them from using means of transportation, retaining their papers or property, or by maintaining manifest surveillance, are also liable to a prison sentence.

**157.** In other cases, debates have arisen over advance payments, and the circumstances in which these can give rise to debt bondage and forced labour. In South Asian countries such as India and Pakistan, there is very detailed legislation against "bonded labour", together with regulations and procedural guidelines for detecting its incidence. But there appear to have been very few prosecutions, despite beliefs that the incidence of bonded labour may be quite widespread in different economic sectors. Thus, attention has recently turned to the need to

clarify the difference between incontestably coercive arrangements which merit punishment by law, and systems of loans and wage advances which are based on consensus between both parties to an employment relationship.

**158.** China addresses different aspects of forced labour in both its criminal and labour legislation. The 1994 Labour Law explicitly prohibits forced labour by use of violence, threats, illegal confinement and deprivation of personal freedom. The Criminal Code, as amended in 2006, provides for penalties for those persons who force others to undertake hazardous work. This is further complemented by the 2008 Labour Contract Law, through several provisions which prohibit forced overtime, confiscation of identity documents, and debt bondage. When the consequences of forced labour are serious for workers, offenders will receive severe penalties under the Criminal Code including up to three years' imprisonment, and up to ten years when workers are forced into dangerous working conditions.

**159.** In other cases there has been a tendency by legislators to provide for a gradation of offences, with "exploitation" perhaps at the lesser end, forced labour in the middle, and slavery as the most extreme. In parts of Africa, slavery has been singled out as the most severe criminal offence. In Zambia, a person who trades, receives or detains a person as a slave is guilty of a felony and liable to imprisonment for seven years,<sup>2</sup> whereas a person who unlawfully compels any person into forced labour is guilty of a misdemeanour.<sup>3</sup> Furthermore, the Penal Code was amended in 2005 to provide for a minimum penalty of 20 years' imprisonment for the criminal offence of trafficking. Both Mauritania and Niger, which have long recognized the need to deal with the vestiges of slavery, have adopted new laws against slavery in recent years. In August 2007, Mauritania adopted a new law to define and criminalize slavery, which entered into force in early 2008. The new Labour Code, which entered into force in 2004, already provided for a general prohibition of forced labour. In Niger, the Penal Code was amended in 2003 to include a provision which criminalizes slavery, carrying a severe prison sentence. While forced labour is also prohibited in the Labour Code, the penalty for the offence is small.

**160.** Israel's new anti-trafficking law, adopted by the Knesset in October 2006, is conceptually based on the notion of different crimes of increasing degrees

1. Victims of Trafficking and Violence Protection Act of 2000, section 1589.

2. Section 261 of the Penal Code.

3. Section 263 of the Penal Code.



of gravity, to address “gradations in exploitation”.<sup>4</sup> As explained by the Ministry of Justice, it reflects the attitude that exploitation, even when it does not amount to trafficking or slavery, may still create a climate conducive to the development of such severe forms of exploitation. As regards trafficking for the purpose of slavery or forced labour, the law thus distinguishes between several different offences. The most serious is trafficking in persons for a wide array of purposes, including slavery and forced labour, carrying a maximum penalty of 16 years’ imprisonment, or 20 years if committed against a minor. The specific offence of “forced labour”, carrying lesser penalties, is seen to cover situations of “lesser exploitation than slavery or trafficking”. The new law also penalizes such acts as the withholding of passports.

**161.** In Europe, careful consideration was given to the linkages between forced labour and the concept of exploitation by the Dutch National Rapporteur on Trafficking in Human Beings, in a report issued in 2007.<sup>5</sup> For the first time, this report examined the question of exploitation in sectors other than the sex industry, including the methodological challenges involved. Trafficking for labour exploitation outside the sex industry has been a criminal offence in the Netherlands since January 2005. However, the legislation does not provide a dividing line between “bad employment and slavery-like situations”, and it is entrusted to the judiciary to further define the concept of labour exploitation. The concept of exploitation applied by the Dutch National Rapporteur’s office is based on the combination of a lack of freedom, as a constant factor, and at least one of three other practices, which are taken as indicators of forced labour or service: force, misuse of authority or abuse of vulnerability; bad working conditions; and multiple dependencies on the employer. When assessing a situation, all particulars of the case such as the duration, the degree of organization and the age of the victim must be taken into consideration.

**162.** In summary, and as seen in the discussion of concepts in Chapter 1, legislators are having to grapple with a range of concerns that involve differing degrees of loss of freedom, together at times with severe abuse or exploitation, in the employment relationship. The emerging laws, whether under the umbrella of forced labour or of human trafficking, are concerned in particular with the risk of abusive practices in the private economy. It is arguably in the developing countries, where there is limited labour

protection in industries and enterprises located in remote areas, that the law has to respond to more extreme situations of violence and exploitation. In industrialized countries, legislators may have to address more subtle, less overt forms of exploitation. In all parts of the world, however, there are important debates concerning the boundaries between coercive and non-coercive forms of exploitation, “gradations of exploitation”, and the means to address them through criminal or labour law, or a mixture of both.

**163.** Finally, more countries are becoming aware of the need to provide special laws to protect their workers who migrate overseas from abusive practices, including forced labour. A 2004 Indonesian Act on the protection of its overseas workers, explicitly motivated by the fact that these workers have frequently been the victims of forced labour and trafficking, provides for severe criminal penalties for placing such workers in situations defined broadly as “opposed to human values and norms of law”.<sup>6</sup> In 2007, Nepal similarly amended its Foreign Employment Act to provide greater protection for its overseas workers, establishing criminal penalties for a range of offences including excessive fee charging.

#### Prosecutions and law enforcement against forced labour

**164.** Reliable information concerning prosecution of forced labour at the national level remains difficult to obtain. Very few States publish statistical data on this. At the global level, the US State Department’s “Trafficking in Persons” report for 2007 indicated for the first time the number of total prosecutions and convictions that relate to labour as opposed to sex trafficking (490 prosecutions and 326 convictions, out of a total of 5,682 prosecutions and 3,427 convictions for all cases of trafficking).

**165.** The Government of Brazil has regularly provided information concerning persons freed from forced labour situations. In 2006, the Ministry of Labour and Employment released 3,266 individuals from employment conditions tantamount to forced labour, through more than a hundred operations conducted by the Ministry’s special mobile inspection groups, typically on remote rural properties in the north of the country. Employers found to have been responsible for forced labour are both liable to criminal prosecution and legally obliged to compensate

4. Prohibition of Trafficking in Persons (Legislative Amendments) Law, 5766-2006, 19 Oct. 2006.

5. Fifth Report of the Dutch National Rapporteur, op. cit.

6. Act of the Republic of Indonesia, No. 39, 2004, concerning placement and protection of Indonesian workers abroad.

employees for unpaid work.<sup>7</sup> For 2007, the Ministry announced a new record of just under 6,000 persons released in that year alone, and a total of more than 30,000 releases since the mobile inspection groups commenced their activities in 1995. By mid-2008 there were seven mobile inspection teams at the national level, comprising labour inspectors and labour prosecutors, together with federal police officers to ensure the safety of the team. In the first six months of 2008, they inspected 96 separate rural properties in usually remote areas, releasing 2,269 victims of “slave labour” in 14 separate states.<sup>8</sup>

**166.** Despite the significant number of identified cases and releases, there have been almost no forced labour convictions in Brazil under criminal justice. The main weapons at the disposal of labour prosecutors are the imposition of fines on offenders, and the order to pay compensation to victims. The compensation payments imposed by labour courts have been increased in recent times, to act as a serious deterrent. The largest fine, imposed in 2006 on a landowner from whose property 180 persons were released from “slave labour”, amounted to 5 million Brazilian reais (approximately US\$3 million). Only one criminal conviction is known to have involved a prison sentence. In May 2008, the Federal Court of Maranhao imposed a 14-year prison sentence on Gilberto Andrade, including 11 years for the offence of reducing a person to slavery-like conditions. He was also ordered to pay 7.2 million reais as arrears of wages to the workers.

**167.** Elsewhere there have been examples of coordinated action by different law enforcement agencies in response to high-profile forced labour cases. An example was the interventions in Shanxi and Henan provinces of China, in May and June 2007, involving serious forced labour cases in brick kilns. An investigation team was swiftly set up – comprising the Ministries of Labour and Public Security, as well as the All-China Federation of Trade Unions (ACFTU) – to investigate the alleged abuses. The State Administration of Work Safety (SAWS) was also involved in subsequent inspections. The Chinese media later reported that a total of 1,340 people had been rescued since the forced labour scandal first came to light.

**168.** The United States has seen a steady growth of criminal prosecutions against trafficking, including

for forced labour. An important measure was the creation, in January 2007, of the Human Trafficking Prosecution Unit within the Criminal Section of the Civil Rights Division of the Department of Justice. The year 2007 saw a record number of convictions in a single year since the Trafficking Victims Protection Act was first enacted in 2000. The 103 convictions included 17 for labour trafficking and 86 for sex trafficking. Those sentenced to imprisonment received an average sentence of over 11 years, while convicted traffickers were also ordered to forfeit nearly US\$2 million in assets and to pay restitution awards of over US\$3 million.<sup>9</sup>

**169.** In August 2008 two US Appellate Court decisions on forced labour cases, both covering domestic servitude, appeared to set a trend towards stronger judicial action. In the first case, the US Court of Appeals for the Seventh Circuit<sup>10</sup> affirmed the earlier convictions of two doctors for holding their domestic servant in forced labour. The court ruled that abuse of the law by threatening deportation was a method of violating the forced labour statute, even when such deportation would be legally permissible. Such actions as withholding the domestic servant's passport, giving vague warnings to the victim that she might be reported to the deportation authorities, and false statements that they were the only persons who could legally employ her, were all found as sufficient evidence to uphold a forced labour conviction. In the second case, the US Court of Appeals for the Sixth Circuit similarly upheld a conviction of a man who had forced a young girl into domestic servitude through assaults and beatings.<sup>11</sup>

**170.** In India, the Government has indicated that it gives priority to the identification, release and rehabilitation of bonded labour. According to official statistics, as of mid-2008, 5,893 prosecutions and 1,289 convictions had been reported by the states under the 1976 Bonded Labour System (Abolition) Act.<sup>12</sup> Since 1997 India's Supreme Court has vested responsibility for monitoring the implementation of the 1976 Act in the National Human Rights Commission, which has since reviewed the situation in a number of states. For example, in Uttar Pradesh, a review by the Commission's Special Rapporteur in September 2005 focused on the carpet-weaving belt, and provided some useful data on law enforcement. During the period

7. Press release from Embassy of Brazil in London, 9 Jan. 2007.

8. According to the Pastoral Land Commission, an NGO of the Brazilian Catholic Church, 58 per cent of these cases were on cattle-raising estates, followed by 11 per cent in sugar cane and 11 per cent in other crops.

9. Attorney General's Annual Report to Congress, May 2008.

10. *US v. Calimlim*, decided 15 Aug. 2008. The Seventh Circuit has authority over the federal states of Illinois, Indiana and Wisconsin.

11. Case No. 07-1740, decided and filed, 20 Aug. 2008.

12. Statement by the representative of the Government of India to the International Labour Conference, Geneva, June 2008.

1996–2006, a total of 2,778 bonded labourers were identified and released across the state and rehabilitation was being actively pursued. Two hundred and thirty-one prosecutions had been launched up to mid-June 2005, but only six cases had been decided to that date and all had ended in acquittal.

**171.** In Pakistan, where 1992 legislation provides for a sentence of up to five years' imprisonment for the exaction of bonded labour, judicial action has been used more to secure the release of bonded labourers than to pursue the offenders. It was recently estimated that 8,530 bonded labourers have been released over the past 17 years, 563 of these by the Government, 722 through joint action by the judiciary and civil society groups, and the remainder through escape, often with the assistance of NGOs. According to the report of the National Human Rights Commission of Pakistan for 2007, in January of that year, the Rawalpindi Bench of the Lahore High Court ordered the release of 39 bonded labourers from a brick kiln. The Commission also reported cases where peasant farmers and their children escaped from private detention centres on landowners' properties. In a further case, the Hyderabad circuit bench of the Sindh High Court registered a case against nine brick kiln owners for keeping workers in bondage and inhuman treatment.

**172.** Overall, in South Asia effective law enforcement against bonded labour remains a major challenge. Bonded labourers clearly face many obstacles in getting their cases heard before the courts, including their often illiterate status and lack of the knowledge of either the law itself or of their means to access justice. However, lack of a clear consensus on the nature and incidence of bonded labour is also a key issue.

**173.** In several other countries there has been a trend of increased prosecution of trafficking offences, covering both labour and sexual exploitation. The Russian Federation, for example, amended article 127 of its Criminal Code in 2003 to prohibit trafficking for both commercial sexual exploitation and forced labour. In 2007, police conducted 139 trafficking investigations, 35 of which were forced labour cases. Forty-six traffickers are estimated to have been convicted in 2007, representing a steady upward trend in both prosecutions and convictions since the Criminal Code was amended. In Ukraine, the Interior Ministry has reported that the number of prosecutions for labour trafficking increased from three in 2006 to 23 in 2007. A similar increase in prosecutions, covering both sex and labour trafficking, has

also been noted in several countries of Central and Eastern Europe.

**174.** Overall, available information suggests that successful prosecution of individual forced labour cases is most likely under the criminal offence of trafficking for either labour or sexual exploitation. Moreover, effective enforcement is most likely when a particular unit has been established within a law enforcement agency, endowed with adequate resources, and with a specific mandate to investigate and prosecute such cases. This was the case of the Human Trafficking Prosecution Unit established in the United States in 2007.

**175.** This is also the case in Ukraine, where human resources to combat trafficking have been strengthened considerably, and specialist training has also been provided for members of the judiciary. By 2008, 30 anti-trafficking officers were employed by the Anti-Trafficking Department of Ukraine's Ministry of Internal Affairs, with similar units existing at the *oblast* (administrative district) and precinct levels, making a total of over 600 anti-trafficking officers in all. Specialist training on human trafficking is also provided for members of the security service, and for judges as part of their normal training curriculum.

**176.** Regional courts can play an important role, if national courts do not recognize the severity of forced labour. A 2008 judgement of the ECOWAS Court of Justice ordered the Government of Niger to pay compensation to a former "slave" sold to her "master" at the age of 12 and made to work for almost ten years. Slavery was made a penal offence in 2003 but national courts did not recognize the right of the plaintiff to be free from her "master" and to marry another man. Similarly, the European Court of Human Rights (ECHR) overturned the ruling of a French national court for failing to recognize the severity of domestic servitude in *Affaire Siliadin v. France*. The court also noted that the French law had failed to recognize the victim's grievances and that penal code provisions were too ambiguous to effectively protect persons from forced labour abuses under Article 4 of the European Convention on Human Rights.<sup>13</sup> In both examples, NGOs helped to bring the cases to court.

**177.** Judicial action has also been taken through such special mechanisms as the United Kingdom's Gangmaster Licensing Authority (GLA). While the GLA's main instrument has been the revocation of licences, in serious cases it has also been able to instigate criminal prosecutions. The first sentence

13. See *Affaire Siliadin v. France*, European Court of Human Rights, Requête No. 73316/01 (2005).

for contravening the Gangmasters (Licensing) Act 2004 was passed by a Scottish court in May 2008, involving a relatively small penalty for the offence of operating without a gangmaster's licence. In the same month, GLA officers investigated a more serious case, involving mainly Polish flower pickers who had reportedly been informed that they could not leave before the end of their contract without paying a substantial sum of money, and had also had threats issued against family members back home. In the context of continuing reports of abuse, the GLA has since escalated its activities, launching an 18-month programme of targeted enforcement in June 2008 through its "Operation Ajax" of surprise raids throughout the United Kingdom. The GLA is thus a model of targeted interventions with a mixed law enforcement response, drawing ever more attention to abuses that have previously remained hidden, with the option of applying criminal justice in the most serious cases.

**178.** International cooperation can be key to successful prosecutions, in particular with regard to cross-border trafficking cases. In one case first prosecuted in 2006, Polish workers had been recruited under false pretences for agricultural work in the Apulia province of southern Italy. The farm workers were housed in squalid conditions and had to work for next to nothing under the eyes of armed guards. The Polish embassy began to receive reports of escaped workers in 2005. Eventually the Polish police started investigations in cooperation with the Italian Carabinieri. But since the necessary agreements were lacking, no joint investigation team was set up. In 2006, however, meetings were held at EUROPOL and EUROJUST to prepare a joint operation and facilitate exchange of information and evidence. Shortly afterwards, 27 arrest warrants were issued, of which nine have been issued in Poland through a European arrest warrant. In total, 22 arrest warrants have been issued in Poland, where offenders were still on trial in late 2008. More than a hundred workers were rescued and received assistance from Italian and Polish NGOs.<sup>14</sup>

**179.** An important aspect of law enforcement is the treatment and protection afforded to actual and possible victims of forced labour and trafficking. Being labelled a "victim" can have both positive and negative implications. On the one hand, victims may be given special protection and assistance under

national law; but on the other, they may suffer stigmatization or be traumatized by those same law enforcement procedures. Regarding trafficked persons, most countries make temporary residence and other assistance conditional upon the victim's willingness to cooperate with law enforcement and testify in court. An exception is Italy, where trafficked persons are unconditionally granted a residence permit and access to socio-economic support. After 18 months they can apply for permanent residence provided that they have found employment.

**180.** For various reasons, victims of forced labour often find it difficult to seek redress through criminal proceedings or to receive compensation through special state funds occasionally set up for this purpose. Labour courts, however, can provide an important avenue for workers to contest abusive working conditions, including forced labour, through administrative proceedings.

**181.** A 2008 study examined victim compensation issues in the countries of the Organization for Security and Co-operation in Europe (OSCE).<sup>15</sup> It concluded that the right to such compensation is to be exercised mainly against the trafficker or exploiter, although in cases of violent crime there can also be a right to compensation from state funds. Civil claims can usually be pursued in parallel with the criminal procedure, except in the United Kingdom. Civil claims can also be pursued independently of a criminal case; the United States is the only country where a compensation claim for the victim is automatically part of the criminal proceedings in trafficking cases.

**182.** An example is a civil court complaint on behalf of over 500 Indian male migrant workers, brought before a district court in Louisiana, United States, in March 2008. It was alleged that the men had been trafficked into the United States through the federal Government's "H-2B guestworker" programme to provide labour and services to a particular enterprise, and had been subjected to forced labour as welders, pipe fitters, ship fitters and other jobs in the states of Mississippi and Texas. The action was brought for the recovery of damages inflicted by the company's agents operating in India, the United Arab Emirates and the United States. Among a wide range of allegations of abusive treatment was the claim that they had incurred substantial debt and liquidated life savings, in order to pay recruitment related fees totalling up to US\$20,000 per worker.

14. See *Operation Terra Promessa*, presentation by Gianfranco Albanese, Captain, CC Command Labour Protection, Italy, ILO Labour Inspection Expert Meeting, 5–6 December 2007.

15. *Compensation for trafficked and exploited persons in the OSCE region*, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, 2008.



**183.** Victims of forced labour and trafficking may often be deterred from seeking legal redress by their fear of punishment if they have entered a country illegally. Immigration laws in most countries of Europe, however, do not prevent undocumented workers from accessing employment tribunals, nor do they require tribunals to report irregular migrants to the authorities. In Portugal, the State Prosecutor for industrial tribunals will not inquire into the immigration status of workers. Similarly, Spanish courts recognize the right of irregular workers to seek protection and compensation from industrial tribunals for violation of basic labour rights, regardless of their immigration status.

#### National policies, plans of action and coordination mechanisms

**184.** Policies and action plans developed at national level provide a framework for prioritizing and planning action against forced labour and trafficking and, importantly, for ensuring effective coordination between the many different stakeholders, including ILO constituents and others with a role to play in such action. They provide a clear statement of national policy commitment to address problems and a vehicle for channelling the necessary resources for implementation. Depending on national circumstances, such plans can address forced labour and human trafficking separately, or, less frequently, together.

**185.** Some of the best examples of action plans against forced labour come from Latin America. Brazil's first action plan on "slave labour" was adopted in 2003, providing the basis for strong inter-ministerial coordination through the National Commission for the Eradication of Slave Labour (CONATRAE). Building on this experience, a Second Action Plan, adopted in September 2008, includes important new measures such as a proposed constitutional amendment to permit the expropriation and redistribution of the property of employers using forced labour and another legal amendment to provide safeguards for foreign workers subjected to forced labour in Brazil. The Plan also proposes heavier economic sanctions against employers using forced labour, barring them from receiving loans from private as well as public

sources, and from signing any contract with a public entity. It increases the powers of the Mobile Inspection Unit and proposes the establishment of employment agencies in the source areas of forced labourers. Finally, the plan includes new prevention and reintegration measures, such as the right to identity papers, legal assistance, social benefits, and vocational training for workers released from forced labour.

**186.** Other Latin American countries have followed suit, strengthening their own national frameworks, often with the support of the ILO. In Bolivia, an Inter-Departmental Council to eradicate serfdom, forced labour and slavery-like conditions was created in October 2007.<sup>16</sup> A specific plan was adopted for the Guaraní people of the Chaco region, which aims to secure adequate living conditions for "captive" Guaranís after their release from servitude on remote farms. In parallel, a broader national plan against forced labour is being prepared by an inter-ministerial technical group.

**187.** Action plans against human trafficking are more numerous than those against forced labour, often reflecting the recent adoption of national legislation in this area. While most of these plans profess to take a comprehensive approach including all forms of trafficking and all types of action against it, it is quite rare to find a systematic focus on the forced labour dimensions in practice.<sup>17</sup> One good example in this respect is the UK Action Plan on Tackling Human Trafficking, launched in March 2007. While acknowledging the lack of robust information concerning the scale of the problem, each chapter addresses trafficking for forced labour as well as for sexual exploitation.

**188.** In the United Arab Emirates, a National Committee to Combat Human Trafficking has drawn up an action plan covering legislation, enforcement, victim support, and bilateral agreements and international partnerships. Some measures already taken include a new unified contract to regulate the rights and duties of domestic workers, enacted in April 2007, and the introduction of provisions to allow workers to transfer sponsorships, in order to create job mobility.<sup>18</sup>

**189.** Pakistan's 2005 action plan against trafficking<sup>19</sup> covers all forms of trafficking, addresses both prevention and prosecution and establishes an

16. Supreme Decree No. 29292 of 3 Oct. 2007.

17. The review conducted for this Global Report covered 11 European countries, mainly from Central and Eastern Europe; six African countries, mainly from West Africa; six Asian countries, mainly from the Mekong subregion; one from Latin America; and one from the United Arab Emirates (the only Middle Eastern country to have such a plan at the time of writing).

18. *Combating Human Trafficking*, United Arab Emirates Annual Report, Ministry of State for Federal National Council Affairs, Abu Dhabi, 2007.

19. *Pakistan Action Plan for Combating Human Trafficking*, Ministry of Interior, Government of Pakistan, 12 Dec. 2005.

**Box 3.1**  
**Peru: Institutionalizing the combat against forced labour**

A 2004 study<sup>1</sup> by the ILO and the Peruvian Ministry of Labour and Employment confirmed the existence of forced labour in illegal logging in the tropical Amazon region. It estimated there were approximately 33,000 victims, mostly indigenous peoples. Shortly thereafter, with the support of the ILO, the government initiated the drafting of a national action plan to combat forced labour, through a process led by the Ministry of Labour and Employment and involving the participation of a broad range of public sector and civil society institutions and experts. The draft plan was subject to a participatory validation process in several regions, with an emphasis on the Amazon region, including with indigenous peoples' organizations and NGOs, so as to promote local ownership.

In January 2007, a permanent tripartite National Commission against Forced Labour was created, to coordinate policies and actions at national and regional levels.<sup>2</sup> The National Plan to Combat Forced Labour was officially launched by President García on 1 May 2007.<sup>3</sup> It encompasses a range of measures to prevent and eliminate forced labour, including legal action for the cancellation of licences of enterprises involved in forced labour, research and statistical data gathering, education, communication and awareness raising, and capacity building and coordination between different institutions.

Some public funding has been allocated to support implementation of the plan, which has started in different sectors, with the National Commission reviewing progress and coordinating action. Achievements include the creation of a division against human trafficking in the National Police, the inclusion of forced labour issues in the curriculum of the Ministry of Education, the introduction of severe sanctions for illegal logging, the elaboration of a communications strategy on forced labour, and extensive training of public servants and other key stakeholders.

The next challenge is to incorporate the objectives of the National Plan into wider public policy agendas with the allocation of sufficient resources for sustainable action in the long term to eradicate forced labour across the country. The Ministry of Labour and Employment's strategic plan for 2006–11 emphasizes forced labour concerns within its broader action to promote fundamental labour rights including through strengthening labour inspection.

<sup>1</sup> *El Trabajo Forzoso en la Extracción de la Madera en la Amazonía Peruana*, Alvaro Bedoya Silva-Santisteban, Eduardo Bedoya Garland, ILO, 2005. <sup>2</sup> Supreme Decree No. 001-2007-TR. <sup>3</sup> Supreme Decree No. 009-2007-TR.

inter-ministerial Committee on Human Trafficking headed by the Minister of Interior. The monitoring and surveillance of recruitment agencies is identified as the responsibility of the Ministry of Labour together with the Federal Investigation Agency.

**190.** As in Brazil, some countries have been able to revise national action plans against trafficking in the light of experience. In Ukraine, successive action plans since the first one in 1999 have been improved; the current (third) plan is very comprehensive and for the first time has a budget allocation for implementation. A monitoring mechanism is also being developed. While the emphasis in earlier plans was on criminal law enforcement, the new plan involves labour market institutions in at least half of the planned activities.

**191.** In other cases, there has been careful planning for coordinated action against trafficking, including forced labour, though not embodied in an

action plan as such. The United States has invested substantial effort and resources in action against all forms of trafficking, both internationally and within the country. The Trafficking Victims Protection Reauthorization Act of 2005<sup>20</sup> authorized new anti-trafficking resources, including grants to assist law enforcement efforts in combating trafficking, and to expand victim assistance programmes. A Cabinet-level President's Interagency Task Force coordinates federal efforts in this area, while a Senior Policy Operating Group coordinates international implementation of anti-trafficking legislation. One of the eight recommendations of a report of the Attorney General is to increase inter-agency efforts to combat trafficking for labour exploitation, in addition to sex trafficking.<sup>21</sup>

**192.** Other countries have set up specialized teams or agencies to deal with trafficking and forced labour cases. The involvement of different government

20. TVPRA 2005, Pub. L. 109-164.

21. Attorney General's Annual Report to Congress and assessment of the US Government activities to combat trafficking in persons, fiscal year 2007, Washington, DC, May 2008.

#### **Box 3.2** **Implementing the National Action Plan against Human Trafficking in Ukraine:** **The role of labour market actors**

A key feature in Ukraine has been the prominent role of the Public Employment Service (PES), together with the Ministry of Labour and Social Policy, in implementing the awareness-raising and prevention components of the action plan. For example, local employment centre staff have been trained to advise jobseekers on the dangers of irregular migration and human trafficking. The PES also verifies the legitimacy of jobs offered abroad in the modelling, tourism and entertainment business. Attention has also been given to the licensing, by the Ministry of Labour and Social Policy, of those agencies which recruit for employment abroad, and their subsequent inspection for compliance. As a further preventive measure, with ILO support, the PES produced the video “Don’t look at work abroad through rose-tinted glasses”, widely broadcast on television and on the metro. The PES is also responsible for the provision of protection and assistance to victims of human trafficking; in 2007, the PES in eight *oblasts* referred 520 persons to competent institutions for support.

#### **Box 3.3** **Guidelines for migrant recruitment policy and practice in the Greater Mekong subregion**

The COMMIT guidelines, issued in 2008, seek to encourage safe migration by reducing migrant workers’ vulnerability to labour exploitation and human trafficking. Developed through a consultative process involving ILO tripartite constituents, international agencies and NGOs, and building on country-specific research, the guidelines cover such issues as pre-departure procedures and services; regulation of recruitment agencies; fees for recruitment services; and working conditions and rights. They are designed to provide guidance for national policies, to be adapted in line with individual country circumstances.

ministries and civil society partners in such efforts is crucial in order to promote multidisciplinary responses and to garner political support from different parts of government. The Nigerian National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP), established under the 2003 federal anti-trafficking law, is one such example. NAPTIP has a broad mandate covering issues of prosecution, victim and witness protection, prevention, and international cooperation. It has successfully fostered operations with counterparts in European destination countries, leading to the prosecution of more than 60 Nigerian traffickers in nine different countries.<sup>22</sup>

**193.** A review of 25 national action plans against human trafficking highlighted two common shortcomings. First, the lack of sound statistical data; only two of the plans reviewed were based on statistical data, while others generally deplore the lack of such data. Second, only seven of the plans reviewed indicated a clear source and amount of state budgetary allocations to support implementation. Future action plans will clearly need to address these deficiencies.

#### **Regional initiatives**

**194.** Given that so many of those at risk of forced labour and trafficking are irregular migrants away from their countries of origin, coordinated policies and approaches are required between sender and destination countries. Regional initiatives can facilitate such a common approach. In the Asian region, a Declaration against Trafficking in Persons, adopted by the Association of Southeast Asian Nations (ASEAN) in November 2004, has provided the impetus for national action plans in several member countries as well as for cooperation between them. Another important initiative has been the COMMIT, a government-led process involving the six countries of the Greater Mekong subregion (Cambodia, China, the Lao People’s Democratic Republic, Myanmar, Thailand and Viet Nam). In December 2007, a Subregional Plan of Action for 2008–10 was approved, with commitments and targets on capacity building, national plans of action, multilateral and bilateral partnerships, legal frameworks and law enforcement, victim identification, protection and reintegration, and prevention. The latter includes

22. Source of information: NAPTIP, downloaded at [www.naptip.gov.ng](http://www.naptip.gov.ng), 27 Oct. 2008.



measures to address exploitative recruitment practices for migrant workers.<sup>23</sup>

**195.** In Africa, the “Ougadougou Action Plan” against human trafficking was formally adopted by European Union and African States in November 2006. It represents a broad commitment to cooperation by European and African States, and identifies general principles for action. In Latin America, at the Fourth Summit of the Americas in November 2005, leaders committed themselves to eliminate forced labour by 2010, by strengthening policies and adopting national plans of action, with the support of the ILO.

### Challenges for labour administration and labour inspection

**196.** Forced labour and human trafficking have not been a traditional focus in the work of labour administration and labour inspection in most countries. Perhaps this is understandable, given that most forced labour occurs in the informal economy, as well as in private homes and in commercial sex, where labour inspectors face great challenges in monitoring and enforcing labour law. Given the criminal nature of the forced labour offence, labour inspectors may also feel that they lack a clear mandate to take action.

**197.** Yet labour inspectors can play a key role in many ways, both for prevention and in identifying and remedying forced labour and trafficking cases. The ILO’s Committee of Experts has observed that “in certain situations a series of violations of labour legislation, taken together, may amount to forced labour and should therefore be considered to constitute a criminal offence”.<sup>24</sup> Effective action against forced labour necessarily must involve a range of enforcement agencies, making creative use of the mandates, skills and competencies of each, extending beyond criminal and labour justice, to also include border control, immigration and customs officials, and others. In some circumstances, special investigative and prosecution units may be required, which incorporate both police and labour inspection. Such combined efforts have been successfully implemented in countries including Brazil, China and Italy.

**198.** Labour inspectors can apply a range of investigative methods which are not available to other law enforcement authorities. For example, they have the right to enter freely at any time and without prior notice any workplace liable to inspection. They are

required to investigate any complaint concerning labour law violations without revealing the source of the complaint. They can apply a wide range of tools in a discretionary and flexible manner, such as issuing notification prior to initiating prosecution against an employer, or closing down production in the event of imminent danger to the health and safety of workers. Thus labour inspectors may enjoy a comparative advantage when tackling forced labour issues, compared to other law enforcement agencies with very different and sometimes narrower mandates.

**199.** Of course, labour inspectorates also face tremendous challenges in addressing forced labour. In developing countries, under-resourced labour inspectorates are usually too overstretched to regulate enterprises effectively even in the formal economy, let alone informal enterprises, private homes and worksites in remote locations where forced labour practices are most prevalent. The subcontracting chains, outsourcing practices and “triangular” employment relationships often associated with forced labour problems present particular difficulties, when inspectors seek to prove liability for violations. A new challenge is associated with the recent trend, especially in Europe, to extend the mandate of labour inspection to cover detection of illegal employment. In Poland, for example, legislation was amended in 2007 to give the labour inspectorate responsibility for controlling the legality of employment of foreign nationals. Similarly, the governments of France, Germany and Belgium have given considerable attention to action against undeclared and illegal employment. In this context, labour inspectors may have to carefully balance their prime responsibility for protecting workers’ rights with other aspects of law enforcement.

**200.** Countries are responding to these challenges in different ways. An increasing number are extending labour law coverage to include domestic workers. For example, Uruguay and Argentina have adopted special laws on the protection of domestic workers and inspection of workplaces in private homes. In 2008, the Jordanian Labour Code was revised, extending labour law coverage to agriculture and domestic work.

**201.** Also in Jordan, the labour inspection system has been reinforced to prevent abuse of workers in factories of the qualified industrial zones (QIZs) producing for export, in which the workforce comes mainly from Asian countries. In 2006, the US-based National Labor Committee published a report denouncing exploitative working conditions, including

23. COMMIT Subregional Plan of Action (SPA II 2008–10), Beijing, China, Dec. 2007.

24. *Eradication of forced labour*, Report III (Part 1B), ILC, 96th Session, Geneva, 2007, para. 209.

forced labour, in factories benefiting from preferential access to the US market. Shortly afterwards, the Ministry of Labour initiated an inspection campaign that led to the closure of five factories, the relocation of 1,200 workers to compliant factories and the imposition of 2,500 penalties. Four cases were brought to court, and a hotline for migrant workers was established.<sup>25</sup>

**202.** In its efforts to investigate trafficking in persons the US Department of Labor (USDOL) has placed emphasis on compliance with labour laws such as the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Investigators from USDOL's Wage and Hour Division interview workers to assess whether they may have been victims of trafficking, for onward referral to other law enforcement authorities. Its investigators also review payroll records, inspect migrant farm worker housing, and coordinate with other law enforcement authorities to ensure restitution on behalf of victims of trafficking.<sup>26</sup> The USDOL has indicated that it will continue to enforce the FLSA and MSPA without regard to whether an employee is documented or undocumented.<sup>27</sup>

**203.** In the framework of the National Action Plan, the Peruvian Ministry of Labour created a special labour inspection group on forced labour in 2008. The group consists of five labour inspectors and a supervisor that can be sent to different parts of the country to detect and act on forced labour situations. The group initiated its work with a field study in the Loreto region, confirming the existence of forced labour in logging camps and identifying the associated production chains. Coordination with other actors such as the national police is also taking place.

**204.** In France, the Central Office to Fight Illegal Work (OCLTI) was established in May 2005 to coordinate investigations against illegal employment, including human trafficking. It includes labour inspectors, police and gendarmerie officers, mandated to investigate alleged violations of the Labour Code and Criminal Code, including provisions related to "working and living conditions contrary to human dignity". Oral hearings can be initiated by the labour inspector or officers of the judicial police on the request of the state prosecutor. Employers can be

confined for up to 48 hours and then referred to the tribunal. Workers who have been subjected to conditions contrary to human dignity can receive compensation equalling six months' salary.

**205.** A study on forced labour in Portugal<sup>28</sup> carried out by the Portuguese Ministry of Labour and Social Solidarity and the ILO, pointed to some difficulties encountered by the Inspectorate-General for Labour (IGT) in addressing cases of labour trafficking. For example, the IGT can act only when an employment situation is documented; hence, cases concerning illegal immigrants are dealt with by the police. The IGT also has difficulty intervening in situations that are under criminal investigation, even when these concern degrading working conditions, forced labour and coercion. The IGT can intervene only once the criminal proceedings are completed and the verdict becomes public.

**206.** In developing countries, alternative models to labour inspection have been tried for the detection of trafficking victims. In West Africa, for example, Community Vigilance Groups (CVG) led by traditional rulers, and religious and community leaders have mobilized community members in rural areas to identify and prevent human trafficking. District Village Committees are also part of the system in South Asian countries, such as India and Pakistan, for the identification and rehabilitation of people in bonded labour. It has been suggested that the effectiveness of these committees could be enhanced by linking them to the formal labour inspection systems. For example, an active enforcement of the Minimum Wages Act, combined with regulation of production units under the Factories Act, could serve as effective prevention mechanisms against debt bondage.<sup>29</sup>

**207.** Private employment agencies merit particular attention in any discussion of the role of labour administration in combating forced labour. This report has provided evidence of how such agencies can be part of the problem, as well as the solution, of human trafficking for labour exploitation. Since regulations on private employment agencies are usually part of the Labour Code, labour inspectors or other agencies of the labour administration system play a key role in monitoring the industry. Some countries have developed specific regulations and institutions that

25. The Ministry of Labour, Hashemite Kingdom of Jordan: *Labour administration and compliance in Jordan: A multi-stakeholder collaboration*, Feb. 2008.

26. Attorney General's Annual report, 2008, op. cit.

27. *Hoffman Plastic Compounds Inc. v. NLRB*, 535 US 137 (2002) and US Department of Labor, Employment Standards Administration, Wage and Hour Division: Fact Sheet No. 48.

28. S. Pereira and J. Vasconcelos, op. cit.

29. S. Maria: "Bonded labour in Tamil Nadu – A challenge for labour administration", in Sivananthiran/Venkata Ratnam: *Informal economy: The growing challenge for labour administration*, ILO, 2005.

combine labour law and criminal law enforcement capacity. An example is the GLA of the United Kingdom. Established in 2005, following the adoption of the Gangmaster Licensing Act in 2004, it licenses labour providers in the agriculture, horticulture, shell fishing, and associated processing and packing industries. Its main tasks are to ensure compliance and to enforce sanctions, including criminal sanctions.<sup>30</sup>

**208.** In Portugal, the IGT has played a prominent role in targeted inspection of temporary work agencies. In May 2007, it launched a large-scale operation, resulting in cancellation of the activity of 195 such agencies. The reasons included failure to make the compulsory deposits to the government agency responsible for registration and licensing, failure to pay accident insurance and other social security benefits, and delays of more than 30 days in the payment of wages to workers.

**209.** In Malaysia, the Ministry of Human Resources has introduced a registration scheme for contractors supplying plantation workers. In 2008, ministry staff, working closely with the police, launched a crackdown to identify abusive contractors and to ensure protection of workers. A new registration scheme requires all contractors to provide records of their workers, including details of monthly salary payments, and contributions to the Employee's Provident Fund and to the Social Security Organization.<sup>31</sup>

**210.** Other efforts focus on the protection of national workers deployed overseas. This function is not always within the competence of labour ministries; other ministries may serve this purpose, or special units under the authority of labour ministries. The Philippine Overseas Employment Administration (POEA) offers a wide range of services to its migrant workers, including provision of information on illegal recruitment and employment practices such as withholding of travel documents, overcharging of placement fees and substitution of employment contracts. The National Labour Relations Commission receives complaints against recruitment agencies or foreign employers regarding unpaid wages, breach of contract or illegal dismissal.

**211.** Overseas labour attachés also have an important protective role to play. They may, for example, facilitate dispute settlement between their nationals and foreign employers before claims are lodged with labour courts. The Philippines maintains overseas labour offices in more than 20 countries across Asia,

the Middle East, Europe and North America. In recent years, countries in Eastern Europe, such as Romania and Bulgaria, have likewise deployed labour attachés in major destination countries.

**212.** In order to better fulfil their role in protecting workers and preventing forced labour exploitation, labour inspectors can benefit from specialist training and exchange of experience. The International Association of Labour Inspection (IALI), with member organizations from almost a hundred countries, is an important vehicle for members to exchange information and to collaborate across borders. In June 2008, IALI adopted a new action plan calling for closer cooperation with the ILO to combat and prevent forced labour. The ILO has supported regional workshops for labour inspectors on forced labour and trafficking, initially in Europe and Latin America. Training conducted at the national level – in countries including China, Jordan and Viet Nam – have opened the eyes of labour inspectors to these new concerns. Training materials have been produced by the ILO to support such capacity-building initiatives.<sup>32</sup>

## Lessons of experience

**213.** In summary, what lessons can be learned from national action to date, by the range of public actors involved in protecting people from modern forced labour?

**214.** One is that labour administration and the various institutions it includes are increasingly involved in policies and action against forced labour and trafficking. This is particularly true for trafficking, which has tended in the past to be dealt with solely by immigration and police authorities. In principle, labour administration can cover all aspects related to prosecution, prevention and protection in cooperation with other government agencies, social partners and civil society organizations. Labour inspectorates play a key role in worksite monitoring, education and awareness raising for the prevention of exploitation, and punishment of labour law violations. Whether labour institutions will in practice play an active role depends very much on legal frameworks, the capacity of their personnel to influence policies, and the resources allocated for their implementation.

**215.** Second, there has been a trend to broaden institutional mandates or to make creative use of existing ones, to create multidisciplinary enforcement

30. See press release 27 Aug. 2008, downloaded at: [www.gla.gov.uk/](http://www.gla.gov.uk/).

31. Government of Malaysia, Ministry of Human Resources, downloaded at: [www.mohr.gov.my](http://www.mohr.gov.my) on 28 Oct. 2008.

32. ILO: *Forced labour and human trafficking: A handbook for labour inspectors*, Geneva, 2008.

teams, and to promote cross-border cooperation. This has led to an increasing number of prosecutions in some countries, though comparative data are difficult to obtain. Enforcement of labour law can either complement penal law enforcement, or be used as an alternative channel to seek justice. It is particularly relevant to secure financial compensation for workers, who may not otherwise be eligible for compensation under criminal law or more specifically under laws against forced labour and trafficking.

**216.** Third, governments increasingly realize that prevention is better than cure and that enforcement is intrinsically linked to victim protection. Many examples cited in this report provide evidence of this positive development. But many challenges still remain to be addressed, such as closing existing loopholes in legislation, training and capacity building, promotion of ethical conduct among enforcement authorities and better protection of those at risk of forced labour.

**217.** There has so far been limited assessment of the impact of current law enforcement and other strategies on the eradication of forced labour.<sup>33</sup> Few

governments have developed evaluation and monitoring tools to assess the impact of their national laws and policies. At the same time, with the assistance of key donor countries that have accorded high priority to action against human trafficking, hundreds of millions of dollars have been invested in anti-trafficking programmes throughout the world. A substantial amount of these resources has been allocated for the training and equipment of police, border guards, immigration officials and related agencies, though much less has been spent on enhancing the capacity of labour market institutions.

**218.** Finally, it is important that the application of laws should protect and not penalize the workers concerned. The ILO Committee of Experts recalled in its 2006 General Survey on labour inspection that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. The principles and mechanisms of labour justice and criminal justice can complement each other, together comprising an integral law enforcement response to unacceptable forms of modern labour exploitation.

33. See, for example, a report by the US Government Accountability Office (GAO), *Human trafficking. Better data, strategy and reporting needed to enhance US anti-trafficking efforts abroad*, Washington, DC, 2006. This observes that little evaluation has been conducted to determine which international anti-trafficking activities are working, or how best to tailor them to meet specific needs.





## Chapter 4

# Forced labour and the private economy: Challenges for employers' and workers' organizations

### Introduction

**219.** Action against forced labour, including human trafficking, has moved steadily up the agenda of both employers' and workers' organizations. Employers have become increasingly aware that forced labour can penetrate their own business operations, as well as those within their extended supply chains. Trade unions worldwide have increasingly realized that they need to extend their activities to defending the rights of workers in informal and unprotected work, including both regular and irregular migrant workers.

**220.** A leading role has been played by two umbrella organizations, the IOE on the employers' side, and the ITUC on the workers' side, in close cooperation with the ILO's Special Action Programme to combat Forced Labour (SAP-FL). The ILO Governing Body in November 2005, recognizing that the involvement of employers' and workers' organizations would be of central importance for an effective global alliance against forced labour, envisaged both a business and workers' alliance on the subject, and to this effect called for intensified capacity building for the social partners.

**221.** These initiatives have already borne considerable fruit. The ITUC General Council adopted, at its December 2007 Session in Washington, DC, a Plan of Action for a Global Trade Union Alliance against Forced Labour and Trafficking, covering the three-year period 2008–10, and identifying the key areas for future trade union activities. A series of follow-up measures have since been taken at regional and national levels. The IOE, after sponsoring several events in the course of 2008 to engage both

employers' organizations and individual companies more intensively in action against forced labour, issued a general guidance together with a broad policy on forced labour at the end of the year.

**222.** Thus the building blocks are now in place for the consolidation of key elements of a global alliance. It will be impossible to make effective progress against forced labour unless the social partners have a clear and shared understanding of what forced labour is, and what their respective roles are, either alone or in cooperation with each other and with governments, in preventing and eradicating it. Employers and workers can achieve much through their own organizational structures, providing clear guidance and training to their members, fomenting and disseminating good practice, and providing direct assistance to those either at risk of forced labour or trapped in forced labour situations.

**223.** However, there are challenging policy concerns that will require tripartite involvement to generate the necessary consensus as to the means to prevent and remedy modern forms of forced labour. At a high-level meeting held in Atlanta in 2008 to engage United States business leaders against forced labour, sponsored by the IOE and others, the point was repeatedly made that employers could not address the problems alone, even within their own supply chains, unless governments enacted a clear and adequate legal framework. The challenge is to find the appropriate means, through national action plans or other implementation mechanisms, to bring the tripartite groups together, examine the underlying reasons for coercive labour practices, and review the need for rules and regulations together with appropriate monitoring mechanisms.



**Box 4.1**  
**Principles for business leaders to combat forced labour and trafficking**

- Have a clear and transparent company policy, setting out the measures taken to prevent forced labour and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains;
- Train auditors, human resource and compliance officers in means to identify forced labour in practice and seek appropriate remedies;
- Provide regular information to shareholders and potential investors, attracting them to products and services where there is a clear and sustainable commitment to ethical business practice including prevention of forced labour;
- Promote agreements and codes of conduct by industrial sector (as in agriculture, construction and textiles), identifying the areas where there is risk of forced labour, and take appropriate remedial measures;
- Treat migrant workers fairly. Monitor carefully the agencies that provide contract labour, especially across borders, blacklisting those known to have used abusive practices and forced labour;
- Ensure that all workers have written contracts, in language that they can easily understand, specifying their rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour;
- Encourage national and international events among business actors, identifying potential problem areas and sharing good practice;
- Contribute to programmes and projects to assist, through vocational training and other appropriate measures, the victims of forced labour and trafficking;
- Build bridges between governments, workers, law enforcement agencies and labour inspectorates, promoting cooperation in action against forced labour and trafficking;
- Find innovative means to reward good practice, in conjunction with the media.

Source: ILO, Special Action Programme to Combat Forced Labour, February 2007.

**224.** To this effect, a useful role is now being played by multi-stakeholder initiatives (MSIs), which have succeeded in bringing together employers' and workers' representatives with other civil society groups and sometimes governments. Some of these are organized by the production sector, such as those in the cocoa, cotton and sugar industries. Others, such as the UK-based Ethical Trading Initiative (ETI), have a more general focus on promoting fair trade and business practices. Others are specifically concerned with certification, social labelling and social auditing. Each of these has given progressively more attention to forced labour concerns, as part of their efforts to promote core labour standards. In a similar vein, forced labour and trafficking issues have increasingly been addressed by organizations concerned with the promotion of socially responsible business or corporate social responsibility (CSR). Several of these organizations have individual companies as members: they can seek to provide guidance on means to prevent forced labour in supply chains, and how to address it in such instruments as industry-wide codes of conduct or those adopted by individual companies.

**225.** Within the United Nations system, a further useful forum has been the Global Compact, promoting its ten principles for business practice in the areas of human rights, labour conditions, the environment and anti-corruption. At its summit meeting held in Geneva in July 2007, the Global Compact gave wide dissemination to ten basic principles developed by the ILO, as to ways in which employers might prevent forced labour in their own enterprises and cooperate with broader efforts to combat forced labour and trafficking (see box 4.1). These were further discussed at a Global Compact Working Group on Labour Principles, jointly chaired by the IOE and the ITUC in May 2008.

**226.** In summary, there is now a considerable momentum to tackle forced labour, either at the policy level or through practical action on the ground. There is still a long way to go before there is a comprehensive understanding of forced labour today in the private economy, and the means to address it, and before the concerns are anchored more firmly among the priority concerns of these organizations. This chapter reviews progress to date, with examples of good practice. It begins with the experience of employers'



organizations together with individual companies, followed by that of the trade union movement. It then turns to the MSIs, within the framework of the CSR movement. It seeks to identify the main challenges ahead for both business and the labour movement, if the momentum that has been generated so far is to be further consolidated.

### The role of employers' organizations

#### The issues

**227.** Business actors and private companies can have many different concerns. For global companies, with extensive supply chains and outsourcing, the main issue is likely to be supply chain management. A number of prominent companies have seen their image badly affected by allegations of forced labour in their supply chains. And this means not only companies engaged in productive activities in those sectors commonly perceived to be at risk, such as agriculture and construction, with their high incidence of temporary work and of “dirty, difficult and dangerous jobs”. The past four years have seen a wave of allegations affecting companies engaged in steel, electronics, footwear and textiles, and much more. Similar challenges are also faced by suppliers to global companies and small and medium-sized enterprises (SMEs) integrated into global supply chains. For them, the risk posed by forced labour entering the operations of their subcontractors can negatively affect not only their own reputation but that of their entire industry, which in turn can have a broad impact on trade relationships with global buyers and with access to global markets.

**228.** While companies are giving more attention to their own supply chains, business leaders are becoming increasingly aware that there are areas where common platforms, principles and approaches are needed. Earlier chapters have focused on the new issues which are now taxing legislators, policy-makers and law enforcement with regard to different forms or degrees of coercion in labour markets. These issues are of particular importance for the business actors who are trying to be competitive in a tight global market, but are at the same time concerned to run their business operations in a socially responsible manner, in compliance with national laws in the countries in which they operate, and also in compliance with any international standards under which they can be held accountable.

**229.** The past few years have seen intense debates between business and civil society, as to the extent

to which companies' commitment to CSR, as normally expressed in their codes of conduct, is a voluntary one; and the extent to which it should represent binding legal obligations, subject to monitoring by outside parties.

**230.** Because forced labour is a serious crime, businesses have a legal obligation to prevent and eradicate it in their company operations, failing which they can be liable to criminal prosecutions and sanctions. But there are at least two outstanding issues of concern. First, when modern supply chains are so complex, there is the question of how far a company's liability should extend. Second, when the jurisprudence on forced labour in the private economy is still so young, there are bound to be uncertainties and “grey areas” as to which business practices constitute the risk of forced labour. As has been seen from some of the more recent national litigation, judicial interpretations will also vary between countries.

**231.** Taken together, the forced labour concerns affecting business can be classified approximately as follows.

**232.** First, there are the widespread problems affecting small industries, sometimes in remote areas, in developing countries. These are long-standing concerns of the largely informal economy, as in the brick kilns or small garment factories of such South Asian countries as India and Pakistan, which are likely to include deeply embedded practices of bonded labour. Serious forced labour problems have also been found in the brick kilns of transition economies, as in Shanxi province of China in 2007. The Chinese case has sometimes been depicted as a “one-off” event, involving severe coercion against vulnerable persons including children in remote areas, followed by a vigorous government crackdown. It remains to be seen whether such forced labour practices can be curbed by a swift government response of this kind.

**233.** Second, there are the industries which appear to be at risk of forced labour practices within individual developing countries, mainly because of the nature of recruitment practices. There is a very clear risk of forced labour through debt bondage, when temporary workers are recruited through informal and unlicensed intermediaries who entice their recruits through the payment of advances, and then make their profits through a series of inflated charges. In Latin America, forced labour has been detected in a range of industries, some of them export oriented.

**234.** Third, there are the problems facing multinational enterprises (MNEs) which outsource their production to companies operating in developing countries. This may be an extension of the first issue,

**Box 4.2****Recommendations of the Atlanta meeting on engaging US business to address forced labour**

Business leaders from different enterprises and sectors – ranging from electronics and steel through to food and beverages and manpower recruitment – met to discuss the risk of forced labour in their supply chains, the appropriate response and their need for guidance tools. There was consensus that most companies present were exposed to this risk, but there was also a need to clarify definitions in ways that all business operators could understand. There was a requirement for better “strategic mapping” of forced labour concerns, by both country and economic sector, and also for improved coordination of auditing and for a global mechanism to promote greater coherence among auditing initiatives, possibly involving the ILO. As existing codes of conduct were now being consolidated, full clarity as to how forced labour may manifest itself in the workplaces of suppliers and other businesses was necessary. Participants stressed the need for practical guidance tools from the ILO, identifying the steps that can be taken to remedy problems once identified.

given that the goods widely produced under forced and child labour conditions in the small garment and other factories in the developing countries can penetrate the supply chain of MNEs. But particular concerns have been raised, when the incidence of forced labour has allegedly occurred on a more systematic basis in a particular model of production for supply to MNEs. This was exemplified by the allegations made in May 2006 by the US-based National Labor Committee, an influential NGO pressure group, that there was widespread forced labour in Jordan’s QIZs which produce mainly for the US export market under a 2000 agreement, which provides preferential terms for goods produced in Jordan. The companies engage mainly foreign workers from diverse Asian countries. Allegations covered such practices as the confiscation of passports, non-payment of wages leading to debt bondage, physical abuse, and forcible removal back to countries of origin.

**235.** Fourth, there are the potential problems facing all companies, in developed and developing countries alike, which engage contract labour through different kinds of employment or recruitment agencies. There is insufficient consensus as to what is acceptable practice with regard to fee charging, sponsorship systems and resulting restrictions on the rights of migrant workers to change their employer. Here, it arguably does not make sense to focus attention on one particular industry or group of industries, because the concerns are likely to affect all employers who make use of migrant labour. In these cases, if there are convincing arguments that existing recruitment practices either constitute forced labour

or risk facilitating it, then the role of employers and their organizations is to work together with governments and other stakeholders in order to promote the appropriate regulations, and also to find means of monitoring their practical application.

**Broad principles and general guidance**

**236.** In response to these challenges, the IOE has increasingly engaged with its own affiliates, and with business more generally, to clarify misunderstandings about the concept of forced labour, to give guidance on ways to identify and prevent it, and to provide general direction on how employers’ organizations might address the issue.

**237.** A meeting to increase the engagement of business on forced labour was held at the Coca Cola Company’s Atlanta headquarters in February 2008. Involving some 80 representatives from employers’ organizations and individual companies, together with government officials and MSIs, the meeting helped identify the main concerns and map out priorities for follow-up action.<sup>1</sup>

**238.** Another event held in 2008 brought together senior representatives from employers’ organizations and business across Asia, alongside representatives of civil society. Participants discussed the role employers’ organizations and business can play in combating forced labour in the region and set out a series of recommendations directed at private actors.<sup>2</sup> These recommendations addressed the following themes: strategies and challenges for business, tools and

1. *Engaging business: Addressing forced labour*, Meeting sponsored by the US Council for International Business, the US Chamber of Commerce and the IOE in cooperation with the ILO, hosted by the Coca Cola Company, Atlanta, United States, 20 February 2008.
2. *Regional workshop on addressing forced labour: The role of employers’ organizations and business*, Meeting jointly held by the IOE and ILO in Bangkok, Thailand, 30 June–1 July 2008.

### Box 4.3

#### **Proposing a leadership role for employers' organizations in the fight against forced labour: Recommendations from a regional workshop addressed at employers' organizations and business in Asia, jointly convened by the IOE and the ILO**

Employers' organizations and business operating in the region, aware of their influence and the role they can play in contributing to the fight against forced labour, and taking into account the challenges they face related to institutional capacity, propose to explore the following actions:

- Affirm and support the central role played by governments in the fight against forced labour, and the importance of effective legal frameworks, enforcement and institutions;
- Collaborate with governments by supporting research, surveys and collection of statistical data to define the scope of the problem at national and industry levels;
- Play a leadership role in contributing to the fight against forced labour at national, regional and international levels;
- Use the available platforms and networks provided by IOE and ILO to promote regional and international cooperation, exchange information and showcase good practices;
- Respond to the challenges of forced labour as a key policy issue for employers' organizations and their members;
- Undertake awareness-raising activities for employers and business to draw attention to the risk forced labour represents within business operations;
- Promote tools to assist in the fight to eliminate forced labour and use existing tools to promote understanding amongst member companies;
- Inform members about the importance and benefit of addressing forced labour as a risk management issue;
- Promote employers' activities contributing to the fight against forced labour, for example in newsletters, web sites and editorials or monthly columns in national media;
- Work with relevant partners to identify and achieve common goals and, where appropriate, develop tools and guidance addressed to business actors at all levels of company operations.

resources to promote engagement, and the leadership role of employers' organizations.

**239.** The IOE has since issued its guidance document and broad policy for the use of its affiliates worldwide, clarifying its understanding of forced labour and addressing such concerns as: how to identify forced labour; how it affects business operations, and why employers should engage in addressing forced labour; what businesses can do to avoid forced labour in their operations, as well as remedy the problems identified.

**240.** The ILO, for its part, has responded to the growing demand for guidance on how to address forced labour by preparing a set of guidance material and tools in close cooperation with the IOE. The material comprises seven booklets addressed to enterprises of all sizes, employers' organizations and others, including senior managers, human resource personnel, CSR and compliance staff, social auditors and procurement staff. The booklets include guiding principles to combat forced labour, a checklist and guidance for assessing compliance, a guide and practical tips for taking action, and a series of good

practice case studies highlighting the different actions companies have taken individually or jointly across industries. The material provides practical advice to help companies address the risk of forced labour in their own operations and in global supply chains, explaining what forced labour is, why it is a significant concern for business, and the actions that can be taken to address it. In this regard, the material plays both an awareness-raising and a capacity-building role for employers' organizations and individual companies.

#### *Initiatives of national employers' organizations*

**241.** A number of employers' organizations have addressed forced labour and trafficking at the national level. They have sought to tackle these concerns through a series of measures including awareness-raising and capacity-building programmes for members and cross-border cooperation to deal with regional and global problems of human trafficking and exploitation of migrant workers.

**242.** In May 2008, the Federation of Employers of Ukraine hosted a regional workshop on strategies against trafficking and forced labour in close cooperation with the ILO, the EU and the International Centre for Migration Policy Development.<sup>3</sup> This workshop sought to inform and raise the awareness of employers' organizations and act as a catalyst to future cooperation and partnership on issues such as labour migration and trafficking; the role of recruitment agencies; good practice in developing National Action Plans to combat forced labour; and examining the role of CSR and supply chain management. The workshop included representatives from Ukraine, Bulgaria, Romania, the Republic of Moldova and Poland.

**243.** Other workshops have been held by employers' organizations in countries as diverse as Georgia, Viet Nam and China, with the aim of sensitizing company members and discussing the role that they can play in anti-trafficking initiatives and programmes targeting forced labour. Meanwhile, with technical support from the ILO and in cooperation with the European Bank for Reconstruction and Development (EBRD), the construction industry in the Russian Federation, through its representative body, KSORR, has developed an industry-wide code of conduct to prevent violations of fundamental principles and rights at work, including forced labour and human trafficking. In particular, the code provides for workplace monitoring and transparency measures to ensure accountability and the credibility of the initiative.

**244.** Employers' organizations in Malaysia and Viet Nam have worked together closely to prevent abuses reportedly faced by Vietnamese workers in Malaysia in recent years, notably in the construction and garment industries. Allegations of wage coercion, confiscation of personal documents and forced repatriation have emerged from media reports and civil society organizations. In response, the Malaysian Employers' Federation and the Viet Nam Chamber of Commerce and Industry have teamed up to provide legal and cultural information to migrant workers in Viet Nam prior to taking up work in Malaysia. This information is distributed through the recruitment agencies in Viet Nam that provide placement services, including the national association of such agencies. Information packets for migrants clarify relevant parts of Malaysian law, taxation issues, information on social security and health care, and contact information in case of emergency.

**245.** Significant measures have also been taken by industry and business associations at national and local levels in countries such as the United States. The National Textile Association, together with the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), filed a joint complaint with the US Government under the Free Trade Agreement with Jordan, alleging “gross violations” of workers' rights. In this unique case, a business association took a lead role in filing a workers' rights case under a trade agreement.

### *Measures and responses of individual companies*

**246.** Direct attention has been given to forced labour concerns, in particular by the MNEs that perceive the risk of forced labour in their outsourced operations and complex supply chains. The risk is increasingly regarded as a serious one, with the reputation of a number of prominent companies damaged by widely publicized allegations that forced labour of either adults or children has penetrated some aspect of their business operations. Many of these have had to face media reports over the past two years that their business has been tainted by forced labour abuse. Aside from the industries commonly perceived to be at risk, such as agriculture and garments, the risk of forced labour extends to all types of industry with elaborate supply chains for the goods used in their end products, such as the steel and automobile industries, which make extensive use of pig iron, or the high technology industries including telecommunications.

**247.** Distinctions have to be made between preventive measures to safeguard against the risk of forced labour, and the responses to specific allegations.

**248.** Most of the company codes of conduct, as indeed the industrial codes for specific sectors, contain a general prohibition of forced labour. For the most part, this tends to be a brief statement without further elaboration. In some cases, however, company codes have provided extensive guidance against abusive recruitment practices. But there are cases where a company sets out in some detail the terms for providing workers with written contracts in their home countries, for specifying restrictions on recruitment fees (if imposed by the applicable host or home country laws), and for ensuring that the vendor must take all reasonable steps necessary

3. Report on the regional workshop for employers' organizations on strategies against trafficking and forced labour, Kyiv, Ukraine, 21–22 May 2008.

in working with reputable agencies, which do not charge workers fees in excess of those permitted by law in the host country.

**249.** In cases of specific allegations against individual companies, there have been examples of swift response. One case concerned a major US computer company. Following media reports of forced labour conditions at a Chinese factory of one of its suppliers, the company immediately engaged an independent auditing company to launch an in situ investigation. The findings were that forced labour as such had not occurred, but that violations of the company's code of conduct with regard to working hours and living conditions required remedial measures. In another case, in July 2008, an Australian television programme alleged forced labour at the factory of a Malaysian supplier of a major US footwear company. In this case the US company, after conducting a rapid assessment, accepted several of the allegations and announced changes to its business practice, while the factory also agreed to rectify the issues. Workers who had previously had their passports withheld would now have immediate and free access to these documents, and access to a 24-hour hotline should they be denied access to these documents by factory management. All migrant workers at the factory would be reimbursed any recruitment fees associated with their employment in Malaysia, and in future any fees associated with employment would be paid by the factory. The US company thus took an important decision to remain with the supplier and remedy the problem, through publicly announced changes in its business practice.

**250.** Several companies, both suppliers and buyers, faced extensive allegations in Jordan's export-oriented factories in 2006, following a widely publicized report by the US-based National Labor Committee. This has stimulated a significant response both from the major buyers, most of them located in the United States, and from the suppliers and their representative organizations in Jordan. Some of the buyers have intensified their own audits, at times documenting certain improvements in the situation. Many of the suppliers have since collaborated with the ILO, to seek a better understanding of the forced labour concerns and remedial action. In March 2008, for example, a series of workshops on forced labour were held with the Jordan Garments, Accessories and Textiles Exporters' Association (JGATE), bringing together some 70 senior representatives from the export factories. The meetings served not only to discuss broad principles, but also to examine the reasons why certain practices subject to criticism continued to occur. Such points of discussion included overtime, holding

of travel documents, recruitment and facilitation fees, and consistency of audits. Noting that large amounts of time and resources were absorbed by different coding and auditing procedures, some of which took different positions on forced labour indicators, participants called for more uniform assessments and procedures, as well as better communication between buyers and suppliers on these concerns.

#### *Auditing of forced labour*

**251.** The above experience raises some important questions as to the utility of social auditing for the eradication of forced labour. There are many obstacles to effective audits of such a complex issue as forced labour. These can include the relative brevity of the audit, limitations in the methods used to conduct such assessments, and the overall lack of auditor training on forced labour and trafficking. Furthermore, social auditing is generally unable to get beyond the first tier of a company's supply chain, meaning that large numbers of subcontractors often escape attention.

**252.** A report of the UK-based ETI, on the results of its project to tackle some of the worst abuses in the UK's agricultural industry, highlights some of the challenges faced by social auditors in auditing the practices of the labour providers known as "gang-masters". These include basic issues such as the ability of auditors to communicate with workers who speak different languages and more complex issues like the need to ensure consistency and the same level of standards in the application of audits at different workplaces with workforces of different sizes. The issue of subcontracting is also highlighted. In this case, the experience of the ETI reinforces the widely held view that the biggest problems occur in subcontracted parts of the supply chain. According to the report, assessing the main supplier of labour does not necessarily reveal problems further down the chain and, that being the case, it is necessary to audit each labour provider in turn.

**253.** For these reasons the ILO has brought social auditors together with global buyers and suppliers in key exporting countries, promoting the development of new and better ways to identify forced labour situations through such audits. A handbook on forced labour for social auditors has been drafted as part of the series of guidance materials developed on this subject for employers' organizations and enterprises. The handbook emphasizes the importance of social dialogue, and the need for auditors to engage with public officials, in particular labour inspectorates.



## The role and experience of trade unions

**254.** The ITUC's call in December 2007, for a Global Trade Union Alliance to Combat Forced Labour and Trafficking, came at a timely moment. Countless workers' organizations throughout the world were ready for this call, and were quick to respond. Many were already taking innovative action, to reach out to vulnerable groups including migrant workers, to demand improved regulation and monitoring of contract labour arrangements, and to promote cooperation between their affiliates in different parts of the world.

**255.** The moves towards a global workers' alliance on the subject, together with the preparation and adoption of trade union action plans in different regions, have galvanized these existing efforts and served to give them greater focus. In recent times, many trade unions have had officers and programmes dealing with such matters as the rights of domestic and migrant workers, and child labour, all of which have served to draw more attention to concerns relating to forced labour and trafficking. But a particular focus on forced labour now appears to have struck a chord. Trade unionists increasingly understand that their members have a pivotal role to play in overall action against forced labour, through direct support to victims, through monitoring conditions of recruitment and employment in areas where labour inspection and other law enforcement measures have not normally reached, and through participation in MSIs which have been increasingly used to seek consensus on the policy response to forced labour.

**256.** This section begins by describing the international momentum to engage trade unions more comprehensively against forced labour, and identifying the main problems which have been addressed. It then reviews initiatives which have been taken at the national level, or through cooperation between countries, many of these within the framework of ILO projects and through ILO technical assistance.

### *A global trade union alliance: The process*

**257.** In early 2007, the ITUC initiated a global project for developing and disseminating a strategy to deal with forced labour and trafficking, in close cooperation with the ILO. In order to seek widespread trade union inputs to this strategy, an international conference on trade union actions and

strategies was held in Malaysia in September 2007, jointly sponsored by the ITUC, the Malaysian Trade Union Congress (MTUC) and the ILO's SAP-FL programme. Participants chose to divide their approaches and activities into the three main pillars of research and data gathering, awareness raising and campaigning, and the reduction of vulnerability. Four priority areas were also selected for future action, namely: bonded labour in South Asia and Latin America, the exploitation of domestic workers, trafficking in Europe and Asia, and the particular case of Myanmar. A follow-up meeting was held the following month at the ILO's Turin Centre, to secure the validation of the draft strategy by senior trade unionists and the Global Union federations.

**258.** A survey was also sent out to ITUC affiliates and the Global Union federations, to assess existing trade union capacities as well as their needs and opportunities in this field. The results clearly indicated a commitment of the trade union movement worldwide to combat forced labour and trafficking. It also confirmed that in many countries trade union activities and structures were already addressing these concerns from different angles. However, while many trade unions around the world had the will to take on the issues of forced labour and trafficking, many lacked the knowledge, skills and resources to do so. The survey detected a strong need for capacity building, mentorship and technical assistance.

### *An action plan for a global trade union alliance: Main areas of activity*

**259.** Following these careful preparations, the ITUC adopted an initial 11-point action plan at its General Council, held in Washington, DC, in December 2007.

**260.** These present broad principles and areas of action, to guide the future activities of trade unions. The next step has been to develop more specific priorities by region. In the course of 2008, the ITUC followed up by producing a range of awareness-raising and information-sharing materials. A web site on trade union action against forced labour and trafficking was created within the main ITUC web site, together with a newsletter of the global trade union alliance, available in several languages, and other publications. In addition, a "Mini action guide" on forced labour provides trade unionists with advice on definitions, with data and indicators for identifying the problem, and with advice on remedial action. The ITUC has also reached out to pertinent NGOs and civil society groups with the knowledge and

**Box 4.4**  
**Action points adopted at the ITUC General Council, December 2007**

- Promotion of ratification and effective implementation of ILO Conventions on forced labour, labour inspection, private employment agencies, and migrant workers.
- Awareness raising on forced labour and trafficking aimed at trade union members and officials, and the wider public.
- Addressing forced labour and trafficking issues in bipartite and tripartite negotiations and agreements.
- Promoting political and materials support within trade union organizations for the development of policies against forced labour.
- Monitoring of employment agencies and companies, including their supply chains, to detect and combat forced labour and trafficking practices.
- Identification, documentation and public exposure of forced labour issues and cases.
- Bilateral, sectoral or regional trade union cooperation agreements, and appropriate alliances or coalitions with civil society organizations with relevant experience.
- Cooperation with labour inspection services, law enforcement, and other relevant authorities or working groups.
- Outreach and direct support to informal, unprotected and migrant workers at risk, to address the specific situation and needs, including through their integration in trade union ranks.
- Ensuring that proper attention is paid to all aspects of racism and discrimination, including in particular its gender dimension, as women and girls are especially at risk.
- Working closely with Global Union federations to target sectors where forced labour and trafficking are most likely to occur.

expertise to help it address forced labour more effectively. In 2008 a memorandum of understanding was signed between the ITUC and the specialist NGO Anti-Slavery International. The ITUC commits itself to involving NGO partners in awareness-raising activities, training seminars and outreach projects within the framework of the ITUC's action plan. Correspondingly, Anti-Slavery International commits itself to maximizing trade union involvement as appropriate in its activities, thus enabling its partners to benefit from trade union experience on labour market issues.

#### *Regional planning and capacity building*

**261.** The first regional follow-up event took place in Kenya in July 2008, bringing together trade unionists from 20 African countries. On the basis of national reports presented by each country, participants were able to present both general proposals and a series of recommendations targeted separately at government, employers and trade unionists themselves. As regards trade union activities, the main recommendations covered both organizational and substantive aspects. A decision was taken to establish a regional network, coordinated by the ITUC's African office, of focal

points in each country to jointly address cases and share information. In the substantive area, recommendations emphasized inter alia the importance of bilateral and subregional agreements between trade union centres in different countries, and the need for priority attention to migrant workers and workers in the informal economy.

**262.** A second major conference on combating forced labour and human trafficking took place in Athens in November 2008, hosted by the General Confederation of Greek Workers (GSEE) in collaboration with the ITUC, the European Trade Union Confederation (ETUC) and the Pan-European Regional Council. Its overall aim was to provide a platform of debate and awareness, and to provide a comprehensive international trade union strategy to fight forced labour and trafficking in Europe, with special emphasis on the situation of women and children. This high-profile event succeeded in identifying a pan-European strategy for trade union action against forced labour, together with a two-year action plan. Its "Athens Declaration" on the subject received widespread media attention, once again confirming the fact that the forced labour resulting from the trafficking of irregular migrants, in particular women and children, is a significant problem in the European region.



*Initiatives by the Global Union federations*

**263.** The global unions, with their focus on workers' rights and protection in specific productive or organizational sectors, can have a leading role to play in addressing forced labour. A good starting point can be the negotiation of framework agreements with particular industries or individual companies, including safeguards against forced labour as part of broader commitments to labour rights. For example, the International Textile, Garment and Leather Workers' Federation (ITGLWF) has constantly drawn attention to the forced labour practices affecting migrant workers. In October 2007, it signed a framework agreement with the Spanish company Inditex, committing the company to action against forced labour as part of a broader agreement to promote the ILO's core labour standards. Inditex committed itself to apply these standards throughout its supply chain to all workers, whether employed directly by Inditex or by external manufacturers and suppliers. In September 2007, the International Federation of Chemical, Energy and Mine Workers' Unions (ICEM) and the International Metalworkers' Federation (IMF) jointly signed a new global agreement with Umicore, a global company concerned mainly with metals services and production. The prohibition of forced labour was one of the issues addressed.

**264.** In May 2006, the ILO Office in Lima and the Building and Wood Workers' International (BWI) established an important precedent, by signing the first agreement between a global union and the ILO to address forced labour specifically. Given the growing evidence of forced labour in the wood and forestry industry in the Andean countries, particularly in Bolivia and Peru, the two organizations committed themselves to a series of joint activities, on awareness raising and the dissemination of information, and in efforts to organize woodworkers. In December 2007, a new agreement extended this cooperation to the whole of Latin America and the Caribbean. As a result, a trade union pilot project to combat forced labour in the forestry sector in Bolivia and Peru was launched by the BWI, in August 2008. The project is financed by the Dutch Trade Union Federation (FNV), with ILO assistance. Its objective is to defend actual or potential victims of forced labour in this sector through awareness, workers' organization and alliance building.

**265.** Preventive strategies have also been adopted by global unions, addressing the needs of workers in their particular sector. Public Services International (PSI) has reached out extensively to prospective migrants in the health-care sector. A guidance kit has been produced by the implementing partners of PSI's Migration and Women Health Workers Project in 16 sending and receiving countries. The information package aims to help women health workers make the right choice, when faced with often complex decisions on the desirable destination country. It contains practical information on the cost of living, legal and employment rights, and union contacts in the destination countries. There is also general information on migration issues in the health sector, and the role of public sector trade unions.

**266.** UNI, the global union for the service sector, has introduced its "UNI Passport" to retain contact with its network of affiliates who can offer help and advice to migrants, wherever they are. Affiliates decide the level of support they will provide to migrants, who are union members in their own countries, and publicize the scheme on their own web sites.

*National action: Guidance and toolkits*

**267.** As a first step to promote awareness and engagement, general toolkits are of clear importance. One was issued by the United Kingdom's TUC in February 2007, as part of activities in that country to commemorate the 200th anniversary of the abolition of the transatlantic slave trade in Europe.<sup>4</sup> Targeted mainly at trade union trainers, it aims generally to increase the confidence of addressing forced labour concerns in learning and public forums, but also to build interest and activism among individual trade unionists. A "forced labour awareness audit" helps users to check their knowledge level, and act on the implications. A further toolkit on forced labour and trafficking was developed by the ILO with trade unions in Zambia, as part of a collaborative project on forced labour between the ILO and its tripartite constituents there. Providing background information on the problem of forced labour and trafficking in Zambia, it explains why trade unions should become involved, and identifies specific actions that they can undertake. The aim has been to develop a model that can easily be adapted to the needs of trade unionists in other African countries, and perhaps more broadly.

4. *Slave and forced labour in the twenty-first century: A TUC fact file and activities pack for trade union tutors*, Unionlearn/TUC Education, London, 2007.

### *Information campaigns*

**268.** A first stage of outreach to those at risk of forced labour is to provide adequate information about these risks, and also about social benefits and entitlements for the workers concerned, which goes both ways. Trade unions can be part of the support groups reaching out to their nationals intending to be deployed abroad. They can also help reach out to the overseas migrants within their own countries. There are many national examples, with trade unions now developing considerable experience and cross-fertilization of ideas. In Colombia, the General Confederation of Labour has set up an information and service centre in Bogota, with links to eight main destination countries for Colombian migrant workers. In Costa Rica, a trade union support centre for migrants produces a newsletter for migrants, mainly those coming from Nicaragua, together with leaflets on labour rights and regulations in the country. In Spain, large numbers of migrant information centres are now run by the Workers' Commissions and the General Labour Union, similarly advising migrants on employment regulations and work permit procedures, and also providing language and other practical training for migrants. The Cyprus Hotel Employees' Federation, the German Trade Union for Building, Forestry, Agriculture and the Environment (IG–BAU), the Polish Agricultural Workers' Union (ZZPR) and the Swedish Municipal Workers' Union (Kommunal) are among the many others to provide information services of this kind.

### *Organizing migrants and supporting their claims*

**269.** Organizing migrants, particularly those in an irregular situation, can be a formidable challenge. In some cases, trade unions may have to face legal restrictions on these activities. But there has been a steady growth in this kind of organizational work in different regions.

**270.** The General Federation of Jordanian Trade Unions (GFJTU) has secured official permission to establish union offices in the export processing zones where over two-thirds of the workers are Asian migrants. Migrants can now become members of Jordanian unions, although they are not as yet eligible to hold elected positions. In the Ad-Dulayl industrial zone, for example, by 2008, migrant trade union members comprised one-tenth of the 30,000 workers. Trade union working methods have been adapted to the production methods, with their

offices sometimes open throughout the day and night to provide services throughout the three successive shifts. Complaints are put in writing and translated into Arabic. In one case, a last minute intervention by the Jordanian textile union averted the threatened deportation of six women workers on the grounds of their trade union membership.

**271.** In 2006, the Transport and General Workers' Union (TGWU), in the United Kingdom, organized a special campaign in food industry factories in the city of Birmingham, where most workers are migrants. By using organizers with the same national background and language as the migrants, the campaign secured some 300 new members for the union, and pay increases of some 12 per cent for the workers.

**272.** The Malaysian Liaison Council, as the co-ordinating body for UNI affiliates in this country, has operated a network of migrant help desks in over 20 areas of Malaysia, providing assistance to migrant workers from several Asian sender countries. Cases have included forced labour and related abuse, such as confiscation of passports, physical intimidation, and excessive working hours through forced overtime.

**273.** In Portugal, irregular migrant workers are able to register complaints of labour exploitation with the social prosecutor, who does not enquire into the complainant's immigration status. Portuguese unions have brought several cases of abuse against migrant workers before the Social Security Administration. Industrial tribunals have ruled in favour of undocumented migrants, in numerous cases brought before them by the unions.

### *Detection and documentation of forced labour cases*

**274.** When adequately trained, trade unionists are particularly well equipped to identify particular instances of forced labour and take appropriate remedial action on behalf of the victims. In Belgium, for example, the CSC Food and Services Union has given particular attention to the plight of domestic workers. An example was a case in Brussels involving severe abuse of domestic workers in a hotel at the hands of a family from one of the Gulf States, who confiscated their documents and restricted their freedom of movement. The union has brought a number of these cases before the courts, as well as organizing a general campaign on the subject of domestic work.

**275.** In mid-2007, following media reports of serious forced labour abuse in Shanxi province, the

All-China Federation of Trade Unions (ACFTU) took a major role in follow-up investigations, together with law enforcement agencies. Soon after that, the ILO provided training for senior ACFTU legal officers from most of China's provinces, on ways of detecting and following up cases of forced labour abuse.

**276.** Work of this kind may be conducted by trade unions in difficult and dangerous circumstances. In Myanmar, the Federation of Trade Unions of Burma (FTUB) collects detailed information on the victims and perpetrators of forced labour, and on the location, duration and forms of labour that community members are forced to do. While the FTUB has a network of union activists on the ground, they operate at considerable risk and have to remain anonymous. The results of the monitoring efforts are published on the FTUB's web site.

#### *Cooperation between trade unions in different countries*

**277.** Such cooperation, of particular importance when migrants are at risk of forced labour, can take place through more or less formal mechanisms. Examples of formal agreements can be given from both Central and South-East Asia. In 2006, the Kyrgyz Agricultural Workers' Union (AWU) and the Agroindustrial Union of the Almaty region in Kazakhstan concluded a cooperation agreement for better protection of Kyrgyz migrant workers in Kazakhstan's agriculture. The AWU provides information before migration on subjects including travel costs and remittance procedures, working conditions, and contacts of the local union in Kazakhstan. The Agroindustrial Union of the Almaty region agreed to inform Kyrgyz migrants of their employment rights in Kazakhstan, and to offer them membership of the local union. A similar agreement between construction industry unions in Tajikistan and the Russian Federation enabled almost 3,000 Tajik workers to join the Russian union. In the Asian region a partnership agreement was signed in September 2006 by the Malaysian Trade Union Congress (MTUC) and the Indonesian Trade Union Congress (KSPI). Regular contacts between the two are intended to ensure immediate action in the event of any violation of the rights of migrant workers in Malaysia.

**278.** In Europe, the General Confederation of Portuguese Workers (CGTP-IN) has signed agreements with the unions of key destination countries

for their migrant workers, including Luxembourg, Spain, Switzerland and the United Kingdom, promoting joint membership of Portuguese workers in their unions.

#### *Cooperation with NGOs and civil society*

**279.** Trade unions will naturally benefit from cooperation with specialist NGOs and civil society, whether in research and data gathering, or in the provision of support services. The rapid growth of NGOs of all kinds, concerned with "anti-trafficking" activities, provides ample opportunity for such networks and coalitions. In Africa, Kenya's Central Organization of Trade Unions (COTU) has cooperated through the East African region with such NGOs involved in action against trafficking. In Asia, the General Federation of Nepalese Trade Unions cooperated with Anti-Slavery International and with civil society research and advocacy groups in India and Pakistan to examine progress in eradicating bonded labour systems. A 2007 study<sup>5</sup> describes the Nepalese experience in organizing bonded labourers, and emphasizes the importance of collective bargaining for the overall fight against forced labour.

**280.** In Europe, a model for such cooperation is that between Ireland's Services, Industrial, Professional and Technical Union (SIPTU) and the Migrant Rights Centre Ireland (MRCI). The latter has been assisting migrants in sectors including agriculture, domestic work, and hotels and catering, by providing support services in several languages and also assisting migrant workers to establish their own support groups. It also cooperates with SIPTU to inform the migrants in its network of the advantages of trade union membership, and many migrants have later joined unions as a result of these efforts.

#### *The challenges ahead*

**281.** Although awareness is growing, action against forced labour remains a new area for most trade unions; it can pose different challenges compared to earlier, high-profile trade union campaigns against child labour, owing to political sensitivities as well as the logistical problems of reaching out to those in hidden parts of the economy and isolated regions.

**282.** First, the political sensitivities. Migrant workers may be perceived as a threat to national workers

5. *Paying back in sweat and tears*, Anti-Slavery International, 2007.

who make up the core membership of trade unions and who may show reluctance to take on their cause. Conversely, migrant workers in an irregular situation may be reluctant to approach trade unions for fear of losing their jobs and risking rapid deportation. A major obstacle for the organization of migrant workers may be the restrictions in national labour law on the right of migrants to join a trade union.

**283.** The logistical challenges are significant and complex. The sectors with a high incidence or risk of forced labour often tend to be those with the lowest trade union density. Intensification of trade union action against forced labour will require more organizing in sectors difficult to reach, such as construction and textiles, as well as among migrant, domestic and informal sector workers, more generally. Migrant workers tend to have long working hours and may not be able to leave the workplace to seek help. A proactive strategy is required, as well as policy discussions among trade union leaders to develop the appropriate policy and vision.

**284.** As the strategies and action plans on forced labour and trafficking are further developed, it is clear that they will have to be comprehensive, embracing both the broad policy framework to safeguard against the coercive exploitation of precarious workers, and the very practical action at the workplace and community level.

**285.** In the policy area, there are many interesting examples, but one will suffice by way of illustration. In Malaysia, trade unions met together with civil society organizations in Selangor in August 2008, for a National Consultation on the Protection of the Rights of Migrant Workers under the auspices of the Task Force on ASEAN Migrant Workers mechanism. It developed an extensive series of recommendations for the Government and Parliament of Malaysia, as well as for ASEAN States, covering such issues as: broad policy principles; the recruitment and placement of workers; working and living conditions; trafficking in persons; and law enforcement and access to justice.<sup>6</sup> These included firm recommendations for the outsourcing system that had created bonded labour arrangements and encouraged human trafficking for the purposes of labour exploitation; and of such instruments as the Foreign Worker Levy which had contributed to the deepening of bondage among workers. Carefully prepared policy recommendations of this kind have prepared the ground for systematic trade union campaigns. In Malaysia, the MTUC subsequently commemorated the World

Day for Decent Work, on 7 October 2008, with a major rally to protest against outsourcing policies and the forced labour conditions experienced by migrant workers.

**286.** Clearly, the extent to which these concerns will figure among the highest of trade union priorities will depend on the labour market circumstances of individual countries. But the indications are that trade unions in almost all countries are now aware of the urgency of the problems. They can learn from the experiences of the Malaysian trade unions, and the other practices reviewed in this section, in order to give real substance to a workers' alliance against forced labour and its various strategic components.

#### Combining the efforts: The importance of multi-stakeholder initiatives

**287.** In addressing the often complex issues of forced labour today, the ILO's tripartite constituents need to combine their efforts. All the partners need to work intensively to develop consensus on the laws and policies against forced labour, including its more subtle forms. They need to build similar consensus on the roles and responses appropriate to modern forced labour: how to monitor it; when to apply sanctions, and against whom; how serious these sanctions should be, as punishments or deterrents; and how to reconcile law enforcement approaches with the prevention and protection needed to address the root causes of the problem.

**288.** This brings into the picture the role of MSIs and CSR. Both terms require some explanation, as used in this section.

**289.** MSIs have come to take different forms and involve diverse actors. However, most were established as NGOs or foundations with memberships drawn from companies, industry bodies, workers' organizations and civil society groups concerned with human rights, consumers' rights and other issues. Public sector agencies tend not to participate directly in such MSIs, although they may act as observers or provide financial assistance. MSIs are typically engaged in policy development, research and capacity building, and provide a forum to address issues related to code implementation. Some MSIs have also developed certification systems, which use social auditing as a method to measure company compliance with an established standard.

6. National Statement, Malaysia National Consultation on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 13–14 August 2008, Quality Inn, Shah Alam, Selangor, Malaysia.

**Box 4.5**  
**Multi-stakeholder initiatives against forced labour in Brazil**

The combined efforts of business, civil society and government to fight forced labour in Brazil are an excellent example of what can be achieved through multi-stakeholder initiatives. First, the private sector provided both financial and technical support for a major national campaign, developed with the help of the ILO to raise awareness on forced labour. Banners, posters, radio and TV spots, mouse pads as well as T-shirts were designed and distributed in partnership with the private sector. More than US\$11 million was donated, notably through providing publicity space in the media. Major mining and transport companies supported a second phase of the campaign, printing some 300,000 brochures and 4,000 posters and providing free advertising space in airports. Campaign banners were displayed for three months in Brazil's 27 largest airports. Eight short films on forced labour were televised, and a prime-time broadcast by the country's largest television channel, featuring famous actors, reached millions of Brazilians.

There has been significant joint action against forced labour in the steel industry. This began in 2004, when the Association of Steel Industries in the Region of Carajás (ASICA), assisted by the Ethos Institute for business and social responsibility and the ILO, signed a Steel Industry Pact involving 13 steel companies in the state of Maranhão. A Citizens' Coal Institute (ICC) was then created under the Pact to eradicate forced labour in the steel production chain. The ICC performs social audits of charcoal suppliers on the basis of a code of conduct. In cases of non-compliance, suppliers' certification is withdrawn, and other member companies cease to do business with them. The ICC has also initiated an innovative pilot project in collaboration with the Ministry of Labour and Employment (MTE). The Ministry provides ICC with a list of forced labourers who have been released by labour inspectors, and ICC seeks to place them in decent jobs with formal contracts. The task is often complicated, as only 30 per cent of the freed workers can be located, and most have low levels of education and literacy. Forty-six workers were reinserted in 2006, and 115 in 2007, getting jobs in steel companies in Maranhão, Pará and Tocantins. In addition, the Steel Industry Pact companies have committed some US\$350,000 for the reinsertion of at least 400 more rescued workers by the end of 2010.

At the request of the Ministry of the Special Secretariat on Human Rights, the NGO Repórter Brasil has worked with the ILO to carry out a supply chain study on the goods produced by the businesses listed in the "dirty list" (a list issued by the MTE every six months containing the names of those caught using forced labour practices). A first study, in 2005, traced forced labour incidence in the production of different agricultural and other commodities. A further study in 2007 provided information on the linkages between other commercial networks and forced labour. These have been powerful tools to raise general public awareness, as well as that of employers concerning the risk of forced labour in their supply chains. As a result of the first study, the ILO and Instituto Ethos contacted the companies identified in the research in order to alert them regarding the existence of forced labour in their supply chain. The National Pact to Eradicate Slave Labour emerged from this initiative in May 2005. The Brazilian Pact involves commitments against forced labour by individual companies, incorporating clauses in their purchase and sales contracts, and facilitating the reinsertion of freed workers. The more than 180 signatories (to 15 July 2008) include large supermarket chains, industrial and financial groups, jointly accounting for a fifth of Brazil's GDP. Follow-up to the Pact has been set up by Ethos with civil society groups, with monitoring carried out by the NGO Social Observatory Institute. Monitoring involves the assessment of compliance with the provisions of the National Pact and other follow-up includes documenting good practice and ensuring that concrete measures have been taken by companies to show their commitment. As a consequence of monitoring, one signatory company was excluded from the Pact in July 2008, having been found using forced and degrading labour, including debt bondage on two occasions between 2007 and 2008.

**290.** CSR has been defined by the ILO as a way in which enterprises give consideration to the impact of their operations on society, affirming their principles and values both in their own internal methods and processes, and in their interaction with others. It is a voluntary enterprise-driven initiative, and refers to activities that are considered to go beyond mere compliance with the law.<sup>7</sup> However, the CSR concept has

also been embraced by governments and civil society groups. Many NGOs have been established with company and industry membership with the aim of promoting socially responsible business practices.

**291.** In any event, forced labour concerns have now figured prominently on both MSI and CSR agendas. Sectoral initiatives in the cocoa, cotton, palm oil, sugar and tobacco industries, among others, have

7. ILO: Governing Body document GB.295/MNE/2/1, Subcommittee on Multinational Enterprises, 295th Session, Geneva, March 2006.



given prominence to action against forced labour. A number of NGOs now seek to work with business in the auditing of forced labour, and in providing advice on remedial strategies to prevent it. Prominent examples are the Fair Labor Association (FLA), Social Accountability International (SAI) and Verité in the United States.

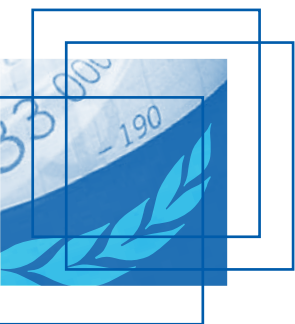
**292.** Some MSIs have played a prominent role in building social consensus on business concerns, including forced labour, and at times in facilitating new regulations. A positive example is that of the ETI, based in the United Kingdom but with outreach and membership in many other countries. The ETI has company, trade union and NGO members, with support and funding from the UK Government. It constituted the key policy forum for addressing abusive labour practices in the UK's contract labour industry, including the practices of unregistered "gangmasters". The alliance it built between governmental, business and workers' organizations was very important in establishing a statutory licensing and registration programme of labour providers in the agricultural and shell-fishing sectors. The ETI has also prepared

guidance materials for its members, on the bonded labour of workers internationally.

**293.** There are lessons to be learned from these and similar initiatives now under way. A key challenge is to find the appropriate balance between the voluntarism of most CSR approaches, with their emphasis on codes of conduct and self-regulation, and the clear legal obligation to prevent and eradicate forced labour in the private economy, an obligation that requires vigorous and effective monitoring. The presence of MSIs in the area of auditing can be welcomed, but only if they adopt a consistent approach based on ILO standards on forced labour and the relevant jurisprudence of the ILO's supervisory bodies. It is also important that these should not be seen by governments or private entities as a substitute for the government agencies responsible for monitoring labour conditions, which in many countries now need to be reinforced as a matter of urgency. MSIs should be encouraged to work with public bodies to explore where collaborative efforts could lead to more effective action against forced labour, particularly in the functions of labour inspectorates and social auditing.







## Chapter 5

# Combating forced labour through technical cooperation: Achievements and challenges

### Introduction

**294.** How can the ILO best exercise its global leadership in action to eradicate forced labour? What are the lessons of experience to date? This chapter highlights some achievements and challenges encountered in the ILO's work against forced labour over the past four-year period, drawing on examples.

**295.** The ILO's technical cooperation has been shaped by the action plan adopted by the Governing Body in November 2005.<sup>1</sup> This covered: basic goals and targets, including assistance to member States to establish time-bound action plans; survey methods and data gathering; awareness-raising and research needs; policy guidance and training materials; operational projects for capacity building and direct action and support to victims; capacity building for employers' and workers' organizations; and, communications and global advocacy. The overarching objective has been to build and support a global alliance against forced labour, focusing especially on the Organization's tripartite constituents.

**296.** While this work has been mainly conducted through the SAP-FL programme under the Declaration on Fundamental Principles and Rights at Work, many different parts of the Office are also engaged. A strength of the ILO is its capacity to tackle problems like forced labour and trafficking in a multi-dimensional way, drawing on a range of skills and approaches. ILO technical assistance is underpinned by action to strengthen the application of international labour standards on forced labour and related issues including migrant workers, child labour, labour inspection and administration, private

employment agencies, and many others. ILO technical departments addressing migrant workers and child labour<sup>2</sup> have particularly important roles to play, along with many others.

**297.** The ILO has now built up a considerable body of knowledge and experience on how to address forced labour and trafficking, drawing on the special strengths of the Organization. Activities at the global level – such as comparative research, communications, tools development and partnership building – have been combined with projects at national and regional levels to address the problems directly in collaboration with ILO constituents and other actors. Indeed, one major recommendation of an independent evaluation of SAP-FL in 2006 was that the programme should focus its efforts on advocating and influencing policy change, striking an appropriate balance between the more “upstream” policy work and the “downstream” project interventions from which policy lessons can be derived. As an international tripartite organization, the ILO may have a comparative advantage in the former, but needs also to address real problems on the ground through the latter.

### Raising global pressure for policy change: Getting the message out

**298.** The ILO has worked hard to communicate to the world the urgency of tackling forced labour. A first step in triggering policy responses is to increase public awareness and pressure for action. The ILO 12.3 million minimum estimate of forced labour

1. GB.294/TC/2.

2. The International Programme for the Elimination of Child Labour (IPEC) has major programmes in the field of combating trafficking in children and women. The International Migration Programme (MIGRANT) addresses trafficking from the perspective of the governance of international labour migration for the better protection of migrant workers' rights.

globally, published in 2005, continues to be widely cited, and has served to focus minds at all levels on the need for action. Global press coverage of forced labour-related stories has increased more than three-fold between 2004 and the end of 2007.<sup>3</sup> This trend is mirrored at national and regional levels, for example in Brazil and countries of the Greater Mekong subregion. Clearly, the issue is capturing the imagination and attention of journalists, commentators and hence the public, across the world. In consequence, there has been a steady growth in international meetings and events on forced labour and trafficking, at which ILO participation has been sought. The ILO's position, that human trafficking involves more than the sexual exploitation of women and children, and must be seen also as a forced labour problem for which labour market-based solutions are required, is now widely accepted. An interesting indicator of this shift in perception and policy discourse is the steep rise in the attention given to forced labour in the annual "Trafficking in Persons" report of the United States Government, up from a mere 20 references in 2001 to 535 in 2008.

**299.** The ILO has also participated in many high-level forums on migration, conveying the position that the governance of international migration should be based on equality of rights for migrant workers with full respect for ILO standards. An important advocacy tool is the Multilateral Framework on Labour Migration, adopted in 2005, which sets out non-binding principles and guidelines for a rights-based approach to labour migration. It includes specific guidance on the protection of migrant workers against abusive practices, including forced labour and trafficking.

**300.** Web-based information is a crucial part of any communications strategy. Since a new web site on forced labour was launched in May 2007,<sup>4</sup> the number of external visitors had increased tenfold by late 2008. It is a comprehensive repository of research reports, news, project and events information, with links to other sites on forced labour and trafficking. Numerous publications (brochures, articles, research papers, policy guidelines and training tools) and audio-visual materials have been produced on varied aspects of forced labour, and how to tackle it. An overview publication on ILO action against trafficking prepared in early 2008 identifies the specific

ways in which ILO skills and expertise add value to international efforts.<sup>5</sup> A continuing challenge is to ensure that research outputs and policy advice reach the hands of those decision-makers who can bring change about at national level.

**301.** Experience shows that change can be brought about when "champions" against forced labour speak out and act at national level. They can come from all walks of life – parliamentarians, government officials, civil society activists, service providers, religious leaders or concerned members of the public, including former victims. This has certainly been the case, for example, in Bolivia, Brazil and Paraguay, as well as in Indonesia and the Philippines. One aim of the global trade union alliance against forced labour is to support a network of trade union activists around the world who take a lead on this issue. High-profile persons can also be identified among the business community to champion the cause. The ILO could identify suitable mechanisms to honour those individuals or institutions who take courageous action against forced labour.

### Understanding the problems and solutions: Generating and sharing knowledge

**302.** Solid research has proved an essential input into awareness raising and advocacy for policy change. The ILO has continued to expand the global knowledge base on forced labour, usually through commissioning national academics to undertake focused studies in methodologically challenging and politically sensitive areas.

**303.** Outside the ILO, research on forced labour has in recent years been rather limited. However, there are now signs of the increasing engagement of the academic community with the emergence of new scholarly networks on unfree labour and slavery-like practices. By contrast, there has been an abundance of recent research and publications on human trafficking. A recurrent criticism of these endeavours has been the lack of consistency in the way the problem has been defined and analysed, meaning that cross-country comparisons are rarely possible. Innovative work to build consensus on key indicators of trafficking in Europe is expected to contribute to improving the quality of future research.

3. This figure is derived from a search of articles related to forced labour in eight newspapers (*The Hindu*, *O Globo*, *Gulf News*, *Moscow Times*, *Le Monde*, *El Comercio*, *The New York Times*, *Dawn*) and one web site providing articles from various newspapers (*All Africa*). The sources were searched from January 2004 to December 2007, using keywords such as "forced labour", "trafficking", "debt bondage", "slavery" and "commercial sexual exploitation".

4. [www.ilo.org/forcedlabour](http://www.ilo.org/forcedlabour).

5. *ILO action against trafficking in human beings*, ILO, Geneva, 2008.

**304.** The ILO's own action- and policy-oriented research programme attaches much importance to engaging national partners in the process, from the planning through to validation, so as to ensure appropriate follow-up. Research on forced labour and trafficking in Zambia was overseen by a tripartite steering committee, chaired by the Permanent Secretary of the Ministry of Labour. A study on recruitment mechanisms for Pakistani migrant workers was guided by an oversight committee comprising government officials and selected academics.

**305.** ILO research often takes place in the framework of technical cooperation projects. In an anti-trafficking project in China, research investigated the pre-migration situation, recruitment mechanisms and root causes of migration in selected areas of out-migration, as well as the exploitation of smuggled or trafficked Chinese migrant workers in France, Italy and the United Kingdom. This enhanced understanding of recruitment systems in China and of the ways in which individuals finance their own migration and incur obligations to help other community members through their savings. The research in Europe shed further light on recruitment channels and on migrants' employment conditions in different occupations. The findings of both were used in campaigns to raise awareness of the risks of irregular migration.

**306.** In Tajikistan, various studies have informed the implementation of an ILO–UNDP project on the prevention of human trafficking through employment creation and improved migration management. The project focuses on the impoverished Rasht valley, from where many male heads of household migrate to seek better jobs abroad. These studies included assessments of local market opportunities, private employment agencies and the vocational training system. Given the limited local research capacity, the ILO provided international expertise to support local research institutions and researchers.

**307.** Respected national research institutions play a key role in sensitive research. In the Greater Mekong subregion, the “Mekong Challenge” series of research reports was produced by an IPEC project to combat trafficking in children and women. These address such concerns as the plight of young migrant workers in Thailand, of hotel and beverage workers in Cambodia, and recruitment practices more generally across the Greater Mekong subregion. Research partnerships with respected national academic institutions along with the involvement of government officials have helped to foster trust and a common purpose around the issue of forced labour, helping to avoid accusations of external interference. A new

research initiative into the forced labour of children in six countries, in collaboration with national statistical offices, aims to understand the mechanisms of recruitment, means of coercion and exploitation.

**308.** In Brazil, research on forced labour in company supply chains has involved close cooperation between the Government's Special Secretary on Human Rights, the ILO, and the NGO Repórter Brasil, which is nationally recognized for its meticulous documentation of forced labour concerns. Research in Bolivia and Peru, by respected national institutions, has shed light on the links between discrimination against indigenous peoples and forced labour.

**309.** Studies in Armenia, Azerbaijan and Georgia have analysed the functioning and problems of private employment agencies, identifying gaps in the legal, policy and enforcement frameworks, and deriving policy recommendations. Based on these studies, capacity building of government officials, industry and worker representatives, aimed to improve the functioning of the industry in order to prevent trafficking and exploitation of migrant workers.

**310.** One aspect of the research challenge is to manage and share knowledge effectively. Research findings must be made available in ways and forms that can be easily accessed and applied by policymakers and other users. The ILO's web sites are core vehicles for dissemination. In China, a special forced labour and trafficking section has been added to the ILO Beijing site. Dissemination strategies for ILO printed materials, including evidence-based policy-oriented briefs, must be further enhanced.

### Building national consensus: The programme and policy frameworks

**311.** ILO technical assistance should respond to real demand at the national level as expressed by its tripartite constituents. Moreover, in the context of United Nations reform, ILO assistance should be delivered together with its partners in the international system, utilizing the comparative advantage of the different specialized agencies.

**312.** The main vehicles for delivering assistance are the Decent Work Country Programmes (DWCPs), which set out agreed national priorities in the world of work. These in turn should link to national development frameworks, the UN Development Assistance Framework (UNDAF), Millennium Development Goals (MDGs) and poverty reduction strategies (PRS). The key objective is to focus ILO efforts so as to achieve tangible results in a fixed time frame.

**313.** Experience shows that, with careful awareness raising, the consensus can be built to include sensitive subjects, such as forced labour, among the core national priorities. ILO constituents in an increasing number of countries are now seeing the need to give more systematic attention to forced labour concerns and related severe labour exploitation. Efforts to prevent and eradicate forced labour require a multifaceted strategy, to which the integrated approach of the Decent Work Agenda is well suited. Microfinance, migration governance, vocational skills training, small enterprise development, social protection, collective bargaining and other technical areas can all be part of the response to forced labour and human trafficking. This means that a range of entry points may be used, for example, linking action against forced labour with a specific engagement on trafficking, the protection of migrant workers, vulnerable groups or even broader labour exploitation.

**314.** Bolivia and Nicaragua are examples of countries which have included the abolition of forced labour as a specific DWCP priority. The abolition of “slave labour” and the worst forms of child labour figure in Brazil’s National Agenda for Decent Work while, in Asia, Pakistan includes a direct commitment on bonded labour. In both these cases, national policy frameworks on forced or bonded labour were already in place before the commencement of the ILO’s country programming on decent work.

**315.** China includes action against forced labour and trafficking within the broader promotion of fundamental labour rights, also stressing the importance of safe migration channels to avoid situations of forced labour and trafficking. This is part of overall action to prevent abuse and possible exploitation of labour within and outside China. In Indonesia, the first of three country priorities is presented as “Stopping exploitation at work”, which includes a programme to combat the trafficking and exploitation of Indonesian domestic workers. Nepal gives priority to the strengthening of constituents’ capacities to protect its migrant workers, especially from trafficking.

**316.** The programme for Tajikistan links human trafficking, irregular migration and labour exploitation. Ukraine also highlights the prevention of trafficking among its cooperation priorities, as do several European countries, including Albania and Romania.

**317.** As anti-trafficking concerns have moved steadily up the agenda of other international organizations, a focus on forced labour has proved fertile ground for partnerships between the ILO and other agencies, drawing on the comparative advantage of each.

### Capacity building: From training to action

**318.** Intensive capacity building of partners is essential to ensure the sustainability of action against forced labour and human trafficking. Particular attention is naturally given in all projects to strengthening ILO constituents. It is also important to engage others progressively in a global alliance.

**319.** Building capacity to combat forced labour takes many different forms. It can involve delivery of training and training-of-trainers; exchange visits, study tours and field visits; informal roundtables and discussions; Internet-enabled information exchanges and networking; production and dissemination of manuals, tools and guidelines; learning-by-doing and mentoring; provision of material support; and many other means. The purpose can vary from general awareness raising on forced labour and trafficking, to much more specific aims, such as the regulation of private employment agencies, national referral mechanisms for victims, or trade union strategies to organize in the informal economy. The design and content of capacity-building initiatives must clearly be adapted to the needs of the target audience and the desired outcome. Effective capacity building is best achieved through a sustained engagement with partners, so each can progressively identify and fulfil its role in solving the forced labour problems at hand.

**320.** Training events can address the needs of particular target groups separately. For example, in the QIZs in Jordan, a series of training workshops has been held for judges, prosecutors and labour lawyers, labour inspectors, police officers and employers (in collaboration with the JGATE), as well as with migrant workers (in collaboration with the GFJTU).

**321.** In Pakistan, seminars on bonded labour have been hosted by the Employers’ Federation of Pakistan for its members, providing also a forum for dialogue with trade unions from the brick-kiln sector. An initiative in Tamil Nadu, India, in collaboration with six trade union centres, targets the labour agents who recruit migrants in southern districts of the state for work in brick kilns in the north. Indonesian trade unions have been supported to reach out to migrant domestic workers, both in Indonesia and in destination countries such as Malaysia and Singapore. Materials were also developed for training Indonesian foreign service officials, who now have increased responsibilities for the protection of their migrant workers abroad. In the Caucasus, seminars have been held for judges and prosecutors in Armenia and Azerbaijan, conducted jointly with

other organizations,<sup>6</sup> using a problem-solving approach based on practical case studies. In Ukraine, employers and their representatives have been trained as trainers on the prevention of irregular migration, human trafficking and child labour.

**322.** The All-China Women's Federation (ACWF) and other partners' capacity has been strengthened through a wide range of measures, including "inter-provincial learning".<sup>7</sup> This approach recognized that the six concerned provincial offices varied in their exposure to international partnerships, and had much to learn from each other. Innovations introduced in certain provinces, such as the Spring Rain Campaign, could thus spread to others.

**323.** Religious leaders can be important partners in the fight against forced labour. In Pakistan, sensitization seminars among religious scholars have enabled them to convey the message that forced labour is repugnant to Islam, and that the bonded labour system is in violation of Islamic injunctions, as specified in a landmark Federal Shariat Court judgement of 2005.<sup>8</sup> The Moldovan Orthodox Church has been a partner in efforts to prevent child trafficking. A flyer for church goers and a pastoral guide for priests enabled the issue to be addressed in sermons and Sunday schools. In Ghana and Nigeria, awareness-raising sessions on trafficking prevention have been held for religious leaders at community level.

**324.** Capacity building can also involve mixed-target groups, clarifying respective roles and responsibilities and identifying means for coordination and collaboration. Support for multi-stakeholder national committees on forced labour or trafficking has been a feature of projects in Bolivia, Brazil, the Republic of Moldova, Niger, Peru and Ukraine. A European project brought together governments and social partners from a selection of source and destination countries (Germany, the Republic of Moldova, Poland, Portugal, Romania, Ukraine and the United Kingdom). Workshops provided an opportunity for training and discussion of measures to combat the forced labour outcomes of human trafficking, focusing on the regulation of private employment agencies and on law enforcement issues.

**325.** Exchange of ideas and experiences between countries facing similar issues can also be important. A study tour for a tripartite delegation from the Republic of Moldova to the Russian Federation allowed discussion of job opportunities and protection for Moldovan migrants. The ILO has also supported exchanges

between the Republic of Moldova and Ukraine as source countries of migrant workers, for example bringing vocational training experts from Ukraine to assist the public employment service in the Republic of Moldova to develop its own training modules.

**326.** Using local resource persons for capacity strengthening wherever possible is key, reflecting both the "domestication" of the forced labour agenda and the increasing capacity of constituents and others to deal with it. One challenge is to document and analyse different capacity-building approaches, developing rigorous indicators and techniques for assessing their impact. Compiling capacity-building tools and good practice guides based on field experience is essential, but these should go further to include means for monitoring and evaluation. There is also a need for more "training-of-trainers" materials; even relatively large projects can themselves directly reach only a limited number of participants, so the emphasis must be placed on cascading systems of training.

**327.** There is also a continued need for high-quality generic materials, covering specific issues and areas of intervention that can then be tailored to national contexts. Recent ILO training tools on the topic include: a resource kit for policy-makers and practitioners on the trafficking of children for labour exploitation; a handbook on forced labour and trafficking for labour inspectors; a case book on forced labour for judges, prosecutors and other legal practitioners; a handbook for employers and business actors on combating forced labour; and guides on private employment agencies and on monitoring the recruitment of migrant workers. Many of these documents have been translated into multiple languages. Country-specific tools on forced labour and trafficking include materials for trade unions and for labour officers in Zambia.

### Building partnerships

**328.** Particular emphasis has been given since 2005 to the strengthening of employers' and workers' organizations' capacity to combat forced labour. To this end, strong alliances have been forged with the IOE and the ITUC at international levels, and with their respective regional organizations and national affiliates. Efforts are under way also to strengthen collaboration with Global Union federations, focusing on those economic sectors known to be especially

6. The project has been implemented jointly with the IOM, the International Centre for Migration Policy Development, and the OSCE.

7. Project to prevent trafficking in girls and young women for labour exploitation within China (CP-TING).

8. Judgement of Federal Shariat Court on bonded labour (October 2005).



vulnerable to forced labour and trafficking, such as agriculture, domestic work and construction. Protection of workers from forced labour may be considered a “natural” cause for the trade union movement to take up, and indeed it was already quite active in this field. Employers’ organizations have increasingly perceived that forced labour does not affect only those enterprises operating illegally in the informal economy. They have, for example, become more aware of the risks of forced labour penetrating supply chains. One of the recommendations arising from a workshop with employers in Jordan was on the need to devise positive incentives for employers to engage proactively, to balance negative sanctions for non-compliance.

**329.** In the human trafficking field, natural partners include the IOM, UNODC and the OSCE. A prominent joint initiative is the UNODC-led UN Global Initiative to Fight Human Trafficking (UN.GIFT), launched in March 2007. Its broad aims are to ensure better coordination of anti-trafficking activities globally, to raise awareness and to involve a range of state and non-state actors in anti-trafficking initiatives. The ILO played a prominent role at the UN.GIFT Vienna Forum in February 2008, organizing panel discussions with employers’ and workers’ organizations. Transaction costs are high for such an initiative, involving frequent meetings and inter-agency exchanges. But, especially in the context of UN reform, it is essential for the ILO to be an active partner in this and other similar initiatives, ensuring that its particular concerns and approaches are fully reflected.

**330.** The development banks remain important partners, particularly with respect to the integration of forced labour elimination in large-scale poverty reduction programmes. However, with the exception of the EBRD, and some cooperation on trafficking with the Asian Development Bank (ADB), there has been relatively limited cooperation between the ILO and the international financial institutions to date on the issue. Some initial steps have been taken, such as a December 2007 event on trafficking and poverty reduction at the World Bank. This remains an important challenge to be taken up by the ILO in the coming years, in the context of broader ILO action to mainstream decent work into the global policy agenda, and to implement the Declaration on Social Justice for a Fair Globalization.

**331.** Finally, the mass media are key partners in work to raise global awareness and convey policy messages. The ILO has collaborated in various ways with the media to support responsible and accurate reporting of forced labour issues, avoiding

sensationalism and stereotyping in portrayal of the victims. Investigative journalists have been increasingly active in recent years in uncovering the harsh realities of forced labour and trafficking, acting as an additional deterrent to perpetrators. The campaign against slave labour in Brazil is one example of a creative partnership with the media, involving many different means, including the broadcast of a television soap opera episode in which the principal characters met forced labour victims. In the Mekong subregion, media training was conducted in Lao People’s Democratic Republic, Thailand and Viet Nam, focusing on the employment and human rights of migrant workers. In Cambodia, the media campaign included a “soap opera” with a trafficking storyline, a full-length feature film, radio spots and phone-ins.

### **From prevention to release and rehabilitation: Defining the role of ILO projects**

**332.** ILO projects typically comprise a combination of components addressing the law and policy frameworks; institutional capacity strengthening; research, advocacy and awareness raising; and often “pilot” action to provide assistance to victims and to prevent forced labour or trafficking in defined geographical areas. Given resource limitations, difficult decisions usually have to be taken as to what areas to prioritize, focusing on those in which the ILO adds real value when compared to other agencies. In some cases, projects can aim only to produce the policy lessons, good practices and tools to be applied more broadly by national stakeholders or development agencies; in others, projects may themselves be able to achieve a large-scale impact. Much will depend on the nature of the problems to be tackled and the amount and duration of resources available to the project.

**333.** While other agencies may focus in particular on law enforcement, ILO interventions on forced labour and trafficking have placed considerable emphasis on prevention. One cost-effective strategy is the use of mass media and campaigning to raise public awareness of the potential dangers of poorly prepared or “blind” migration or acceptance of job offers without adequate guarantees or protections in place. In Brazil, seminars were held for journalists to encourage widespread and responsible reporting of slave labour issues, leading to a significant increase in news coverage. Another initiative, entitled “Escravo, Nem Pensar” (Never be a slave), targeted major sending regions. The ILO worked with the NGO Repórter Brasil on a prevention campaign involving awareness

raising and training of teachers, educators and community leaders; between 2004 and 2008, more than 2,000 people participated in over 30 locations. Supported by the Ministry of Education, this initiative paved the way for inclusion of forced labour issues in the school curriculum.

**334.** The “Spring Rain” campaign in China targeted transport networks. Each year, after the Spring Festival, tens of millions of young women migrants flock to China’s towns and cities in search of work. The campaign was conducted in 22 bus and train stations across five provinces, alerting young female migrants to the risks of trafficking and how to avoid them. Slogans and a logo were used in a range of materials (including playing cards, bags, calendars, fans and question and answer leaflets) distributed to domestic travellers by over 2,500 young women volunteers and transport staff. Some 1 million items were distributed, complemented by banners and audio announcements; and a two-minute “flash animation” was broadcast on trains and in station waiting rooms. Local leaders and broadcasters were mobilized to take part in the campaign.

**335.** This project, in collaboration with the ACWF has also established “Women’s Homes” to provide information and services to migrant women in both sender and receiving areas. Emphasis is placed on peer-to-peer learning and self-help, and information exchange between homes in different locations. The network had grown rapidly to 114 homes by late 2008, and more than 20,000 girls and young women had received information, training or referrals. The approach holds great promise for future replication on an even larger scale.

**336.** Another campaign in China targeted overseas migrants. It was run by the provincial labour departments in the three sending provinces of Fujian, Jilin and Zhejiang. The ILO assisted with the preparation of guides containing relevant information on seven popular destination countries. Different materials were produced and disseminated over a six-month period. Provincial-level web sites provided information about the migration process and the risks involved. While stakeholders assessed the campaigns as successful, it is a real challenge to devise practical and cost-effective ways to measure the impact of such work. In similar vein, a series of safe-migration guides was produced and disseminated in the five countries of the Mekong subregion, targeting young women and teens of working age, and adapted to each country’s specific circumstances. Surveys enabled both the initial identification of migrants’ key information needs and an ex post assessment of the impact of the programme.

**337.** In Burkina Faso, an “information caravan” helped raise community awareness for the prevention of child trafficking. The campaign reached more than 2,700 people in border regions and along major migration routes, distributing materials such as T-shirts, caps and posters. A key strategy was to bring trade unions and NGOs together for this programme, leading to a better understanding of the issues on both sides and heightened respect for each other’s roles.

**338.** Trade unions are also key partners in the southern Caucasus. Migrant information guides on important destination countries (e.g. Austria, Germany, Greece, the Russian Federation and Turkey) are being used in pre-migration training programmes organized by the Georgian Trade Union Confederation. They contain information on legal requirements for migration, recruitment, living and working conditions, and contact details for organizations that can provide assistance.

**339.** Awareness raising and information dissemination are vital components of any forced labour and trafficking prevention strategy. But vulnerable people also need other forms of support, including local income opportunities, if they are not to fall prey to traffickers or exploitative recruitment agents. In Viet Nam, as in other countries, community-based programmes include microfinance and vocational skills training for women and working-age children, followed by assistance to find local jobs. In the Lao People’s Democratic Republic, community-managed banks succeeded in displacing loan sharks and instilling a culture of savings and planning in 120 villages with populations vulnerable to trafficking. Similar community-based approaches have been developed in South Asia, as part of integrated programmes to reduce vulnerability to bonded labour or to rehabilitate those released from bondage.

**340.** In Tajikistan, the ILO is partnering with UNDP to fight poverty and increase human security in the Rasht region, an area of high male out-migration. Vocational training and income-generating activities are combined with institutional capacity strengthening for the prevention of trafficking and labour exploitation. Careful research has been undertaken to identify local market opportunities for income generation.

**341.** A community-based approach to prevention can be particularly useful and cost-effective in remote areas where law enforcement is weak. A pilot project in the Tamale region in Ghana and Cross River State in Nigeria established and trained community vigilance committees to identify possible situations of human trafficking and forced labour, and to reach out to vulnerable people in their communities. These



committees are composed of local teachers, trade unionists, women leaders, and community and religious leaders amongst others.

**342.** The scale of interventions will depend on the resources available to the project, as well as on local implementation capacity. In Nepal, it was possible for an ILO project to reach almost all the initially identified formerly bonded *Kamaiya* households in five districts in the western Terai region. Activities included support through trade unions to organize agricultural workers and negotiate for payment of at least the minimum wage for both men and women labourers, vocational skills training, microfinance, and non-formal education and mainstreaming of children into schools.

**343.** In Tamil Nadu in India, with the support of the federal Ministry of Labour, a sector-based approach has been adopted, targeting clusters of brick kilns and rice mills in the districts of Kanchipuram and Thiruvallur. Active collaboration with employers and trade unions aims to build mutually acceptable solutions to long-standing problems linked partly to the payment of wage advances. A key role of the government is to enable vulnerable migrant and local families to access various government welfare schemes, including health insurance. While the project initially targets some 11,000 men and women workers, there is great potential for replicating successful approaches in other areas facing similar concerns. Already, kiln owners have requested coverage of the entire state of Tamil Nadu, so as to create a “level playing field” regarding recruitment practices, advances and wage systems.

**344.** When budgets are limited, good practice lessons may be derived from small-scale, pilot interventions. In Niger, such an approach was adopted in three rural villages believed to contain a high proportion of slave descendants. Villagers selected the installation of mechanical grain mills as a priority intervention, to free up women’s time for other activities. The mills are managed by committees of women who have been trained for this role.

**345.** While these and many other projects are developing and documenting innovative and effective approaches to tackling forced labour, there are many challenges ahead. First, a key issue is to mobilize adequate resources to sustain this important and necessary work in response to constituents’ increasing demands. Too many projects have too small a budget to be able to fulfil their ambitions and meet constituents’ expectations, and project duration is often too

short to be able to demonstrate real and sustainable impact and to yield the results that can guide policy-making. As resource mobilization efforts focus increasingly on the achievement of decent work goals at country level, it becomes ever more important to ensure that the concerns of forced labour and trafficking as identified in this report are reflected in country programming, using available resources in the most effective way.

**346.** Second, adequate funding should continue to be channelled towards the core functions of documenting good practice, rigorous impact assessment, developing methodologies for comparative research, production and dissemination of capacity-building materials, and deriving policy lessons. It is by distilling the lessons of cross-country experience into good practice and policy advice that can be taken up by partners at national and international levels that maximum impact can be achieved; indeed, herein lies the comparative advantage of an international organization. A focused ILO fund-raising strategy on forced labour needs to find the appropriate balance between field projects and core policy functions. And as increasing importance is given to addressing forced labour in the private economy, and preventing its incidence in supply chains, it is essential to look to new partners in the private sector, including foundations and corporations.

**347.** There are important questions regarding the target groups for interventions against forced labour, especially relating to children and minors. Some projects address trafficking and, to a lesser extent, forced labour of children, separately from adults.<sup>9</sup> Action must be sensitive to the different needs of children and adults, as well as of males and females of all ages. Age-specific responses are also required for children; those under the minimum working age should be provided with education, while older children could be offered vocational training and decent jobs. But under what conditions does it make sense to adopt child-specific projects, plans or policies, rather than identifying children as a specific target group within broader, inclusive forced labour initiatives? In situations where whole households are affected, as in many bonded labour systems, an integrated family-based approach seems to make the most sense, including specific interventions for children. For trafficking, however, the situation is more complex. Trafficking generally involves individuals, rather than families, although of course adults have a role to play in the trafficking of children. Children suffer very specific

9. The term “children”, as specified in the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), covers all boys and girls under 18 years of age, thus also including adolescents.

### Box 5.1 The case of Myanmar

The special case of Myanmar, with its severe and continued incidence of forced labour imposed by the state and national authorities, raises the important question of the circumstances and conditions in which an organization such as the ILO should engage in technical cooperation on forced labour with a member State. The ILO has been able to establish a permanent presence on the ground through the appointment of a Liaison Officer maintaining regular contact with high-level government officials. Negotiations subsequently led to an agreement in principle in May 2003 on a Joint Plan of Action between the Government and the ILO, including an awareness-raising programme on forced labour, and a pilot programme of labour-intensive road construction where a prohibition on forced labour would be strictly enforced. The plan also included the services of a facilitator to deal with complaints on the use of forced labour. Due to the situation in the country after that date, the ILO was not in a position to move forward with implementation of the Joint Plan of Action. Under a Supplementary Understanding reached between the ILO and the Government in early 2007, the Liaison Officer was accorded the possibility to examine complaints, which citizens of Myanmar could lodge without fear of reprisal.

Since 2007, the Government response to the complaints mechanism at senior level has been positive, although there has been a gap between this acceptance in principle and the practical situation on the ground. There have been limitations on the number of field missions that the Liaison Officer can undertake, and on the ability of this Officer to function proactively.

New circumstances were provided by the tragedy of cyclone Nargis in mid-2008, and by the ILO's involvement in the post-cyclone crisis response, in which it has placed special emphasis on the forced labour aspect. As a working model against the use of forced labour, a labour-intensive employment project was launched by the ILO with the agreement of the Government. It aims to provide temporary decent employment to the most needy cyclone victims, adding value to the interventions of other international agencies including FAO and UNDP. The ILO's output is the rehabilitation of infrastructure, the priorities for which have been determined in direct consultation with community-level committees.

This approach has enabled the ILO to have a presence on the ground and to an extent assist vulnerable groups, while linking its presence to the primary goal in this country of eradicating forced labour.

vulnerabilities. Moreover, trafficking of children, based on the Palermo Protocol definition, is materially different from that of adults – it does not require the use of coercion or deception. The mere fact of moving a child for the purpose of exploitation (which can include *all* forms of child labour) qualifies as child trafficking, whereas for adults, coercion and deception are necessary elements. Action must be sensitive to these distinctions. It may indeed make sense, in certain circumstances, to target action against child trafficking apart from adult trafficking, but the conditions for this to hold need to be better understood.

**348.** On many other forced labour concerns, combined efforts are needed – drawing on a range of ILO skills and competency and also entry points – in order to help member States address particular policy challenges. As trafficking results in part from failures of migration governance, as well as inadequate law enforcement, the response must involve the tools of migration governance as well as those specific to forced labour. Similarly the response to bonded labour will necessarily involve a wide variety of interventions. Such integrated responses must be presented in a coherent and consistent way.

**349.** So what kinds of project should henceforth be developed on the various forms of forced labour? What should be their components, coverage and intended duration? One major lesson of SAP-FL experience, since its outset, is that results cannot be expected too quickly. It takes time to build national consensus to address a problem, identify its main forms and dimensions, agree on the appropriate legal, policy and institutional frameworks, build the implementation capacity of these institutions, and develop and disseminate the necessary tools to ensure effective and sustainable action against forced labour is taken. Where coordinated responses are required between sender and destination regions and countries of migrant workers, the situation is yet more complex.

**350.** This means that the ILO should, as in the past, focus on a limited number of projects where it has the clear competence and expertise to achieve results, over what may be a quite extended period of time. Prolonged engagement for up to a decade with countries like Brazil, the Andean countries and Pakistan has contributed to significant progress in tackling forced labour, but this still remains “unfinished business”. At the same time, clearly defined project

exit strategies are needed, that progressively pass implementation responsibilities to national partners and stakeholders, and allow for the provision of strategic policy guidance as required.

### The way forward: Leading a global alliance against forced labour

**351.** First, it is important to underline the need for rigorous monitoring and evaluation, to assess the impact both of technical cooperation on forced labour and of the policy approaches it supports. While the knowledge base on forced labour problems continues to grow, less progress has been registered globally in analysing the effectiveness of different policy responses and intervention strategies. This can partly be explained by the relative youth of many anti-forced labour and trafficking efforts: insufficient time has elapsed to be able to assess the real impact of different responses. Urgent efforts are still needed to undertake rigorous analysis of the strengths and weaknesses, costs and benefits of alternative policy choices. Increasing sums of donor funds and national resources are being invested, particularly in anti-trafficking efforts. Understandably, questions are being asked as to whether these amounts are justified in terms of the impact they achieve.

**352.** Positive steps have already been taken at the level of individual projects. Some of the more mature

projects have been able to document good practices and lessons learned, for example in the Mekong sub-region, while others are being prepared in China and West Africa. Detailed impact assessments were undertaken of field-based interventions against bonded labour in South Asia.

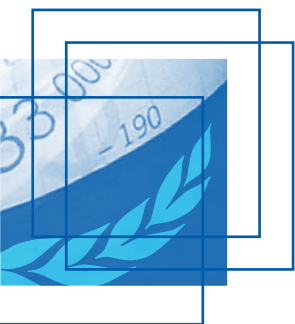
**353.** It is also necessary, however, to derive more general conclusions, about the positive and possibly negative outcomes of different policy approaches. One recent independent NGO analysis has highlighted some negative consequences on human rights of perhaps well-intentioned but poorly conceived efforts to combat trafficking, insisting that it is high time that all levels of anti-trafficking work be evaluated and assessed.<sup>10</sup> The ILO, working with its partners, could make a valuable contribution in this respect.

**354.** By conveying its message clearly, demonstrating what can be done, and drawing the policy implications, the ILO can thus exercise global leadership on a human rights issue that is daily arousing more concern around the world. This Report began by pointing out that forced labour, is the very antithesis of decent work and an affront to the concept of social justice for a fair globalization. A comprehensive ILO programme of work against forced labour, based on the vision of the 2008 Declaration on Social Justice for a Fair Globalization, will be instrumental in helping member States to make concrete progress towards this end. It is in this spirit that specific proposals for an action plan over the forthcoming four-year period are presented.

10. *Collateral damage. The impact of anti-trafficking measures on human rights around the world*, GAATW, 2007.







## Chapter 6

# A global action plan against forced labour

**355.** A global alliance against forced labour, led by the ILO with increasing numbers of other partners, is now taking shape. This third action plan for abolishing forced labour should seek to draw on all the ILO's strengths, as reflected in its four strategic objectives of: promoting full, productive and freely chosen employment; enhancing social protection; promoting social dialogue and tripartism; and promoting all the core labour standards embodied in the 1998 Declaration on Fundamental Principles and Rights at Work. It should also reach out to an ever broader range of partners, both within and outside the United Nations system, ensuring that the eradication of forced labour is included in their development and poverty reduction goals and targets.

**356.** Eradicating forced labour continues to pose a range of challenges, which require different responses. Most forced labour is still found in developing countries, often in the informal economy and in isolated regions with poor infrastructure, labour inspection and law enforcement. This can only be tackled through integrated policies and programmes, mixing law enforcement with proactive measures of prevention and protection, and empowering those at risk of forced labour to defend their own rights.

**357.** Like the previous one in 2005, this Report has placed its emphasis on forced labour in the private economy. It has also focused on the emerging concerns, often linked with migration and human trafficking, that affect developed and developing countries alike. An underlying theme has been the subtle forms of coercion, usually involving labour market intermediaries, through which workers in both the formal and informal economy can be deprived of either fair wages or full freedom over the employment relationship. Though research on the

economic implications is still at an early stage, in developing and developed countries alike, our overall findings are that the costs of this coercion are considerable. They also mean that the policy response, in addition to criminal law enforcement, needs to address compensation for lost earnings as well as improved labour market governance with regard to recruitment and contracting.

**358.** Moreover, this Report was drafted at a time when the world economy was experiencing the most severe economic and financial crisis for many decades. In such crisis situations, it is the vulnerable who suffer the most. At such times it is all the more necessary to ensure that adjustments are not made at the expense of the safeguards that have been painstakingly put in place to prevent forced labour and trafficking abuse in supply chains.

**359.** The ILO is expected by its constituents to take a lead on these issues within the United Nations system, conducting research, providing guidance and training, and demonstrating possible approaches through targeted interventions.

**360.** The proposed action plan builds on the previous one, adopted by the ILO Governing Body in November 2005, which set the stage for increased involvement by employers' and workers' organizations in addressing forced labour in the private economy. A proposed plan of action is structured as follows. A first part identifies the broad role of the ILO in spearheading intensified global action against forced labour, with the involvement of its own constituents and other key partners. This will involve the development of new research, guidance and training tools, and other awareness-raising materials in order to maintain the present momentum against forced labour and trafficking in all parts of the world. A second part highlights priority areas for regional action.

## 1. Global issues and approaches

### *Data collection and research*

**361.** Quantitative and qualitative research and surveys, the latter involving both thematic and country-specific studies, remain high priorities.

**362.** While the need for reliable national statistics on forced labour and trafficking is widely recognized, it is a difficult exercise. The ILO approach is to provide technical assistance to interested countries, enabling them to produce their own national statistics. In a limited number of countries, progress has been achieved through sustained partnerships with national bureaux of statistics and other stakeholders, building the capacity of social science researchers and statisticians. The aim will be to build on the present pilot programmes in a limited number of additional countries, both developing and industrialized, in the hope that further countries will then embark on similar initiatives with ILO assistance as necessary.

**363.** Over the past four years, the ILO has focused less than previously on qualitative research and more on the preparation of guidance tools. To be effective and practical, such tools need to be based on operational research. Moreover, it is usually pursuant to such research findings that governments have established implementation mechanisms against forced labour, as the policy response.

**364.** While there has been a recent upsurge in research on different aspects of human trafficking, other forms of forced labour continue to receive relatively little attention in the academic and policy communities. The ILO will therefore continue to work with the academic community and other national partners to fill gaps in the knowledge base, and also to promote more attention to these concerns.

**365.** In certain countries, there is still a need for overall diagnostic studies to identify the concerns that may warrant more detailed attention. Such studies can also be a useful means to enhance local research capacity. Consensus can be sought through establishing tripartite advisory and steering groups to oversee the research; and sponsoring nationwide consultations to discuss the results and follow-up action.

**366.** A recurrent theme of this Report has been the need for better knowledge and understanding of contract labour systems, how and why forced labour abuses can occur with them, and what the appropriate remedies might be. This calls for a comprehensive research programme in both sender and destination countries, covering several regions. More thematic research is also needed concerning vulnerable workers

including domestic workers, seafarers, and workers in export processing zones. All of this will provide the basis for the requisite training and guidance tools.

**367.** It is also essential both to document good practices and to conduct critical assessments of policies and programmes against forced labour and trafficking. These should extend beyond the programmes implemented by the ILO itself. In partnership with others, aided by independent experts, the ILO can contribute to broader evaluations of the impact of national and international programmes. Particular attention should be given to labour market-based approaches to tackling forced labour.

**368.** Finally, expanding on the initial pilot efforts of this Report, it is essential to conduct more systematic research on the economic aspects of forced labour, including costs to the workers affected.

### *Raising global awareness*

**369.** To keep the forced labour issue in the spotlight, while avoiding sensationalism, a media and communications strategy needs to be carefully devised. A centre point within the ILO can be an expanded website on forced labour, as a repository of continuously updated information about forced labour problems and solutions. Particular attention will be given to interactive training tools and the production of user-friendly briefs and research summaries.

**370.** Beyond the ILO the challenge is to tap into the growing media interest in forced labour and trafficking, while encouraging journalists to report on progress and solutions as well as the problems themselves. By covering such complex issues as trafficking for labour exploitation, the media can make a significant contribution to promoting a deeper understanding of its scope and nature. This can encourage public support for local and international efforts to fight trafficking for labour exploitation, as well as sexual exploitation, and also alert those persons at risk of trafficking. The media can place the problem in context: it can advise actual or potential victims where to turn for help and, where appropriate, through investigative reporting, it can also identify those responsible for forced labour and help bring them to justice.

**371.** Moreover, following the publication of this Global Report, with its assessment of the role of different actors and the challenges ahead, the media can facilitate high-profile debates on the subject. What works? Who has taken courageous action against forced labour? What are the deep-rooted causes of



modern forced labour, and what can be done about it? This can be achieved by blogging, televised debates, guest columns in newspapers, and other means. Wherever possible, the ILO can use its influence to engage a wide range of media personalities on the subject.

### ***Improving law enforcement and labour justice responses***

**372.** Training tools have been developed for law enforcement actors including labour inspectors, judges, prosecutors and other legal practitioners. These complement guidance tools developed by other international organizations, and focus on the particular forced labour concerns within the ILO's mandate and structure. There is considerable scope to build on these guidance tools, adapting them to national and regional contexts in the appropriate languages. A future programme will expand existing partnerships, supporting further training activities of labour inspectors and other law enforcement bodies, as part of broader strategies to strengthen the role of labour administration in the prevention and prosecution of forced labour.

**373.** Cooperation with international and regional networks of labour inspectors can foster dissemination of information and good practice. There is scope for an expanded training programme for members of the judiciary, especially judges and prosecutors, on how to define and prosecute forced labour. Training programmes can also be developed for independent lawyers and legal officers, for example, those within workers' and employers' organizations, who may provide advice and assistance to the victims of forced labour.

**374.** The case book on court decisions on forced labour represents a first effort to examine national jurisprudence on the subject. There is scope for expanded work on this subject in future years, for example by assessing the way in which courts deal with the issue of compensation for forced labour victims.

### ***Strengthening a workers' and business alliance against forced labour and trafficking***

**375.** In addressing forced labour in the private economy, both workers' and employers' organizations have a critical role to play. Reaching out to workers in the informal economy is a particular challenge, as is working together with and reinforcing public inspection and law enforcement mechanisms.

### ***Workers' organizations***

**376.** Trade unions are central partners in the fight against forced labour. ILO assistance for the activities of a global trade union alliance against forced labour and trafficking, led by the ITUC, has steadily raised awareness of forced labour and the role of trade unions in combating it. This work should increasingly cascade down to trade union activities at the national level, involving a range of capacity-building activities, and support to designated trade union focal points with specific responsibility for forced labour and trafficking. It should also promote effective trade union participation in national committees or other institutional structures against forced labour and trafficking. In future work with trade unions, particular emphasis will be given to the following.

**377.** First, ILO programmes should strengthen the capacity of trade unions to organize workers most at risk of forced labour, including in the informal economy, and support their efforts to bargain collectively. Work will be intensified with trade unions representing workers in specific sectors known to be especially vulnerable to forced labour and trafficking, such as agriculture, construction, domestic work and hospitality. Programmes will be developed in collaboration with the respective Global Union federations. A special effort will be made to reach out to, and organize, women domestic workers, helping to ensure that any future instruments for the protection of these workers contain adequate safeguards against forced labour and trafficking.

**378.** A second priority will be to foster greater cooperation between trade unions in neighbouring countries which face similar forced labour concerns, and also between trade unions in countries of origin and destination of migrant workers, including migrant domestic workers. Programmes will promote reciprocal arrangements between trade unions, through which migrant workers affiliated to trade unions in the sender country can also receive the benefits of union membership in the destination country.

**379.** Third, trade unions can be supported in their efforts to monitor conditions of recruitment and employment, particularly in locations and sectors where the risk of forced labour and trafficking is perceived as serious, and where these conditions may escape the attention of labour inspection services. Trade union officers and their members may need specific training, in order to identify and document cases of abuse, file complaints, and seek redress from the appropriate authorities.

**380.** A further task of trade unions, sometimes acting together with other civil society groups, can be the provision of assistance and protection to the victims of forced labour. Trade unions may wish to file cases before labour authorities and other law enforcement agencies, for example, seeking compensation for the wrongs suffered by workers including loss of earnings.

**381.** Finally, there is a need for more awareness raising, advocacy and guidance tools on forced labour, targeted at a trade union audience. A start has been made with the development of tools for trade unions in certain countries. These need to be further developed, adapted to different national contexts, and widely disseminated.

### *Employers' organizations*

**382.** With support from the IOE, business actors have become progressively engaged in action against forced labour. CSR programmes, together with the codes of conduct of industrial associations and many individual companies, are increasingly more explicit in addressing forced labour. The 2008 ILO handbook for employers and business on combating forced labour sets out guiding principles for action, and also provides practical guidance on ways to remediate problems. The ground is now prepared for an intensified effort, which may involve the following areas of activity.

**383.** First, the ILO will engage with the various MSIs, the development and banking institutions that finance private sector initiatives, and forums such as the UN Global Compact, to ensure consistency in understanding the concept of forced labour and the ways in which it can affect business activities. Specific training programmes and focused guidance materials will be developed, and disseminated in different languages, in cooperation with the auditing and other groups that have begun to develop expertise on forced labour.

**384.** Second, while many industries and companies have so far focused their efforts on the monitoring of "first-tier" suppliers, an ILO programme will now examine ways to reach beyond this first tier in global supply chains. There is a clear need to reach out also to second- and third-tier suppliers of raw materials and products, rather than finished goods, many of these operating in the informal economy where forced labour problems are more likely to arise. Such work is best conducted on an industry-specific basis, through broad partnerships between employers' and industrial associations, labour inspectorates

and administration, individual companies, and civil society groups. Building on experience in areas like the Brazilian charcoal industry, pilot programmes can be undertaken in select industries and regions, documenting the practices, and identifying suitable forms of remediation. Full account will be taken of the contribution and value of employers' organizations in providing the networks to reach small and medium enterprises, thereby enhancing ownership and sustainability of the programmes.

**385.** Third, assistance will be provided to employers' organizations and companies, helping them ensure that recruitment practices are free from debt bondage and other forms of coercion. Support can be provided to the relevant industrial associations to devise frameworks for the monitoring of systems of contracting and subcontracting, and to develop codes of practice. Further to earlier pilot studies, the ILO can support more in-depth research and case studies on recruitment systems in practice, examining the factors that contribute to forced labour and debt bondage, and formulating recommendations on means by which employers can prevent their incidence.

**386.** Fourth, support can be provided through pilot programmes to employers' initiatives to assist the reintegration of former victims of forced labour, and prevent possible relapse, for example, through vocational training services, skills development and apprenticeship schemes. In promoting such efforts, it will be especially important to build partnerships between business actors, governments and civil society organizations, working together to provide an integrated package of assistance and social protection.

## **2. Regional issues and priorities**

### *Expanding the knowledge base in developing countries: Applied research*

**387.** While important research has been conducted on forced labour in parts of Africa, Asia and Latin America, it has been limited to a few countries in these continents. Particularly in Africa and Latin America, there is a need to conduct research beyond the small number of countries where the ILO has so far conducted its technical assistance programmes. In developing further research programmes, the ILO will benefit from the networks developed through existing programmes, enabling the sharing of methodologies.

### *Forced labour and poverty reduction in developing countries: A focus on prevention*

**388.** Research and operational programmes have led to an enhanced understanding of the population groups at risk of forced labour, often as a result of a long-standing pattern of poverty and discrimination. They can include caste and other minorities in Asia, indigenous peoples in Latin America and, in some cases, the descendants of slaves in Africa. Experience has shown that, together with improved law enforcement and labour inspection, there is a need for better prevention strategies, including the targeting of poverty reduction programmes and development resources at the communities most in need.

**389.** Broad-based action against bonded labour systems, particularly in Asia, will continue to take place at different levels. At the policy level, persons in or at risk of bonded labour should be specially targeted through poverty reduction programmes, including microfinance initiatives. Sensitization programmes for government agencies and officials are of key importance, identifying the various means at their disposal to address bonded labour systems and practices. At the community level, it is essential to build on the good practice learned so far, replicating this in other areas of known bonded labour incidence. The involvement of local employers' and workers' organizations will be a key element of future approaches. In Latin America, given the particular vulnerability of indigenous peoples to forced labour and debt bondage, the issues will be accorded due importance in programmes to address poverty through promoting the identity and rights of indigenous peoples.

### *Forced labour, migrant and contract workers: Cooperation between sender and destination countries*

**390.** While these concerns are global, they are of particular importance to certain regions. There is scope for building on the cooperation between the sender countries of Central Asia, and European countries, including such countries as the Russian Federation, where migrant workers may be at risk of forced labour in formal sector activities, including construction.

**391.** A priority throughout the Asian region, with its high incidence of internal and international migration, will be improved regulation, monitoring and operation of recruitment agencies, including

informal labour contracting mechanisms both within and between countries. While still needing to build the knowledge base, and to press for appropriate regulations, the ILO can now undertake pilot programmes on this subject with the involvement of employers' and workers' organizations, recruitment and job placement agencies, and labour administration. Also in Africa, particular attention can be given to the monitoring of recruitment agencies, including those recruiting for overseas employment, to avert the risk of forced labour practices. Further interventions can seek to prevent human trafficking, and to promote the reintegration of trafficked persons, through cooperative programmes between African sender countries and destination countries both within and outside the African region.

**392.** Future cooperation with the Gulf States and other Middle Eastern countries can focus, in particular, on the prevention of trafficking and the protection of temporary contract workers from abusive recruitment and employment practices. It will expand on earlier research, which has documented recruitment mechanisms and practices in both the countries that send temporary workers to the Middle Eastern region, and to the destination countries within it.

**393.** Important steps have recently been made in the Middle Eastern region, as regards anti-trafficking legislation and policies. The ILO will provide continued support for addressing the labour dimensions of trafficking, involving labour ministries and other ILO constituents in inter-ministerial mechanisms for implementing the law and policy frameworks. Emphasis can be placed on promoting better-regulated recruitment mechanisms, and improved monitoring, in cooperation with sender countries. Finally, particular attention will be given to public-private partnerships, ensuring that employers and workers are fully engaged with government efforts to improve systems of labour contracting and job placement.

### *Issues for industrialized countries*

**394.** At their request, training on the means to identify and tackle forced labour has been provided for government officials and the social partners from industrialized countries, for example, in Europe and the United States. Similar assistance has been provided for research on forced labour and trafficking. This has helped generate awareness that forced labour is a concern for all countries and all kinds of economy. Requests for assistance from the industrialized

countries, including those for training and research, are expected to continue. Subject to demand, it is envisaged that support will be provided for quantitative surveys on forced labour and trafficking in several of these countries. Existing toolkits – including those for labour inspectors, judges and prosecutors, and business actors – can be adapted to national contexts.

An ILO programme will seek to engage more closely with the academic community and major policy institutions, promoting research and teaching on the economic and other underpinnings of forced labour in the modern global economy. Materials of this kind will be an essential support for the media and communications strategy on forced labour.



