

1. Introduction

Estimates by the International Labour Organization (ILO) indicate 20.9 million people worldwide are subjected to forced labour. Of these, 18.7 million (90%) are exploited by individuals or enterprises in the private economy for labour and sexual purposes, and 2.2 million (10%) are exploited by the state.¹

First and foremost, forced labour is a fundamental violation of human rights, depriving individuals of their freedom and dignity. It is both a leading cause of poverty and an obstacle to economic development.

In the private economy, forced labour generates around US\$150 billion globally in illegal profits every year. The total amount of unpaid wages to forced labourers is estimated at US\$19.6 billion annually (excluding victims of commercial sexual exploitation).² Not only does forced labour provide unfair competition to industries and businesses, it also deprives states of tax and social security revenues. Governments are unable to collect these revenues that voluntary, paid labour would have generated, and victims of forced labour do not acquire the purchasing power they would have gained otherwise. Consequently, the state is unable to accumulate the extra revenue that would have been collected from higher consumption and tax revenues.

Forced labour remains in the international spotlight. Given such practices penetrate global supply chains, there is increasing pressure to identify products potentially made by forced labour. Direct or indirect use of forced labour can thus be detrimental to trade and business. Mongolia, as a member of the European Union's (EU) enhanced Generalised Scheme of Preferences (GSP+), benefits from trade incentives dependent on compliance with international Conventions, including on forced labour.

Case study: Uzbekistan

A Central Asian example is Uzbekistan's cotton industry, which involves persistent allegations of state-sponsored forced labour of both adults and children. Repeated criticism of the situation by ILO supervisory bodies led to public discussion by the government, and workers' and employers' representatives at the International Labour Conference.³ The matter was seen by many as a truly international problem in view of increasing globalisation and international supply chains in the textile industry. Eventually, the European Parliament postponed the signature of a bilateral trade agreement

between the EU and Uzbekistan.⁴ More recently, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted "with interest" in its 2015 observation under the **Worst Forms of Child Labour Convention, 1999 (No. 182)** that the government was taking measures to eliminate child labour during the cotton harvest.⁵ It also noted in its observation under the **Abolition of Forced Labour Convention, 1957 (No. 105)** that further work is needed to mitigate the risk of, and strengthen safeguards against, adult forced labour in cotton picking.⁶

As an upper-middle income country currently experiencing a significant economic slow-down, Mongolia therefore stands to benefit from increased efforts to prevent and eliminate forced labour. Indeed, it is a target of Sustainable Development Goal 8 on decent work and economic growth to eliminate forced labour by 2030.

Forced labour is prohibited under Article 7 of Mongolia's **Labour Law (1999)**.⁷ The **Criminal Code (2015)** has also been approved, Article 13.13 of which criminalises forced labour, punishable with a fine or imprisonment for up to 8 years. It will come into force on 1 September 2016.

2. Identifying forced labour

The **Forced Labour Convention, 1930 (No. 29)**, ratified by Mongolia in 2005, defines 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."

Threatened penalties can take physical, psychological, financial and other forms, ranging from the withholding of wages, restriction of mobility and use of physical violence, to the removal of rights or privileges, transferral to worse working conditions and denouncing an irregular migrant to the authorities.

Similarly, involuntariness and coercion can go beyond the mere absence of a statement of consent or the presence of deception and be difficult to detect. Other indicators include exacting labour in repayment of a debt (debt bondage) or seizing a worker's identity documents. There may be lack of consent from the outset (victim commences work against his or her free will) or it may develop later (victim is unable to stop work with a reasonable notice period and without forgoing payments or other entitlements).



It is therefore not the nature of the work that determines whether it can be considered forced labour, but the relationship between the person performing it and the person exacting it. Thus, even work that would ordinarily be deemed lawful under domestic law can be exacted in a way that amounts to forced labour due to the threat of penalties and lack of consent. Forced labour can exist within or without an employment contract or employment relationship, and whether wages are paid in full, in part or not at all.

Some groups are more vulnerable to forced labour. For example, migrants can be at risk of debt bondage, having often incurred debts for transport, food and lodging that cannot otherwise be repaid. Irregular migrants are particularly vulnerable, as their precarious immigration status leaves them more open to threats, intimidation and exploitation.

Issues facing migrant workers in Mongolia

Mongolia's **Law on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad (2001)** offers few protections for migrant workers. In 2011, around 200,000 Chinese migrants were working in Mongolia. Local media reports indicated that 84 had entered the country with tourist visas using a Chinese labour agency and were "sold" to Mongolian employers, their passports being confiscated on arrival. One report suggested tens of thousands of Chinese construction and mining workers entered Mongolia under similar circumstances. Other reports stated some North Korean migrants work in conditions tantamount to forced labour in mining, factory work, utilities, transportation, construction, customer service and health services. It is reported that they are prohibited from leaving work and their wages are paid directly to a North Korean government agency.⁸⁹

Convention No. 105, also ratified by Mongolia in 2005, prohibits forced labour as a means of:

- political coercion or education;
- punishment for holding or expressing contrary political views;
- mobilising labour for economic development;
- labour discipline;
- punishment for participating in strikes; and
- racial, social, national or religious discrimination.

Certain types of work that may involve involuntariness and the threat of penalties for non-compliance are specifically excluded from the definition of forced labour under Convention No. 29, namely:

- compulsory military service (only for work of a purely military nature);
- normal civic obligations and minor communal services;
- prisoners' labour, under specific conditions (see below); and

- emergency work performed in the event of a war, calamity or other situations endangering the whole or part of the population.

More recently, the ILO adopted the **Protocol of 2014 to the Forced Labour Convention, 1930** (referred to hereafter as P29), to address gaps in the implementation of Conventions Nos. 29 and 105. It has not yet been ratified by Mongolia.

P29 requires states to take measures to prevent and eliminate forced labour, including educating employers and people vulnerable to forced labour, strengthening and enforcing legislation and inspection services, and providing access to remedies such as compensation to all victims, irrespective of their presence or legal status in the territory. P29 emphasises the link between forced labour and human trafficking and reiterates the importance of prosecuting perpetrators of forced labour.

3. Prisoners' labour

In accordance with Convention No. 29, prison inmates can be obliged to perform work subject to the following conditions:

- they have been detained following their conviction by a court for a criminal offence (not administrative or pre-trial detention);
- their work is supervised and controlled by a public authority; and
- they are not hired to, or placed at the disposal of, private individuals, companies or associations.

Even if a person has been lawfully detained, he or she cannot be forced to work for the purposes set out in Convention No. 105 (see above). For example, someone imprisoned for participating in illegal but peaceful strikes cannot be forced to work (although using violence during strikes may justify forced labour as a punishment). Similarly, a prisoner cannot be subjected to labour discipline in the sense of being punished for not meeting prison production quotas by imposing more labour.

According to the CEACR, if a prison is operated together with private organisations, further conditions must be met to ensure that work performed by prisoners does not amount to forced labour:

- Prisoners' labour for private organisations must be voluntary, and prisoners should provide their formal, written consent;
- Remuneration and health and safety conditions should approximate normal working conditions outside prison (although deductions from remuneration, controlled by the public authority, can be made based on prisoners' upkeep and compensation for victims);
- Prisoners should be able to make purchases or use their earnings to support their families, and should be credited with any savings upon their release; and
- Prisoners' labour should be open to scrutiny by labour inspection.

These conditions ensure work is not involuntary, prisoners are not exploited by private organisations and workers outside prison are not undercut.

Prisoners' labour in Mongolia

3,281 detainees are currently engaged in prisoners' labour in Mongolia.¹⁰ Section 120 of Mongolia's **Law on Court Decision Enforcement (2002)** requires the working conditions of prisoners to be close to those in the normal labour market, and section 121 provides that prisoners should be paid a salary appropriate to the amount and quality of work performed. Payment should be transferred to the prisoner's account directly. In practice, however, prisoners are sometimes paid below minimum wage, do not receive their full salaries (a significant amount being deducted to cover the administration of prisons) and perform work for private employers, according to studies conducted by the National Human Rights Commission on Mongolia (NHRCM) and the ILO.¹¹¹²

As noted by the CEACR in its 2012 direct request under Convention No. 29, the **Law on Forced Medical Treatment and Labour of Individuals Addicted to Alcohol and Narcotic Substances (2000)** permits courts to impose compulsory labour on alcoholics and drug addicts to pay for expenses incurred, such as medical treatment.¹³ It is likely that the Government will soon be required to explain how the free and informed consent of such individuals is obtained without the menace of any penalty.

4. Conscript labour

Convention No. 29 sets out that compulsory military service is permissible if the work performed is of a purely military nature. Forcing conscripts to complete compulsory non-military work, on the other hand, is not allowed and constitutes forced labour. Moreover, both Conventions Nos. 29 and 105 prohibit the mobilisation and use of forced labour for economic development. In general, conscript labour must therefore not be used for development-oriented, non-military projects.

However, non-military work can be demanded of conscripts in emergency situations, as outlined in Convention No. 29, such as "in the event of a war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population".

Moreover, non-military work can be required of conscripts serving in engineering or similar units as part of their military training, for example, building roads and bridges. Such conscripts will normally have been educated in the relevant field. In addition, it is accepted that non-military work can be required of those who express a conscientious

objection to military service due to their personal and political beliefs.

It should be noted that voluntarily enlisted career servicemen and women can be engaged in non-military work because, in contrast to conscripts, their labour is performed voluntarily. They must, however, be free to end their service in peacetime, subject to serving reasonable notice.

Conscript labour in Mongolia

Conscription in Mongolia is mandatory for men aged 18 to 25, and does not allow conscientious objection. In 1999, the President adopted the Rule to Involve Military Units and Organizations in Business Activities by Decree 153, which allows conscripts to be employed off-site by agreement between the Government and its partners to conduct economic and social development projects.

Using servicemen in non-military work deemed to be of benefit to the community is common, according to the NHRCM.¹⁴ Even though a forthcoming ILO and NHRCM study suggests non-military work performed by conscripts is often voluntary, paid and covered by basic health and safety protections,¹⁵ it does not appear permissible under Conventions Nos. 29 and 105 because it is conducted in the context of a military service obligation, so falls under the definition of forced labour. Moreover, the Action Plan of the Government of Mongolia (2012–2016) includes a goal to "take measures to involve military servicemen in reconstruction and development activities", and the Government adopted the Military of Mongolia in Development programme in 2013, suggesting non-compliance with Conventions Nos. 29 and 105.

5. Trafficking in persons

Mongolia adopted the **Law on Combatting Human Trafficking** in 2012. It defines trafficking in compliance with the **Palermo Protocol**, to which Mongolia acceded in 2008 and which defines trafficking 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 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, 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."¹⁶

Other than the removal of organs, the types of exploitation covered in the Palermo Protocol's definition of trafficking and Convention No. 29 fully coincide. The link between forced labour and trafficking is underlined in P29, which

also calls to “include specific action against trafficking in persons for the purpose of forced and compulsory labour.”

Trafficking in Mongolia

Parliament passed the **Law on Victim and Witness Protection** in 2013, which has been enforced since 2014, setting out various protection measures that benefit trafficking victims and specifying when the need for protection emerges. Although the criminal justice system has improved in this regard, there are concerns about police capacity in investigating trafficking and prosecuting traffickers. The State Investigation Unit’s Special Police Unit to Combat Trafficking was subsumed into another unit dealing with narcotics and organized crime staffed by only 9 police officers.¹⁷

Reports indicate foreigners are trafficked to Mongolia for forced labour, particularly in the construction and mining sectors, and Mongolia remains a source country, particularly for female victims of sex trafficking to China and other Asian countries. Prosecution of traffickers and has been limited, as have attempts at prevention. Furthermore, victims continue to be punished for actions committed as a result of them being trafficked, including children in prostitution being arrested, detained and prosecuted, and Chinese labourers being fined and expelled from Mongolia for breaching the terms of their visas.¹⁸

6. Recommendations

Mongolia should seek to strengthen its commitment to the prevention and elimination of forced labour, not only to ensure it upholds fundamental human rights and international labour standards, but also to advance its economic interests, maintaining trade benefits with the EU and attracting further trade. The following actions are recommended:

- Ratify P29 in order to address gaps in the implementation of Convention No. 29 through increased prevention, education and monitoring of forced labour, and encourage further steps to combat trafficking;
- Promote freedom of association and collective bargaining to enable vulnerable workers, such as migrant workers, including irregular migrants, to join workers’ organisations;
- Amend the Law on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad to provide safeguards for migrant workers, including the right to union representation, no fees charged to migrant workers, clear contract terms, inclusive labour policies, protection against the confiscation of passports or identity documents, the guarantee of regular and directly paid wages, the provision of safe and decent living and working conditions, access to legal remedies and the freedom to change employment;
- Increase efforts to formalise enterprises, particularly small and medium-sized enterprises (SMEs);
- Strengthen labour inspection capacity to ensure compliance with international Conventions on forced labour, including trafficking;
- Allocate sufficient funds and conduct regular research on forced labour to ensure evidence-based approaches to policy formulation; and
- Reconsider current practices in respect of prisoners’ labour, conscript labour and migrant labour.

¹ ILO: *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012), p. 13.

² http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm

³ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3132643

⁴ http://www.antislavery.org/english/campaigns/cottoncrimes/forced_labour_in_uzbekistan_background.aspx

⁵ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3256000

⁶ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3256210

⁷ Labour Law is currently undergoing revision

⁸ <http://survey.ituc-csi.org/Chinese-migrant-workers-forced.html>

⁹ <http://survey.ituc-csi.org/North-Korean-workers-exploited.html>

¹⁰ Response from Ministry of Justice officer (2015)

¹¹ NHRCM: *13th Status Report on Human Rights and Freedoms in Mongolia* (Ulaanbataar, 2014), pp. 34-36.

¹² ILO and NHRCM (forthcoming), *Prison labour and employment conditions of convicts in Mongolia: An empirical study*

¹³ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3074509

¹⁴ NHRCM: *13th Status Report on Human Rights and Freedoms in Mongolia* (Ulaanbataar, 2014), p. 33.

¹⁵ ILO and NHRCM, *Compulsory military service and conscript labour in Mongolia: Review of policy and practice* (Ulaanbataar, NHRCM, forthcoming).

¹⁶ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 2000.

¹⁷ ILO: *Mongolia: Legislation and law enforcement (Investigation, prosecution and conviction)* (Bangkok, ILO, FLARE project briefing note, 2014).

¹⁸ ILO (2014), *Mongolia: Legislation and law enforcement (Investigation, prosecution and conviction)* (Bangkok, ILO, FLARE project briefing note, 2014).