

# THE COST OF COERCION

## Executive Summary of 2009 Global Report on Forced Labour

Four years ago, the ILO report *A Global Alliance against Forced Labour* provided compelling evidence that forced labour is a truly global problem on modern labour markets, affecting almost every country and every kind of economy. Providing facts and figures, this report showed how modern forced labour is distributed, by region, by gender and by broad forms of economic activity. It also revealed for the first time the huge profits of almost US\$ 32 billion per year made by the criminals who exploit the victims of trafficking, mainly for sexual exploitation, but also for other forms of economic exploitation.

In presenting this report the ILO launched a challenge to the world community, to build and consolidate a global alliance, involving a range of partners, in order to eradicate forced labour at the earliest opportunity.

*The Cost of Coercion* sheds new light on forced labour, including the forced labour that results from trafficking in persons, in the rapidly changing world economy. It also indicates what has been achieved since the ILO called for intensified action against this serious violation of human rights. In doing this, the report can point to some positive trends. But it also highlights areas where the challenges are becoming more difficult, at a time of growing economic and financial crisis, when the aftershocks of this crisis can have a particularly negative impact on the most vulnerable groups, including women, children, migrant workers, indigenous peoples and others least covered by social protection systems.

A key message is that, to avoid an expansion of forced labour and trafficking, governments must give similar attention to the crisis on labour markets as they are now doing to crisis on financial markets. They must fill the legal vacuum, sometimes as a result of deregulation, that has allowed some employers and labour market intermediaries to make substantial and unfair profits at the expense of the world's poor. As an ever larger number of countries legislate against human trafficking for labour or sexual exploitation, it is becoming essential to help judges and law enforcement agents identify what constitutes the criminal act of forced labour in the private economy, and to punish this accordingly. But the law and policy response must go further than this. When the borderline between what is and what is not forced labour is difficult to assess, perhaps because the existing legal framework is inadequate, governments should use social dialogue to address these concerns. Labour inspectors and other law enforcement agents must also work together, complementing each other's activities. Ministries responsible for labour and social affairs need to be involved as much as those responsible for the application of criminal justice, in integrated action against forced labour and trafficking.

### **The conceptual and legal challenge**

Since our last global report on forced labour, there has been a significant growth in attention to forced labour, slavery and slavery-like practices, and trafficking for either labour or sexual exploitation. The ILO's first Convention on forced labour, No. 29 of 1930, clearly defines the term of forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself

voluntarily”. The Convention also provides that forced labour shall be punishable as a penal offence, and it shall be an obligation on any ratifying State to ensure that the penalties imposed by law are really adequate and are strictly enforced. By late April 2009 it had been ratified by 173 of the ILO’s 182 member States, making it the most widely ratified of all the ILO Conventions with almost universal acceptance.

In recent years, the momentum for action has come largely from the concern to address human trafficking for labour as well as sexual exploitation. With the 2003 entry into force of the “Palermo Trafficking Protocol” to the UN Convention against Trans national Organized Crime, the States parties (128 by May 2009) have been required to criminalise trafficking for labour as well as sexual exploitation. A growing number of countries have amended their penal codes to this effect, recognized new offences, adopted action plans and inter-ministerial mechanisms, and in limited cases begun to prosecute individual cases of labour trafficking. Nevertheless, there have been differences in national approaches. Some countries have seen the element of coercion, as defined in the ILO’s forced labour Conventions, as an essential feature of the trafficking offence. Others have placed emphasis on unacceptable living and working conditions as the key feature of “labour exploitation”. Yet others have identified different degrees of gravity, ranging from non-coercive exploitation, through to forced labour, and slavery as the most serious offence.

The global movement against trafficking has also opened up debates concerning the treatment of migrant workers, particularly those recruited for overseas employment through a range of labour market intermediaries, both official and informal. The size of this migrant labour force has grown in recent years, increasingly involving young women for domestic service and other activities. They can be charged excessively high recruitment fees, be deceived about the conditions of employment, and face restrictions to move freely or change jobs in the destination country. There can also be collusion between recruiters in sending countries and employers in destination countries to trick these vulnerable migrants out of fair wages and employment conditions. This is widely seen as a modern form of debt bondage. However, despite key provisions of ILO Conventions on private employment agencies and the protection of migrant workers, there is a need for more consensus and clearer guidelines on issues such as fee charging, contracts of employment, or the rights of short term migrants to change jobs and negotiate terms of employment.

### **Indicators of forced labour and trafficking**

Even when the legal framework is in place, law enforcement agents are having obvious difficulties in identifying individual cases of trafficking for labour exploitation, or forced labour. Many countries have been seeking practical guidance from the ILO on this matter. One important initiative was undertaken together with the European Commission, to build an expert consensus on indicators of human trafficking. A range of experts from throughout the 27 EU countries were asked to list elements of deception, exploitation and vulnerability considered relevant to trafficking in Europe. The exercise has developed a series of indicators, some considered stronger than others, on issues including: deceptive recruitment, coercive recruitment, recruitment by abuse of vulnerability, exploitative conditions of work, forms of coercion at destination, and abuse of vulnerability at destination. It is expected that the use of such indicators will heighten understanding of the problem; and, most importantly, enable countries to identify more victims of trafficking. A pilot application of these indicators to a labour force survey in Moldova has identified the percentage of returned migrants considered to have been trafficked for forced labour.

## **Regional perspectives**

In different regions, there have been some improvements in the knowledge base on forced labour.

In Africa, forced labour has generally continued to receive limited attention, though several countries have adopted new anti-trafficking legislation, and there are continuing concerns with slavery-related practices in certain countries. An ILO study in Zambia has provided a model for the kind of country study needed to improve this knowledge base.

In Asia, issues of particular concern are the persistence of bonded labour systems, despite longstanding legislation to prevent and punish these practices; the widespread incidence of trafficking for both sexual and labour exploitation; and the persistence of forced labour exacted directly by the State and official institutions in a country such as Myanmar. In China, detection of different forced labour concerns in the emerging private economy has prompted law and policy reforms. In India, a cooperative programme between the ILO and the Government seeks to address bonded labour problems through regulating systems of advance payments to workers, among other measures.

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 workers including indigenous peoples who migrate from their own communities. The main form of forced labour is debt bondage, within or across national frontiers, when temporary workers are enticed through the payment of advances by unlicensed intermediaries. A country like Brazil, with its long experience and official history of commitment to combat forced labour, has shown what can be done through innovative methods of research, monitoring and inspection, and creative engagement with private employers. Peru has also taken important steps, with regard to policy coordination mechanisms and labour inspection. 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.

Throughout Europe, the recent spotlight has been on forced labour as the outcome of irregular migration processes. An innovative study in Portugal has provided a useful model for future research, addressing separately the immigrant labour exploitation in Portugal itself and the exploitation and trafficking of Portuguese emigrants in other European countries. In the new EU member states more attention is now being given to the trafficking of men for forced labour, as well as of women for sexual exploitation. Recent data from the Russian Federation and other countries of the Commonwealth of Independent States also point to a steady increase in the number of identified persons trafficked for labour exploitation.

Throughout the Middle East there has been a steady growth of reporting on matters related to human trafficking, and to some extent forced labour. Several countries have adopted new laws against human trafficking, sometime backed by inter-ministerial coordination mechanisms. Some have faced criticism of harsh conditions of work for migrants in certain sectors, or of their systems of individual employer sponsorship for temporary contract workers. The question of adequate safeguards for such workers is of particular concern for countries that rely heavily on migrant labour.

## **Thematic concerns**

There has been growing concern about inadequacies in contract labour and recruitment systems, which can contribute to the existence and proliferation of forced labour. Issues include: fees for recruitment services and placement; recruitment channels and mechanisms: contracts of employment; and the means to prevent constraint and coercion. Deficiencies derive in part 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. Criminal law enforcement, with the application of severe penalties, may be necessary in the most serious cases of abuse. But it is essential to generate consensus on acceptable practices, through dialogue between governments and employers' and workers' organizations, building a regulatory framework that reconciles business efficiency with the eradication of abuse. Such policy dialogue can prepare the ground for better guidance on such contentious issues as fee charging to workers.

More evidence is coming to light that seafarers and fishers can be at particular risk of forced labour and trafficking. 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 vessels. Domestic workers 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. There have been isolated cases of good practice, in which labour inspectors have been given the power to enter private premises. The ILO Governing Body has now placed decent work for domestic workers on the agenda of the 2010 session of the International Labour Conference. This discussion needs to consider the circumstances in which domestic workers can be exposed to forced labour, as well as appropriate remedial action.

## **Economic of forced labour: Measuring the cost of coercion**

Workers clearly suffer significant costs through being in a forced labour situation rather than a free employment relationship. This can be traced to two main sources. First, people in forced labour receive wages lower than the market rate, sometimes less than the subsistence minimum. Victims may be overcharged for their accommodation, food and other items. Underpayment also includes excessive overtime and other work that is either unpaid or inadequately remunerated. The second major cost, mainly in the case of trafficked persons, is that associated with the recruitment process, including fees paid to agents, inflated travel costs, and other charges incurred.

Far more work is needed on this subject, Our first and provisional estimate is that the total financial cost of coercion to the workers affected– excluding the victims of forced commercial sexual exploitation – is approximately **US\$ 21 Billion**.

## **National action against forced labour: the role of governments and labour administration**

Governments have the responsibility for the law and policy framework against forced labour, for law enforcement, and for coordinating mechanisms of integrated action against forced labour. As regards prosecution of forced labour, it is reasonable that government

action should be led by criminal justice. Yet 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.

Labour administration and labour inspectorates should be involved in integrated action against forced labour. In most countries, this has not so far been an important aspect of their work. Most forced labour occurs in the informal economy, where labour inspectors face great challenges in monitoring and enforcing labour law. Yet labour inspectors can apply a range of investigative methods not available to other law enforcement authorities. They can investigate complaints without revealing the source, enter premises freely at any time and without prior warning, and act as “early warning” of abuses which may subsequently warrant criminal prosecution. They can moreover apply their tools flexibly before initiating prosecution, issuing notifications, or closing down production in certain cases.

In some cases and jurisdictions, labour inspection is an integral part of criminal law enforcement. In other cases, labour justice is separate from criminal justice, applying sanctions other than criminal penalties. While labour inspectors have the power to apply sanctions against abusive employers, their main concern is to secure fair and safe conditions for all workers. Enforcement of labour law can therefore either complement criminal law enforcement, or be used as an alternative channel to seek justice on matters including financial compensation for workers subjected to forced labour.

### **Forced Labour and the Private Economy: Challenges for Employers’ and Workers’ Organizations**

Employers’ and workers’ organizations need a shared understanding of what forced labour is, and of their respective roles in addressing it, either alone or in cooperation with governments. When blurred areas exist between forced labour and non-coercive exploitation, social dialogue is an essential means of working towards the appropriate regulations and follow-up enforcement and prevention mechanisms.

Both employers and workers have now embraced the forced labour issue, including through the International Organization of Employers (IOE) and the International Trade Union Confederation (ITUC) as their respective umbrella bodies. Both have endorsed policies and action plans, and given increased attention to these concerns in their operational programmes.

Forced labour can affect business actors in different ways. There can be widespread problems in small enterprises in the informal economy, mainly in developing countries. Other industries can be at risk because of their recruitment practices, involving informal and unlicensed intermediaries. Multinational enterprises that outsource their production can find that their subcontractors are using coercive practices. The ILO has provided broad guidance on how employers can prevent, identify and remediate forced labour. There has been much good practice by national employers’ organizations and individual companies, with codes of practice setting out in detail the steps to be taken at different levels of business activity. There is still a need for more uniform assessments and auditing procedures, to have common positions on forced labour indicators, as well as better communication between suppliers and buyers.

The ITUC has called at a timely moment for a Global Trade Union Alliance against forced labour and trafficking. Global and national union federations have taken up the concerns, conducting information campaigns, detecting and documenting forced labour cases, preparing guidance materials, organizing migrant workers to support their rights, and building cooperation between trade unions in different countries. But there are many challenges to intensify trade union involvement, given that the sectors with a high incidence or risk of forced labour tend to be those with the lowest trade union density. Among migrant, domestic and informal sector workers, as well as in industries such as agriculture, construction and textiles, a proactive strategy is required to develop the appropriate policy and vision.

Multi stakeholder initiatives (MSIs), combining the efforts of employers and workers with other civil society groups, can be a good model for unified action. These come in different forms. Some are engaged in policy development, research and capacity building, or in preparing codes of conduct: others have developed certification systems and social auditing. Sectoral initiatives in industries including cocoa, cotton, palm oil, sugar and tobacco have also given prominence to action against forced labour. Such initiatives should not be seen as a substitute for the government agencies responsible for monitoring labour conditions and enforcing standards. But there is scope for collaborative efforts, using the technical skills and experience developed by the MSIs to strengthen the work of the public agencies on matters such as labour inspection and social auditing.

### **Achievements and challenges of technical cooperation**

The ILO has already achieved much through its efforts to date, both in terms of national capacity building, and in leading a global alliance against forced labour. It has provided the basic facts and figures on modern forced labour, raising the global pressure for policy change. The ILO website is a core vehicle for disseminating this knowledge. With careful awareness raising, it has built the consensus to include forced labour as a priority for national action. It has produced a range of guidance and training materials on forced labour and trafficking, targeted at such diverse groups as legislators, labour inspectors, judges and prosecutors, employers' organizations and trade unions. Projects have covered both the "upstream" policy level, and "downstream" initiatives for prevention and reintegration at the community level, using microfinance and other empowerment tools. Lessons are being learnt and documented for future approaches. The ILO should henceforth focus on a limited number of key projects where it has the clear competence and the expertise to achieve results, over a perhaps extended period of time. There is however a need for exit strategies, progressively passing implementation responsibilities to national partners and stakeholders. The ILO should continue to provide strategic policy guidance, covering the complex concerns of forced labour and labour exploitation, and undertake a rigorous analysis of the alternative policy choices available to governments.

### **A Global Action Plan**

A proposed plan for the future combines global issues and approaches with a determination of regional priorities.

Four overall priorities are: improved data collection and research, refining the indicators that can now be used for the much needed country estimates; an intensified global awareness campaign, for example encouraging public support for local and international

efforts to fight trafficking for labour as well as sexual exploitation and facilitating high-profile debates on both the causes of modern forced labour and the best means to address it; improving law enforcement and labour justice responses, mainly by seeking more involvement of labour administration and labour inspectors in integrated action against forced labour; and strengthening the engagement of employers' and workers' organizations in action against forced labour and trafficking.

When resources are limited, priorities must also be determined by region. The knowledge base on forced labour and its causes needs to be further expanded in developing countries, beyond the small number of States that have so far taken the lead. Where forced labour continues to exist in a context of poverty and discrimination, there should be a focus on better prevention strategies, including the targeting of poverty reduction programmes and development resources at the communities most in need.

In view of the concerns echoed throughout this report, that migrant and temporary contract workers can be at serious risk of forced labour, there should be intensified cooperation between sender and destination countries for these vulnerable workers. Emphasis can be placed on better-regulated recruitment mechanisms, and improved monitoring. Furthermore, public-private partnerships can help ensure that employers and workers are fully engaged with government efforts to improve systems of labour contracting and job placement.

Finally, forced labour and human trafficking are a concern for all countries and all kinds of economy today, including the industrialized countries. The ILO will continue to respond to requests for assistance from industrialized countries, including those for training, research and quantitative surveys of forced labour. It will also engage more closely with academic and policy institutions, to promote research and teaching on the economic and other underpinnings of forced labour in the modern global economy.