

Leaflet No. 3

Forced Labour, Human Trafficking and Indigenous and Tribal Peoples

1. Forced labour: an extreme manifestation of discrimination

The persistence of forced labour today is often the result of very longstanding patterns of discrimination, particularly against certain indigenous and tribal peoples and ethnic minorities. In Asia, bonded labour has been and remains particularly severe among the Scheduled Castes and Scheduled Tribes in India; and among indigenous peoples in Western Nepal. Indigenous peoples or hill tribes, particularly women and girls, throughout the Mekong region of South-East Asia are also known to be particularly vulnerable to trafficking for sexual exploitation. Throughout Africa, contemporary forced labour and slavery-like practices appear to be a particular problem in those countries which have a recent history of slavery, and where there are reports of continuing patterns of discrimination against persons of slave descent. In Latin America, today as centuries ago, the main victims of forced labour are indigenous peoples. At times these are the indigenous groups living in isolated regions, where comparatively recent settlement has encouraged a demand for cheap labour, and where there is virtually no state presence to provide protection against forced labour abuse. At other times forced labour has been exacted from indigenous peoples who have long been integrated into the national economy and society, though in a situation of extreme disadvantage vis-à-vis the remainder of the national population.

The enhanced vulnerability of children to forced or compulsory labour is well known. Women and men differ in their particular risks of new and differing forms of coercion. And there is evidence that indigenous peoples and other racial or ethnic minorities are especially vulnerable.¹

2. What is forced labour?

A typology of forced labour

There are three main forms of forced labour:

- **forced labour imposed by the State or by armed forces** – which includes three main sub-categories, namely:
 - forced labour exacted by the military or by rebel groups;
 - compulsory participation in public works; and
 - forced prison labour in labour camps as well as in modern privatised or semi-privatised prisons;
- **forced commercial sexual exploitation (CSE)**, which includes women, men and children who have been forced into prostitution or into other forms of commercial sexual activities; and
- **forced labour for economic exploitation (EE)**, which comprises all forced labour imposed by private agents and enterprises in sectors other than the sex industry. It includes forced labour in agriculture, industry, services as well as in some illegal activities.

Forms of coercion

The ILO's definition of forced labour has two basic elements, which are as follows:

- **The menace of a penalty** can take multiple forms. Arguably its most extreme form involves physical violence or restraint, and 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 forced prostitution. Other penalties can be of a financial nature, including economic penalties linked to debts or the non-payment of wages. 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.
- **The involuntariness of work.** Indigenous peoples' involuntary engagement in work may take a number of forms. And the following need to be taken into account: the form and subject matter of the consent to work; the role of external constraints or indirect coercion; and the possibility of revoking consent.

¹ Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2001.

There can be many subtle forms of coercion. Many victims enter forced labour situations initially out of their own choice, thereafter, they may discover that they are not free to withdraw their labour. They may be unable to leave their work due to legal, physical or psychological coercion. Initial consent may be considered irrelevant, when deception or fraud has been used to obtain it.

In order to determine whether a situation can be labelled as forced labour or not, it is not necessary to look at the nature of the activity involved, or even at whether this activity is legal or illegal under national law. Instead, a *situation of forced labour is determined by the nature of the relationship between a person and an “employer”*. For example, a woman forced into prostitution is in a forced labour situation because of the involuntariness and menace under which she is working, not because prostitution might be legal or illegal in a particular country.

Discrimination and human trafficking

An ILO research programme has shown that the existence of discrimination based on ethnic origin is also one major determinant of trafficking in human beings.

Trafficking is defined by the United Nations² as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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.”

More research will be needed to fully understand the linkages between discrimination based on ethnic or national origin and human trafficking. However, it is clear that ethnic and racial stereotypes exacerbate the vulnerability of migrant workers to forced labour practices.

The existence of gender discrimination on top of ethnic discrimination further increases the probability of forced labour. Due to the multiple discrimination they face, indigenous women are often particularly vulnerable to trafficking, not only for commercial sexual exploitation, but also for other forms of forced labour.

Trafficking not only occurs for the purpose of forced commercial sexual exploitation but also increasingly for other forced labour such as in agriculture, construction, or domestic work. It is often the result of a complex reality. For example, migrants, including indigenous peoples, frequently enter destination countries of their own will, perhaps with the assistance of friends and family members who are already there. They can still be highly vulnerable to exploitation, in particular when they have an irregular status and live under persistent threat of denunciation to the authorities and eventual deportation.

3. Which ILO Conventions are of relevance to forced Labour?

Two ILO Conventions address the question of forced labour specifically. These are:

The Forced Labour Convention, 1930 (No. 29)

Convention No. 29 defines forced or compulsory 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” (Article 2.1).

Forced labour occurs when people are being subjected to psychological and/or physical coercion in order to perform some work or service which they would otherwise not have accepted at the prevailing conditions. Forced labour is thus not just equivalent to low wages or bad working conditions. It represents much more than that. It is a violation of human rights and a restriction in human freedom. Forced labour includes situations such as slavery, practices similar to slavery, debt bondage, or serfdom. At the national level, forced labour is sometimes known under different names. It can be called bonded labour in South Asian countries or “slave labour” and “peonaje” in parts of Latin America. In the press, forced labour is often referred to as “modern slavery”.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

The ILO does not prohibit all compulsory work. There are certain exceptions, in particular with regard to military service for work of purely military character, normal civic obligations, work of prisoners convicted in a court of law and working under the control of a public authority, work in emergency cases such as wars or other calamities, and minor communal services (Article 2.2).

In its examination of the implementation of Convention No. 29 by ratifying states, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR – see leaflet 1 for more details) has noted the situation of indigenous peoples on a number of occasions.³

The Abolition of Forced Labour Convention, 1957 (No. 105).

As a complement to Convention No. 29, ILO Convention No. 105 makes it clear that there are some purposes for which forced labour can never be imposed. So, for example, forced labour can never be used for economic development or as a means of political education, discrimination, labour discipline, or punishment for having participated in strikes.

Other ILO Conventions of relevance

ILO Conventions Nos. 107 and 169 (see leaflet No. 2) also contain provisions to protect indigenous peoples from forced labour. In their examination of the implementation of the ILO's Indigenous and Tribal Populations Convention, 1957 the ILO's supervisory bodies have also examined the labour situation of indigenous peoples, in particular the employment of indigenous workers, including children, in the Brazilian state of Matto Grosso do Sul, sometimes in slave-like conditions.⁴

5. What is the ILO doing to combat forced labour?

ILO activities to combat forced labour include support for high-quality investigations and better documentation of forced labour, awareness-raising and advocacy, advice on legal reform and on the development of efficient policy frameworks, training of labour inspectors or others, capacity building, as well as community-based prevention and rehabilitation through technical cooperation projects. The ILO established the *Special Action Programme to combat Forced Labour (SAP-FL)* in 2001 to spearhead ILO activities against forced labour, including trafficking. It is a broad-based technical cooperation programme working at the request of member states and in close collaboration with workers and employers, civil society and other international organizations.

It is clear, though, that policies and projects against forced labour, trafficking and discrimination must be nationally owned. The ILO can only be really effective when supporting efforts by Governments and social partners. The ILO thus encourages social partners to record and document cases of forced labour at the national level and to raise the issue in their dialogue with Government. Forced labour can only be eliminated through the genuine mobilization of Governments, social partners, and civil society.

In Peru, a recent investigation has confirmed the existence of forced labour in the context of illegal logging activities in the Departments of *Ucayali and Madre de Dios* – which are located in the country's Amazon basin and are areas that are largely inhabited by indigenous peoples.⁵ In Bolivia, a different study has also documented the existence of forced labour against indigenous peoples.⁶ In Paraguay, forced labour against indigenous people has been observed in some traditional farms in the Chaco region.⁷

A number of countries have recently implemented stronger policies to eradicate debt bondage and other forms of forced labour to which indigenous peoples are too often subjected.

Bolivia has recently created a *National Commission for the Eradication of Forced Labour* which is responsible for developing and implementing with the involvement of social partners a set of effective policy measures to combat the forced labour inflicted on indigenous people.

³ CEACR Individual Observation, Paraguay, (Convention No. 29), 2004. ⁴ CEACR Individual Observation, Peru, (Convention No. 29), 1999.

Report of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution alleging non-observance by Brazil of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) CEACR, Individual Observation (Convention No. 107), 1996.

⁵ Bedoya Garland and Bedoya Silva-Santisteban, DECLARATION Working Paper no. 40, March 2005.

⁶ Bedoya Garland and Bedoya Silva-Santisteban, DECLARATION Working Paper no. 41, March 2005.

⁷ Bedoya Silva-Santisteban and Bedoya Garland, DECLARATION Working Paper, (forthcoming).

6. Where can I look for further information on ILO action on forced labour and indigenous and tribal peoples?

Electronic resources

For information on relevant Conventions, you can consult the following resources:

- The ILOLEX database at www.ilo.org/ilolex
- The website of the ILO Standards Department at www.ilo.org/normes

For information on the SAP-FL programme, you can consult the following resources:

- The website of the Programme to Promote the ILO Declaration on Fundamental Principles and Rights at Work (including the SAP-FL programme): www.ilo.org/declaration.
- Or, you can e-mail forcedlabour@ilo.org.

Key Publications

- *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 93rd Session, 2005, Report I (B).
- *Stopping Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 89th Session, 2001, Report I (B).
- Eduardo Bedoya Garland y Alvaro Bedoya Silva-Santisteban, *El Trabajo Forzoso en la Extracción de la Madera en la Amazonía Peruana*, DECLARATION Working Paper no. 40, International Labour Office, March 2005.
- Eduardo Bedoya Garland y Alvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, DECLARATION Working Paper no. 41, International Labour Office, March 2005.
- Alvaro Bedoya Silva-Santisteban y Eduardo Bedoya Garland, *Servidumbre por Deudas y Marginación en las Estancias Tradicionales del Paraguay*, DECLARATION Working Paper, International Labour Office (forthcoming).