

FORCED LABOUR: CRITICAL ISSUES FOR EMPLOYERS & BUSINESS LEADERS

Background paper prepared for a conference on
Addressing Forced Labour: The Role of Employers' Organisations and Business
Bangkok, Thailand
June 30th - July 1st, 2008

Although forced labour has not been particularly high on the agenda of employers' organisations, their members and global business, concern and interest is growing steadily. Certainly, no business can afford the negative implications of being associated with forced labour in its own operations or supply chains. Forced labour is a criminal practice, prohibited in both international law and most national legislation. Indeed, it is the only subject in almost 190 Conventions of the ILO that touches on a matter of criminal law and its enforcement. This is a matter on which employers' organisations would be advised to provide guidance to members, and which every company would be advised to factor into risk assessments. A business facing sound allegations that it is profiting from forced labour exploitation will not only find its reputation severely tainted: it might in rare circumstances also face expensive lawsuits and criminal prosecution.

Yet the issue, while of major importance, is often little understood. While child labour is easy to identify, forced labour can be a more complex issue. It is rare to find workers under lock and key, or physically forced to work under threat of violence. But there are a range of more subtle forms of constraint - such as inducing workers into severe indebtedness, confiscating identity documents of migrant workers, or deliberate non-payment of wages - which can be considered as forced labour practices under national laws or international standards.

Moreover, the limits of a business' legal obligations and liabilities are a matter of much debate. To what extent is this a corporate social responsibility (CSR) concern, as a voluntary business commitment to ensure better working conditions around the world? And to what extent should there be binding legal obligations on companies throughout their product and supply chains?

In today's globalized world, companies tend to have complex supply chains and production processes. Production sites are moved to places where production costs, including labour costs, are most competitive. However, this may have consequences for wages, working hours, and living and working conditions may be far from satisfactory. Yet, as part of their CSR policies, companies seek better work practices everywhere; and they have a higher degree of responsibility to verify whether business partners are using forced labour.

What is forced labour?

The term *forced labour* is defined by the ILO in its Forced Labour Convention (No. 29 of 1930). This has been ratified by 171 of the ILO's 182 member States, meaning that it enjoys almost universal acceptance. In essence, persons are in a forced labour situation when they enter work or service against their freedom of choice, and cannot leave it without penalty or the threat of penalty. This does not have to be physical punishment or constraint. It can also take other forms, such as the loss of rights or privileges.

Working in poor or unhealthy working conditions is also considered a form of exploitation. Accordingly, certain countries have passed legislation providing penalties for companies that subject workers to conditions that are “degrading” or “incompatible with human dignity.” The purpose of labour law and its enforcement, guided by the international labour standards developed by the ILO, is to achieve the improvement of working conditions everywhere.

Forced labour, however, is a *criminal act*. The ILO’s Forced Labour Convention clarifies (Article 25) that “The illegal exaction of forced or compulsory labour shall be punished as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”. Otherwise put, forced labour goes beyond a CSR issue, in the sense of a voluntary commitment by companies to improve business practices. It is a binding legal obligation, failing which a company can be liable to criminal prosecutions and sanctions.

Forced labour: implications for employers’ organisations and business

At least until recently, forced labour has not often been seen as a problem likely to affect employers’ organisations and their members. Rather, it has been associated with human rights abuse by repressive regimes, with gulags and concentration camps.

But two global reports on contemporary forced labour by the ILO, in 2001 and 2005, help to show why it should figure higher on the risk management concerns of business. The ILO’s 2005 report, *A Global Alliance against Forced Labour*, contains the first ever global and regional estimates of forced labour incidence by an international organization. It estimates some 12.3 million victims of forced labour worldwide (9.5 million in Asia, 1.3 million in Latin America, 660,000 in sub-Saharan Africa and no less than 360,000 in the industrialized countries including Europe and the North Americas). Perhaps more importantly, the findings are that four out of every five cases involve forced labour exploitation by private agents.

What does this consist of? Apart from state imposed forced labour, the 2005 ILO report distinguishes between two main forms. One is the widespread forced labour in the poorer developing countries, linked to longstanding patterns of poverty and discrimination. The second major form is the forced labour that arises from migration and trafficking of workers across the world. This affects mainly those persons working at the margins of the formal economy, with an irregular employment or migration status. Sectors where problems have often been identified include agriculture or horticulture, construction, garments and textiles under sweatshop conditions, catering and restaurants, domestic work, entertainment, and in particular the sex industry. The more research that is carried out, however, the more evidence is produced that coercive recruitment and employment practices can affect migrant workers in other mainstream economic sectors, including food processing, health care and contract cleaning, and also in some public sector employment such as the provision of health-care services.

Today, with the phenomenon of subcontracting and the greater use of recruiting intermediaries, many businesses have long, complex and unregulated supply chains and business relationships. Within these supply chains, companies may exercise little influence and the risk of abusive practices may be present. While recruitment for employment abroad is a legitimate and much needed business, in the worst cases it can provide a cover for trafficking activities. Weak monitoring, lack of appropriate labour inspection systems and low law enforcement are some causes that can enable unscrupulous recruitment agencies to make high profits by charging migrant workers excessive fees, deceiving them about the nature of their work and paying wages far less than those promised at the time of recruitment. Indeed the US Department of State, in its annual *Trafficking in Persons Report* issued in June 2007, highlighted the problems of debt bondage and involuntary

servitude among migrant “guest workers”, including the “intentional imposition of exploitative and often illegal costs and debts on these labourers in the source country or state, often with the complicity and/or support of labour agencies and employers in the destination country or state”.

What can employers’ organizations and business leaders do?

Forced labour is now becoming a significant risk management concern for companies. But in today’s sophisticated business world, it can be very hard to monitor all aspects of production throughout supply chains. Senior boardroom members may simply not know what the recruitment practices in an outsourced operation are, and procedures may not be in place to ensure that such information is available. Moreover, officials at different levels of a company’s operations may not have the tools to identify a forced labour risk, or prepare the appropriate response.

Auditors, human resource officers, field managers and supply chain managers can have different responsibilities. Some have the job of training key personnel, to ensure that all employees know *what forced labour is*, and when some unsatisfactory employment practices can spill over to the criminal offence of forced labour. Others have to deal with outsourcers and supply chains. They need to know when to disengage, and when to engage constructively by using their influence to achieve a gradual improvement in working conditions.

Employers’ organisations and their members might also see the need to be involved in broader policy debates - involving legislators, government officials and also the representatives of workers’ organizations - on the labour market and other factors that can breed forced labour conditions, and on the means to address them. A good example is the charging of fees by labour brokers and recruitment agents. Throughout the world, there are growing concerns that some workers are being driven into high indebtedness through the high transaction charges of these labour brokers, sometimes so severe as arguably to amount to the debt bondage prohibited by international human rights instruments. In extreme cases, where the brokers deliberately exploit workers’ vulnerability, the costs of visas, transport, passports or accommodation can be so inflated that migrant workers remain in debt after a full season of employment. Worse still, contract workers can be deceived over promised wages or the nature of their jobs, getting trapped in a spiral of indebtedness.

To ensure that debatable practices do not degenerate into forced labour, it is essential that business actors get together to agree on at least minimum standards of behaviour.

Basic principles

To set the ball rolling, the ILO’s Special Action Programme to Combat Forced Labour has proposed a set of 10 principles to guide business action against forced labour. They were originally presented at a business summit on forced labour and trafficking in Hong Kong in April 2007, and were reproduced by the Global Compact at its Geneva Summit in July 2007. They are, respectively, to:

- 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, forced 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.

Guidance material and other tools

While the above are general principles, applicable to all industries and employers, there are signs that employers' organisations and companies would now welcome a more intensive learning process on forced labour, together with guidance tools and materials developed in consultation with key business actors. The SAP-FL programme has begun by working with employers' organizations, listening to their concerns, and preparing guidance material accordingly.

In China, initial seminars have been conducted in Beijing and Zhejiang respectively, for senior managers from both public and private companies and recruitment agencies, in sectors including construction, manufacturing, textiles and transport. Following an assessment of training needs of member companies of the China Enterprise Confederation (CEC), a training manual is being prepared with a particular focus on employers engaged in subcontracting, recruiting agencies, small and medium enterprises in export processing zones, and suppliers to multinationals. In Russia, together with the European Bank for Reconstruction and Development (EBRD), SAP-FL has been working with construction employers to raise awareness of the risk of migrant workers' exploitation and to improve recruitment practices. In Jordan it has held training sessions with garment exporters, particularly those whose factories in the export sector have been criticised by NGOs for alleged forced labour practices.

In February of this year, the Coca Cola Company, together with ILO, the US Chamber of Commerce and US Council for International Business, hosted a conference on "Engaging Business: Addressing Forced Labour" at its headquarters in Atlanta. This meeting was part of broader efforts to engage business, and brought together employers' organisations, companies, government officials, civil society organisations and ILO to share experiences and knowledge. The meeting's discussion and debate showed there is growing concern about the risks of forced labour in global supply chains. Finally, as part of a UN-wide initiative against human trafficking, the SAP-FL programme has recently embarked on a new initiative on supply chain management. This covers the four sectors of construction, garments and textiles, food chains and retail, and transport. Through detailed consultations with business actors in these four sectors, the programme aims to develop targeted training and guidance by the end of 2008.

A Business Alliance against Forced Labour

The ILO now seeks to harness business actors to its global efforts to end forced labour. A strategic plan has been developed, preparing the ground for the formal launch of such a business alliance in early 2009. Beginning with this consultation, and in close coordination with the International Organization of Employers, the plan envisages growing engagement with the business community on concerns including:

- Forced labour as a possible issue of concern in supply chain management, through codes of conduct, monitoring, auditing and compliance
- Factors that may contribute to forced labour in the production and trade of major commodities, and which therefore warrant a more systemic approach than traditional supply chain management
- Factors that make forced labour a particular risk for some non-export businesses, particularly those small and medium enterprises exposed to the informal economy
- The role of trans-national recruitment agencies, and the measures needed in both law and practice to prevent the incidence of forced labour and trafficking in contract labour and recruitment processes.

This represents a strategic opportunity for employers' organizations and their members to exercise leadership on an issue which is certainly moving higher on economic, trade and social policy agendas. Building on an already strong commitment to the global fight against child labour, this can be a vitally important step in promoting adherence to core labour standards and decent work worldwide.