

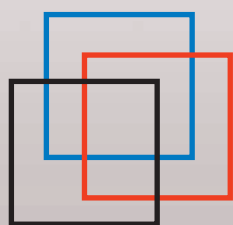


International
Labour
Organization



**FORCED
LABOUR
AND HUMAN
TRAFFICKING**

HANDBOOK FOR LABOUR INSPECTORS



Special Action
Programme to
Combat Forced
Labour

FORCED LABOUR AND HUMAN TRAFFICKING

A handbook for Labour Inspectors

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A handbook for Labour Inspectors

By Beate Andrees

International Labour Office
2008

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Foreword

All over the world, there has been huge investment in training police, border control and other law enforcement agencies in ways to address human trafficking. Yet the key role of labour inspectors, in the eradication and prevention of forced labour including human trafficking, has so far been overlooked. Because these are serious criminal offences, States and other actors have tended to assume that forced labour and trafficking are best dealt with through criminal law enforcement and procedures, rather than through labour law, administration and justice.

Yet there are many reasons why – as is already happening in some countries – labour inspectorates need to take these concerns more on board, and to consider their particular role, acting either alone or in co-operation with other law enforcement agencies, in addressing the problems. First, labour inspectors are well equipped to provide early warning. The early indicators of what may degenerate into forced labour situations in the private economy relate to abusive practices of wage payment, unfair deductions, fraudulent contracts, abusive recruitment practices and the like. Second, labour inspectors have easier access than police and prosecutors to most workplaces; they can carry out the initial investigations and intelligence gathering on the basis of which criminal prosecutions can later be brought. Third, because of their more conciliatory role than criminal law enforcement, they can have important functions of prevention and awareness-raising on the risk of forced labour situations.

The handbook is a tool for training. It seeks both to inform labour inspectors of the facts and trends of modern forced labour and the challenges before them, and to promote discussion as to how labour inspectorates worldwide could be harnessed more effectively to global efforts against forced labour and trafficking. It identifies cases of good and innovative practice, such as the Special Mobile Inspection Unit of labour inspectors and federal police officers in Brazil. Models of this kind will have to be replicated elsewhere, adjusted to national circumstances, if the world is to respond to the ILO's call of eradicating all forced labour and trafficking by 2015.

This first version of the handbook was presented at a European Expert Meeting of Labour Inspectors in December 2007, as well as at national seminars in Asian countries including China and Vietnam. English and Spanish editions of this first version have been prepared for launch at the 12th Congress of the International Association of Labour Inspection and a special meeting of Latin American labour inspectors to be held in Geneva and Lima respectively in June 2008.

The production of this Handbook was made possible through funding of the Governments of Ireland and the United Kingdom. Resources permitting, we would be glad to reproduce this handbook in other languages after that, ensuring the greatest possible sensitization of labour inspectors worldwide in contributing to the eradication of forced labour.

Roger Plant
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*Programme on Promoting the Declaration
on Fundamental Principles and Rights*

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Thanks are also extended to the many colleagues of the ILO who provided comments to the initial draft, namely Malcolm Gifford (SAFEWORK), Maria Luz Vega (DIALOGUE), Carmen Sottas, Halima Sahraoui, Claire Marchand, Rosinda Silva (NORMES), Christian Hess (ACT/EMP), Claude Akpokavie (ACTRAV), Hans van de Glind (IPEC), Pallavi Rai (HIV/AIDS), and most importantly, colleagues of SAP-FL who helped collecting good practice examples and case studies. The International Organisation of Employers' (IOE) also submitted useful comments.

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on Fundamental Principles and Rights

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INTRODUCTION

Contemporary forms of forced labour, including trafficking in human beings are often perceived as criminal matters beyond the reach of labour inspectors. This handbook explains why forced labour is relevant to labour inspectors, how it can be identified and acted upon. There are many reasons why labour inspectors should play an active role in the global fight against forced labour and human trafficking:

- Contemporary forms of forced labour penetrate mainstream economic sectors through complex supply chains and the irregular movement of people across borders in search for work.
- Forced labour and human trafficking are gross violations of human and workers' rights. Forced labour is the antithesis of decent work, and freedom from forced labour is one of the four fundamental labour rights which labour inspectors are supposed to promote and safeguard.
- Forced labour and human trafficking generate significant profits and are often linked to other illegal activities such as tax evasion and social benefit fraud.
- Regular inspections on health and safety and/or illegal employment can reveal indicators of possible forced labour situations. Labour inspectors and other inspection authorities can play a key role in the identification of such cases.
- Labour inspectors can enter workplaces that are liable to inspection without a search warrant. They also have a wide range of discretionary measures at their disposal. This makes them an important partner of criminal law enforcement authorities.
- Labour inspectors have a potential role to play in the prevention of forced labour and protection of victims. As such, they are an important partner of government agencies, employers' and workers' organisations, and NGOs that deal with issues of forced labour and trafficking.

Aims of the handbook

This handbook is aimed primarily at labour inspectors but also other law enforcement authorities, such as police, tax or immigration authorities. Its purpose is to assist labour inspectors in understanding modern forms of forced labour and human trafficking, how it is related to their work and how they can contribute to the global fight against this crime. It should also encourage labour inspectors to enforce relevant laws and to play an active role in the implementation of national strategies against forced labour and trafficking. In particular, the handbook has the following aims:

- To increase the understanding of labour inspectors on forced labour and human trafficking, victim identification and prevention;
- To enhance cooperation between labour inspectors, police and other relevant stakeholders;
- To improve protection and referral of victims;
- To explore linkages to the informal economy and illegal employment;
- To propose practical training tools and learning activities;
- To serve as a resource book and guide for further reading.

How to use the handbook

This handbook has been designed for use in training seminars and as a reference book for policy development. It provides background information with the latest statistics on forced labour and trafficking, national and regional responses, methods of victim identification and investigation of forced labour cases. The background information presented here in abbreviated form is intended to guide policy and to build a case for the more active involvement of labour inspectors in the elimination of forced labour and human trafficking. Links to further resources and material are included where relevant.

We have developed two training modules, one lasting five and another three days. Both training modules cover forced labour and human trafficking, but the contents can be adjusted to the specific situation in each country or region. In the annexes of this handbook, readers will find learning activities, background materials, case studies and further references.

The training modules are based on interactive learning methods. This implies that participants actively contribute to the training and that their ideas and experiences are recognised as a valuable resource. The trainer is the facilitator of that exchange and the learning is centred on the participant.

Inter-active learning involves group work, role plays, and discussion of case studies. There will be input in the form of power point presentations, video and other material. The handbook is accompanied by a CD-ROM which contains all the relevant documents, video material and power point presentations.

Definitions and concepts

Labour inspection

In this training handbook, the functions of labour inspection are defined as follows:

- a) To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
- b) To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- c) To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

(Art. 3, 81 Labour Inspection (in Industry and Commerce) Convention, No. 81, 1947)



Forced labour

The definition of forced labour is enshrined in the ILO Forced Labour Convention No. 29 (1930). According to Article 2, forced labour is defined as:

“all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Several elements of this definition need further elaboration:

1. “All work or service” encompasses all types of work, employment or occupation. The nature or legality of the employment relationship is therefore irrelevant. For example, while prostitution is illegal in some countries, it may still fall under the orbit of C. 29. Domestic work is often not regulated by labour law; however, forced labour as defined in C. 29 can take place in private households.
2. “Any person” refers to adults as well as children. It is also irrelevant whether or not the person is a national of the country in which the forced labour case has been identified.
3. “Menace of penalty” refers not only to criminal sanctions but also to various forms of coercion, such as threats, violence, retention of identity documents, confinement or non-payment of wages. The key issue is that workers should be free to leave an employment relationship without losing any rights or privileges. Examples are the threat to lose a wage that is due to the worker or the right to be protected from violence.
4. “Voluntary” refers to the consent of a worker to enter a given employment relationship. While a worker may have entered an employment contract without any forms of deception or coercion, he or she must always be free to revoke a consensually made agreement. In other words, free and informed consent has to be the basis of recruitment and has to exist throughout the employment relationship. If the employer or recruiter had used deception or coercion, consent becomes irrelevant.

Trafficking in persons

Forced labour often occurs as an outcome of trafficking in persons (or human trafficking). It involves the movement of a person, usually across borders, for the purpose of exploitation. Human trafficking has been defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (the Palermo Protocol) adopted in 2000. The Palermo Protocol distinguishes trafficking from smuggling through the element of exploitation, deception and coercion. According to the Protocol (Art. 3):

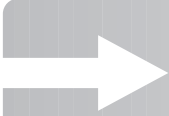
“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving 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, or the removal of organs.”

The definition is rather complex but can be broken down into the following elements:

- **Activities:** recruitment, transportation, transfer, harbouring or receipt of a person
- **Means:** force, deception, abduction, coercion, fraud, threats, abuse of power or a position of vulnerability
- **Purpose:** exploitation, including forced labour, or removal of organs

It is important to understand that not all forced labour is a result of human trafficking. Moreover, almost all cases of human trafficking result in forced labour (an exception being trafficking for the removal of organs). From an ILO point of view, it is important to distinguish between **forced labour**, where forms of coercion and deception are used to retain a worker, and **sub-standard working conditions**. The lack of viable economic alternatives that makes people stay in an exploitative work relationship does not in itself constitute forced labour though it may constitute a position of vulnerability as defined by the Palermo Protocol. External constraints that can have an impact on free consent should therefore be taken into account.

In addition, the Palermo Protocol distinguishes between trafficking in children (under 18 years old) and adults. Any of the illicit means mentioned above are irrelevant in the case of child trafficking. Child trafficking is also defined as one of the worst forms of child labour in ILO Convention No. 182. Given the complexity of these definitions, it is of paramount importance to develop clear indicators and operational guidelines for labour inspectors.

 Annex 3 contains excerpts of the ILO Forced Labour Convention, other relevant ILO Conventions and the Palermo Protocol. We recommend that you read them carefully and discuss these key provisions in the group.



FORCED LABOUR AND HUMAN TRAFFICKING IN THE GLOBAL ECONOMY

Facts and figures on forced labour

The elimination of forced labour has been on the ILO's agenda almost since its establishment. While the initial emphasis was on forced labour imposed by states, it is now recognized that most contemporary forced labour takes place in the private economy. In 2005 and 2007, the ILO published two major reports about forced labour; its contemporary manifestations as well as legal implications with regard to Conventions No. 29 and 105. Both reports make it clear that forced labour exists in industrialised as well as developing countries. It is a global problem that affects every country to greater or lesser extent and that can only be acted upon through a global effort. In 2005, the ILO produced its first ever global estimate of victims of forced labour (men, women and children), including forced labour as a result of human trafficking. The table below demonstrates that forced labour is most pronounced in Asia and the Pacific due to traditional forms of bonded labour. It also shows that forced labour in industrialised and transition economies is by and large an outcome of human trafficking for the purpose of sexual or labour exploitation.

	Total Forced Labour	Total Trafficked
Industrialized Economies	360,000	270,000
Transition Economies	210,000	200,000
Asia and the Pacific	9,490,000	1,360,000
Latin America and the Caribbean	1,320,000	250,000
Sub-Saharan Africa	660,000	130,000
Middle East and North Africa	260,000	230,000
World	12,300,000	2,440,000

Country-specific research carried out by the ILO has produced a wealth of information about the different types of forced labour and coercion from which employers can derive huge benefits. The annual average profits generated from human trafficking alone are estimated to be as high as 32 billion US dollars. The highest per capita profits can be made in the sex industry. About half of the total profits are made in industrialised countries.

These are some examples where forced labour can be found today:

- **Traditional forms of bonded labour** can be found in agriculture, rice mills, brick kilns and other economic activities in South Asia (e.g. India, Nepal and Pakistan). Bonded labour can affect a whole family when the male head of the household pledges not only his own labour but that of family members to receive an advance payment from his employer or credit in the case of need.
- **Debt bondage and other forms of coercion** can keep indigenous and other poor people of Latin America in forced labour, such as logging, mining and agriculture. The system is often based on a complex system of contractors and sub-contractors who all take their cut from these indebted workers, some of whom work for years without ever receiving any substantial income.
- **Forced child labour** in many regions of Africa is linked to traditional practices of placing children in foster care with relatives in distant cities. While parents are promised education for their children, the boys and girls are often ruthlessly exploited as domestic servants, in agriculture and fishing or in the sex industry. Forced child labour and child trafficking, however, is not limited to Africa. The ILO estimates that at least 40% of forced labour victims worldwide are children.
- **Forced labour linked to migration and exploitative labour contract systems** can be found everywhere in the world today. For example, migrant workers from Indonesia, India, the Philippines or other Asian countries can find themselves “bonded” to a labour contractor due to excessive fees and with limited if any possibilities to change the employer in the destination country. Main destination countries for Asian migrant workers include Singapore, Malaysia and countries of the Middle East. In Europe, labour agencies came under scrutiny following reports of serious exploitation of migrant workers. The boundaries between clandestine work and organised crime are sometimes blurred.
- **Forced labour as a result of organised criminal trafficking** can be found in the sex industry all over the world. Because of the often clandestine nature of prostitution in many countries, organised criminal networks play a major role in supplying young women and children to bars, brothels or private homes. The Internet and tourism have possibly stimulated sex trafficking. Organised crime can also be involved in other forms of trafficking, such as trafficking for the purpose of labour exploitation. It is often linked to deceptive recruitment, racketeering and blackmailing to obtain a cut of migrant workers’ earnings.

Economic sectors at risk

Until there are more rigorous efforts to identify and protect the victims of forced labour, it will remain difficult to provide reliable statistical information about the economic activities most affected by it. According to ILO estimates, 43 per cent of all trafficked victims are exploited in the commercial sex business while 32 per cent are in other forms of economic exploitation and 25 per cent in a combination of both labour and sexual exploitation. Other forms of forced and bonded labour are often used for low skilled economic activities where there is a high turnover of workers, and employers have difficulties to retain workers.

Below is a non-exhaustive list of economic sectors in which forced labour has been identified as a significant problem in many countries:

- Construction, including brick kilns
- Agriculture and horticulture
- Mining and logging
- Food processing and packaging industry
- Domestic service and other care and cleaning work
- Factory work, mainly textiles and garments
- Restaurants and catering
- Sex and entertainment industry
- Transportation
- Various forms of informal economic activities, such as organised begging or hawking



Many of these sectors are difficult to reach for labour inspectors, other law enforcement agencies and victim assistance organisations. They are difficult to monitor because of the high turnover of staff, often linked to the seasonal nature of work, complex sub-contracting arrangements and changing work places, such as in construction. Other activities such as domestic service or prostitution are hidden from public view, as they usually take place in private premises that are out of reach for labour inspectors.

Categories of vulnerable workers

While forced labour has been detected in various industries, affecting workers in formal as well as informal employment relationships, certain categories of workers are nevertheless more vulnerable than others. Some workers will be difficult to reach, given their isolated workplaces and also the principle of inviolability of the private home. Labour inspectors, in line with their mandate and the scope of the inspection system, should pay special attention to the following groups of workers:

- Workers who are part of a group that has suffered a documented pattern of discrimination in the workplace, such as indigenous workers in Latin America, the Roma in Europe or Scheduled Castes and Tribes in South Asia;
- Women workers who are often discriminated and tend to work in economic sectors vulnerable to exploitation including forced labour, such as textiles and garments or domestic work;
- Children are not seen as a category of workers as such. As a vulnerable group, working children are composed of young persons over the legal minimum age of employment and in acceptable forms of work. No child should work in one of the worst forms of child labour, defined in ILO Convention No. 182 or below the minimum age of employment according to ILO Convention No. 138. Labour inspectors should understand the special conditions of child workers as well as the worst forms of child labour that are closely related to forced labour and human trafficking.
- Migrant workers, in particular those who are in an irregular status. Irregular migrant workers are found in construction, agriculture, manufacturing and other sectors where they are often exposed to poorer working conditions than other workers.

THE ROLE OF LABOUR INSPECTORS IN NATIONAL STRATEGIES AGAINST FORCED LABOUR

From global to national policies against forced labour

There has been growing international recognition that forced labour cannot be seen as a thing of the past, and that its modern manifestations require urgent action. Law enforcement is a major part of the solution, and impunity of offenders is one of the most important reasons why forced labour practices continue. At the same time, there is growing consensus that action against forced labour, including trafficking, requires an integrated approach that blends rigorous law enforcement with prevention and victim assistance measures. Policies against forced labour should therefore cover the three p's: prosecution, prevention and protection. But more importantly, they should be based on a sound analysis of the problem and a clear vision of its eradication, including measurable indicators of success and state allocation of resources.

Such an integrated approach of policy development and implementation should be anchored in the overall national labour administration system. ILO Labour Administration Convention No. 150 (1978) represents proposals for such a system of national labour administration, its role, functions and organization. Based on this normative framework, the ILO has developed a strategy for labour administration to reach out to workers in the informal economy, where many of today's forced labour victims can be found. Most importantly, one of the main functions of labour administration is the development of draft laws, in consultation with social partners that labour inspectors are obliged to enforce. For the sake of law and policy coherence it is important to foster cooperation with other ministries that are concerned about issues of forced labour and human trafficking.

In 2007, the ILO assessed 28 National Action Plans (NAPs) against Forced Labour and Human Trafficking from different countries of the world. The findings are that most NAPs lack a clear strategy, sufficient resources and clear indicators. NAPs against human trafficking tend to be dominated by a law enforcement approach in which labour administration and labour inspectors play a limited role, though this trend is slowly changing due to the growing recognition that criminal law enforcement alone cannot solve the problem. Only few NAPs are covered by state budget allocations and are subject to rigorous reviews to assess success of implementation. In many countries, the agenda is driven by international organisations or bilateral donor organisations.

At global and regional levels, the following events can be seen as milestones in the fight against forced labour and human trafficking:

- In 1998, the International Labour Conference adopted the Declaration on fundamental principles and rights at work and its follow-up. Through this process, the eradication of forced labour alongside other core labour standards became a priority of the ILO and its constituent members. It subsequently became part of the UN Global Compact Principles, bilateral trade agreements and corporate social responsibility (CSR) policies of individual companies or industries. In 2005, the ILO Governing Body adopted a four year Action Plan against Forced Labour.
- In 2000, Member States of the UN Office on Drugs and Crime (UNODC) adopted the Convention against Transnational Crime, and its supplementing Protocols, including the Palermo Protocol. The fight against human trafficking has since received growing international attention. While many approaches still place their main emphasis on criminal law enforcement, particularly against sex traffickers, the need for a human rights based approach that takes labour market issues into account is increasingly being recognised.
- In 2006, the Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS) adopted the "Abuja Agreement on Trafficking in Persons, especially Women and Children". This is a follow-up to the 2001 ECOWAS Initial Plan of Action against Trafficking in Persons.
- In 2004, Member Countries of the Association of the Southeast Asian Nations (ASEAN) adopted a Declaration against trafficking in persons, particularly women and children. They expressed the urgent need for a comprehensive regional approach to prevent and to combat trafficking in persons as well as to undertake action to safeguard the human rights of victims.
- In 2005, the fourth Summit of the Americas adopted an Action Plan, with the aim inter alia "to eliminate forced labour before 2010 by strengthening measures and policies, to enable those countries that have not already done so to achieve this goal". It also encouraged the drafting of national action plans.
- In Europe, action against human trafficking is led jointly by the European Union, the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE). In 2003, the OSCE adopted its Action Plan against Human Trafficking. In 2005, the Council of the EU adopted the plan on best practices, standards and procedures for combating and preventing trafficking in human beings (EU Action Plan). In February 2008, the Council of Europe *Convention on Action against Trafficking in Human Beings* entered into force with ratification of ten member States.

Harmonization of anti-trafficking policies in Europe

Forced labour in Europe is mainly an outcome of human trafficking. The European approach to trafficking was initially dominated by a perception that trafficking is mainly related to prostitution and that more criminal law enforcement is needed. This has gradually shifted since the adoption of the Palermo Protocol. In 2002 the Council of the EU adopted its Framework Decision on combating trafficking in human beings that required all member States to bring their anti-trafficking legislation in line with international standards. In 2004, the Justice and Home Affairs Council of the EU adopted the Directive on the residence permit issues to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities.

At the same time, an expert group developed recommendations for an EU Action Plan. In 2005, the Council adopted a plan on best practices, standards and procedures for combating and preventing trafficking in human beings. Chapter 4 of the EU Action Plan focuses specifically on demand factors related to employment regulations. The Action Plan also refers to trafficking for labour exploitation that requires “new types of specialisation and cooperation with partners, e.g. agencies responsible for the control of working conditions and financial investigations related to irregular labour” (paragraph 4/iv).

Mandate and role of labour inspectors

The most important function of labour inspectors is to ensure compliance with national labour law.¹ With regard to forced labour and human trafficking, labour inspectors often lack a clear mandate. First, because in many countries forced labour and trafficking are criminal offences that are primarily investigated by the police. Second, the scope of labour inspection systems may not cover sectors in which forced labour practices tend to occur, such as agriculture, domestic work and the sex industry. There may also be a gap between legal provisions and their application in practice. Providing labour inspectors with a mandate to combat forced labour requires strong political will to strengthen the labour inspection systems as whole, for example by increasing the number of inspectors, training them and providing them with adequate resources. If labour inspectors do not have access to a computer and means of transportation, they will have difficulties fulfilling their role.

With few exceptions, laws and NAPs against forced labour and human trafficking have been drafted without the consultation of the labour inspection service and hence without designating labour inspection a specific role. The mandate of labour inspectors should therefore be anchored firmly in national law and administrative regulations. Some countries have a prohibition of forced labour in their labour code in addition to providing in their criminal law that human trafficking is a criminal offence. Countries that only have anti-trafficking regulations in their penal code should make it consistent with labour law, in particular if the definition of trafficking includes trafficking for the purpose of labour exploitation.

¹ Two ILO Conventions are directly relevant to the mandate and functions of labour inspectors: the Labour Inspection Convention, No. 81 (1947), and the Labour Inspection (Agriculture) Convention, No. 129 (1969).

Given the complexity of the crime, it may be difficult to assign responsibility to one specific ministry. Forced labour is usually under the Ministry of Labour whereas trafficking is often under the Ministry of Interior or Foreign Affairs. Policy coordination is therefore of crucial importance. Since labour inspectors come under the Ministry of Labour, they will need specific regulations issued from that Ministry in order to take action. Labour inspectors, however, can also lobby the Government to take an action such as to address gaps in legislation, and can be consulted on emerging policy issues such as forced labour and trafficking.

Labour inspections fulfil several sectoral functions, which can provide a useful entry point to the prevention and elimination of forced labour:

- Industrial relations
- General conditions of work
- Occupational safety and health
- Illegal employment
- Certain aspects of social insurance

Labour standards, which labour inspectors are supposed to promote and safeguard, are a key instrument to ensure decent work. They are, however, often not applied to actual or likely victims of forced labour. In addition, victims of forced labour are usually not organised or part of collective bargaining agreements. They are excluded from social insurance, and often work without regular employment contract under extremely hazardous and sometimes degrading conditions of work.

Labour inspector's three main **operational functions** are also relevant to the three "P's" in the global fight against forced labour and trafficking – **P**revention, **P**rosecution and **P**rotection:

- **Function of ensuring compliance with national law**
This is the overall function of labour inspectors which can be carried out by using means of persuasion as well as rigorous sanctions that act as a deterrent. In order to enforce compliance, labour inspectors observe and keep track of compliance levels in enterprises in different economic sectors. As such, they can play a key role in gathering data related to forced labour and trafficking. Periodical reports on labour inspectors' activities provide important relevant data.
- **Advice and information function**
Labour inspectors can put their knowledge and expertise to use in helping resolve problems encountered during on-site inspections or through their contacts with workers' and employers' organisations. Labour inspectors can also advise on the development of information campaigns and play a key role in the campaigns, such as campaigns against illegal employment. Furthermore, labour inspectors promote labour standards, in particular core standards and national regulations that give effect to them. They play a key role in the development of benchmarking and the dissemination of good practice. Labour inspectors may also provide training, especially to trade unions, employers, NGOs, labour court officials and other government authorities.

- **Protection function**

Labour inspectors can also empower workers through direct contact during on-site inspection by disseminating information. Informing workers, employers and potential forced labour victims about their rights is an important prevention and protection strategy.

Labour inspectors can apply a wide range of tools in a discretionary and flexible manner depending on the specific situation that they encounter at a work place. This makes them particularly well placed to respond effectively to often sensitive cases that involve potential victims of forced labour or trafficking. For example, they can offer non-compliant enterprises the opportunity to correct their transgressions by issuing notifications prior to initiating prosecution. They also consult during the process by involving employers, supporting workers and disseminating good practice.

There is a worldwide trend towards integrated labour inspection systems. It is therefore recommended to mainstream the fight against forced labour within existing labour inspection functions instead of creating a new institution. This is also reflected in Conventions No. 81 and No. 129. Due to the complex nature of forced labour and trafficking, it may however be advisable in some cases to establish a specialised labour inspection unit that can monitor the field and develop capacity. In order to effectively implement laws, it is also necessary to equip proper institutional structures with material and financial resources as well as sufficient number of qualified staff at local offices and transport facilities.





IDENTIFICATION OF VICTIMS AND INVESTIGATION OF FORCED LABOUR CASES

Challenges of enforcement

Forced labour and human trafficking are crimes with high returns and low risks of detection. Victims are often exploited over a prolonged period of time, and are sometimes sold and re-sold. The ILO estimated that the total profit derived from forced labour is 44 billion US dollars per year, among which profits from trafficking account for 32 billion US dollars per year. At the same time, prosecution of offenders remains very low in comparison with the estimated number of victims.

The table below refers to trafficking related offences that were prosecuted and convicted globally:

Year	Prosecutions	Convictions	Number of countries that have new or amended legislation
2003	7,992	2,815	24
2004	6,885	3,025	39
2005	6,618	4,766	41
2006	5,808	3,160	21

Source: Trafficking in Persons Report, US State Department, 2007

There are various obstacles to effective law enforcement. Some relate to the very nature of forced labour, others to political and institutional factors including the limited scope of labour inspection in some areas and countries (see section on the mandate of labour inspectors). Forced labour and trafficking are difficult to identify due to its nature of being hidden from the public eye. For law enforcement officers as well as victim assistance organisations, it is difficult to reach likely victims who work in an isolated environment, such as private homes, geographically isolated areas and shifting workplaces such as construction sites.

Furthermore, forced labour often takes place in a situation where likely victims have limited alternatives and may have no choice but to cooperate with the exploiters instead of labour inspectors. Many are aware that they have violated national laws by working irregularly. Others may belong to a discriminated group that tends to avoid contacts with state authorities in general. Indeed, law enforcement can bring more offenders to justice when it receives support from potential victims empowered to resist exploitation and to seek the involvement of the authorities.

Moreover, widespread absence of effective arrangements for cooperation and coordination among concerned parties can lead to fragmentation of responsibilities. Labour inspectors frequently have no contact with criminal law enforcement, such as police or prosecutors. Hence, many forced labour related crimes may be identified by labour inspectors but not be followed up under criminal law and therefore not be counted as such.

Finally, forced labour and trafficking are violations that take place at the margins of national labour markets. They often affect discriminated groups of the population, whose protection is of low priority to the government as well as society as a whole.

Indicators of possible forced labour situations

A key element of operational guidelines for labour inspectors on forced labour and trafficking should be indicators that help them decide whether a particular situation could fall under forced labour or not. Such indicators may not always be an element of forced labour; however they should be read as signals to investigate further. The overall assessment has to be based on the question whether a worker has given a free and informed consent when accepting work and is free to leave the employment relationship.

Indicators should:

- Guide labour inspectors, other law enforcement agencies and victim assistance organisations to identify possible situations of forced labour;
- Be country-specific by taking into account forced labour situations that are most likely to occur in specific sectors and regions;
- Be based on national law and regulations;
- Help to distinguish poor working conditions from forced labour.

The ILO Committee of Experts on the Application of Standards has provided guidance in this regard² in various occasions. There are six over-arching indicators that are proposed by the ILO. Each of these generic indicators should be linked to a sub-set of questions that are more specific. Some examples are given below:

- **Physical violence, including sexual violence**
 - Does the worker have any sign of maltreatment, such as bruises?
 - Does the worker show signs of anxiety?
 - Is there any other sign of mental confusion or traces of violence?
 - Do supervisors/employers demonstrate violent behaviour?
- **Restriction of freedom of movement**
 - Is the worker locked up at the workplace?
 - Is the worker forced to sleep at the workplace?
 - Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
 - Is the worker constrained to leave the workplace?

² For a review of some relevant comments by the ILO Committee of Experts on the Application of Standards see: ILO; Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement, Geneva, 2005

- **Threats**

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)?
- Does the worker show anxious behaviour?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?

- **Debt and other forms of bondage**

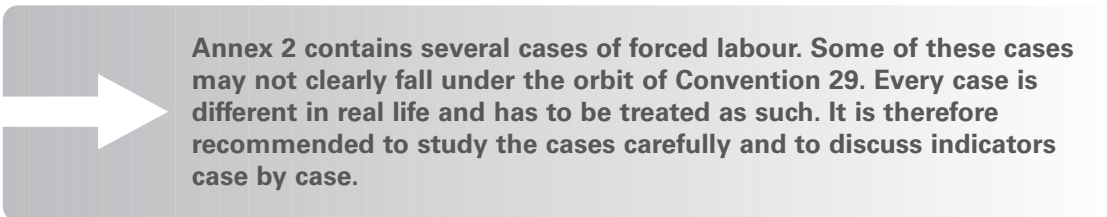
- Does the worker have to repay high recruitment or transportation fees? If so, are these deducted from the salary?
- Is the worker forced to pay excessive fees for accommodation, food or working tools that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer?
- Are work permits bound to a specific employer? Has there been any complaint about the employer before?

- **Withholding of wages or no payment of wages**

- Does the worker have a regular employment contract? If not, how are wages being paid?
- Is there any illegal wage deduction?
- Has the worker received any wage at all?
- What is the amount of the wage in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

- **Retention of identity documents**

- Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why?
- Does the worker have access to the documents at all time?



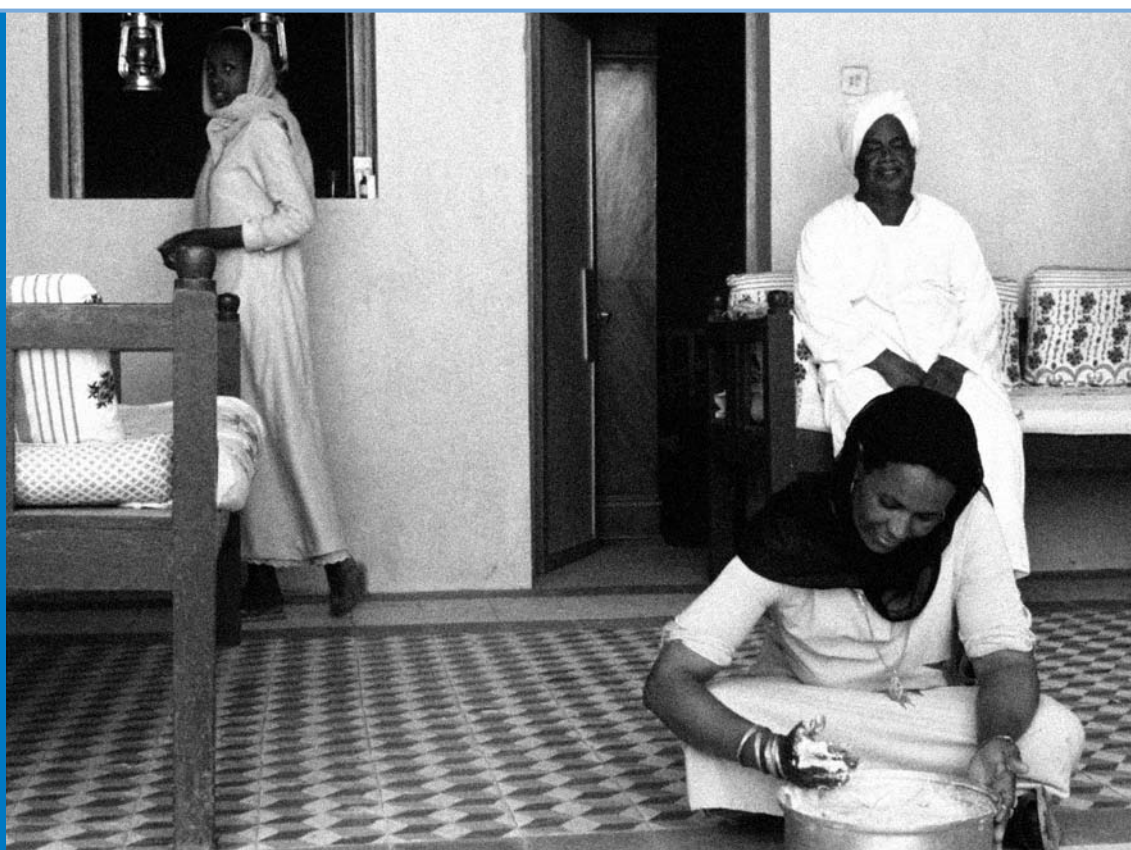
Annex 2 contains several cases of forced labour. Some of these cases may not clearly fall under the orbit of Convention 29. Every case is different in real life and has to be treated as such. It is therefore recommended to study the cases carefully and to discuss indicators case by case.

Investigation techniques

Labour inspectors have at their disposal a wide range of investigation methods that other law enforcement authorities may not have. Most importantly, they usually have the power to enter freely at any time of the day or night any workplace liable to inspection without prior notice (Convention No. 81). They can carry out inquiries freely and in particular speak with persons alone, examine documents and take samples. They also have the power to issue orders with a view to remedying defects, and to decide whether it is appropriate to give warning and advice, or to institute or recommend proceedings. These proceedings could ultimately also entail criminal proceedings. Besides, inspectors are required to investigate any complaint concerning labour law violations without revealing the source of the complaint, thus encouraging victims to come forward. Finally, as any other law enforcement authority, labour inspectors can use tact and the power of persuasion to obtain information or achieve compliance. Collaboration with social partners, including union and staff representatives, is a major tool in identifying violation and ensuring compliance.

A major challenge faced by labour inspectors is finding and gaining access to premises where likely victims may be forced to work. This is particularly the case for employment in the informal economy as well as illegal employment in the formal economy. Sometimes, very practical constraints can hinder identification and investigation of forced labour cases. In remote areas, for example, labour inspectors may be limited by the absence of adequate means of transportation. In many countries, only registered establishments of large or medium size are inspected. But these are not the places where forced labour occurs most often, or indeed at all. Some employers may also hide behind sub-contractors that disappear in the event of any problem or they may obstruct access of labour inspectors. In some countries, fines can be imposed for obstructing inspections and investigations.

Finally, labour inspectors must strictly respect privacy. In agriculture for example, they should not enter the private home of the operator except with a letter of consent or with a special authorization issued by the competent authority. The many people, the majority of whom are women, who carry out domestic work in private households, are excluded from workplace inspections due to the inviolability of the private home. For these cases, other techniques must be used, such as cooperation with trade unions, community based organisations or NGOs.



To date, most forced labour victims are identified either through police raids, with the help of assistance organizations, or by coming forward themselves. When investigating potentially serious cases of labour law infringements, labour inspectors may have no choice but to resort to some form of force, but it must be ensured that this will then happen only with the support of the police. In principle, however, labour inspectors should act in a non-confrontational manner.

The following inspection methods are of key importance:

- **Interviews and direct observation**

Labour inspectors should be empowered to interview, alone or in the presence of witnesses, the employer, the staff or any other person whose evidence could be useful for the purposes of the inspection. Labour inspectors have to exercise their own judgement as to whether they carry out confidential interviews in order to obtain the most reliable information. In most forced labour situations, workers are intimidated and are afraid to talk freely. In such instances, it could be useful to disseminate information from workers discreetly through hotlines or other confidential ways of informing authorities about the situation. Labour inspectors have to be very sensitive about the possible risk of reprisals that workers could face from their employers once labour inspectors leave. During inspection and interviews, labour inspectors can use methods of direct observation to assess a particular situation and to verify statements.
- **Verification of documents**

The legislation of most countries recognizes the right of inspectors to require access to any book, register, document or electronic information from employers in order to see that they are in conformity with the legal provisions, and make copies or make extracts from them. With regard to forced labour, labour inspectors should focus on the existence of an employment contract, and on whether the contract entails any abusive clauses, such as working off debts or otherwise preventing the worker from leaving the employer. In the absence of any contract, interviews with workers should focus on deception, false promises and unfair threats of dismissal.
- **Enforcing the posting of notices**

Inspectors should be empowered to enforce posting of notices required by the legal provisions. In many countries, employers are required to post documents such as the internal regulations, work schedules and general safety information in an appropriate place. This method is particularly relevant for the prevention of trafficking in human beings. Labour inspectors should ensure that information is posted in simple or foreign language in enterprises that use migrant labour. Notices should also provide other relevant information to migrant workers, such as immigration regulations. Proceedings should be instituted against employers for failing to comply with this provision.
- **Inspection of materials and substances used**

Inspectors should be empowered to take or remove samples, materials and substances used at the workplace for purposes of analysis. These provisions are intended to ensure protection of the health and safety of workers and in some cases their families. Potential victims of forced labour often work under extremely hazardous conditions of work and they may be exposed to health risk.

Mobile inspection unit, Brazil

One of the measures to combat forced labour in Brazil has been the creation of a Special Mobile Inspection Unit (Ordinance No. 550 MTb of 14 June 1995); a flying squad of labour inspectors and federal police officers. Both are drawn from a body of volunteers, none of whom operate in their federal state of residence for reasons of personal safety and independence from local pressures. Their job is to investigate allegations of forced labour on “fazendas” (rural farm estates or ranches). Sometimes labour judges are also part of the unit so that prosecution can be done swiftly and on the spot.

Regular evaluations of the operations of this Unit have pointed to two main criteria for effectiveness: centralized organisation and absolute secrecy in planning. Attempts to decentralize activities have proved unsuccessful in that news of inspection raids has invariably reached landowners in advance, enabling them to disperse workers or to cover up the situation.

The low-budget inter-agency team has proven crucial in the fight against forced labour. The investigative work of the mobile inspection teams has been replicated at the local and state level. The municipality of Vila Rica, in the state of Mato Grosso do Sul, set up a commission with the participation of the Mayor’s office and municipal council, and the agriculture producers’ and rural workers’ organisations. Upon receiving allegations of forced labour, the commission negotiated with local landowners and intermediaries. The very threat of calling in the Mobile Inspection Unit, and the prospect of fines, has facilitated negotiations. The Mobile Inspection Unit has only been brought in if such negotiations have broken down.

Source: ILO: Trabalho Escravo no Brasil do Século XXI, Brasil 2005

Intelligence and information sources:

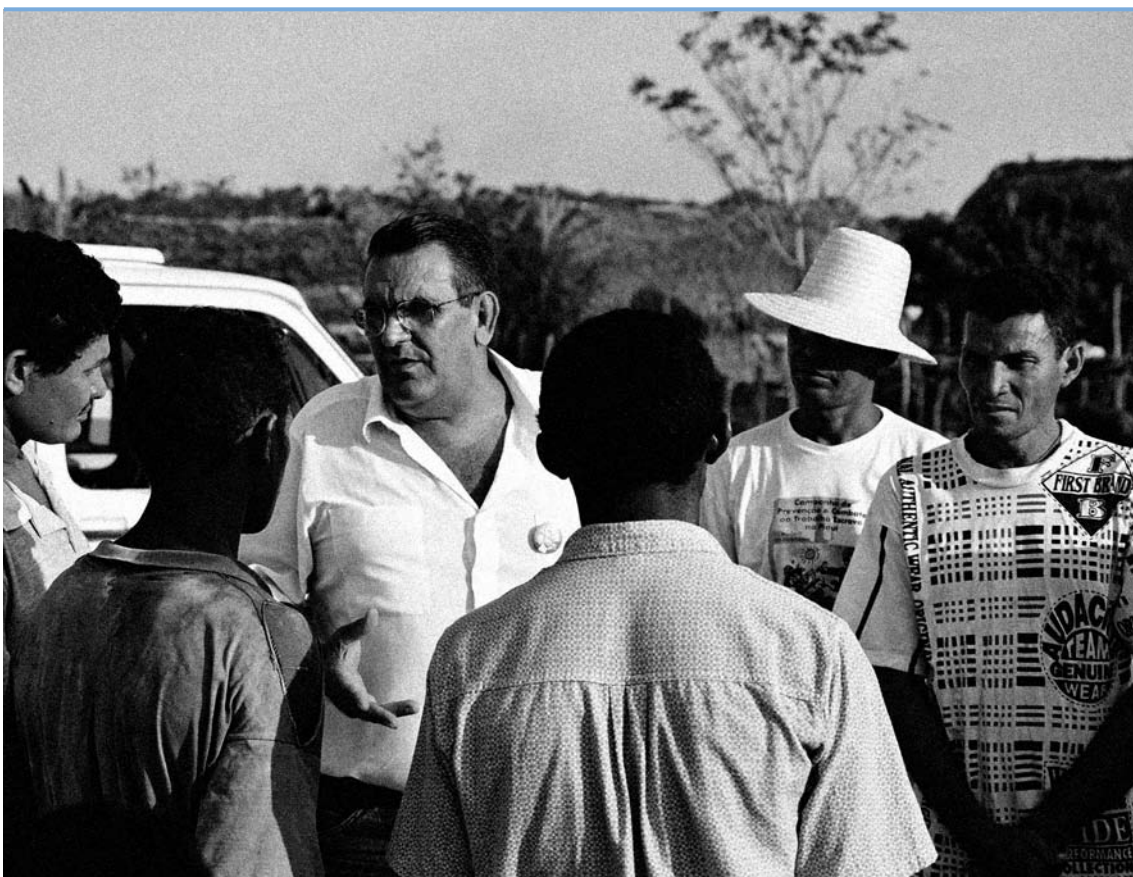
- Testimonies of victims and witnesses
- Information from trade union organisations
- NGOs or other community based organisations, such as vigilance committees or religious groups
- Information of tax and customs authorities
- Information of social security authorities
- Information retrieved from databases maintained by other government agencies
- Media reports or other public reports
- Databases maintained by international organisations, e.g. Interpol, IOM
- Environmental authorities and satellite monitoring of at-risk-activities, e.g. deforestation or mining
- Information received from hotlines/spontaneous informants
- Internet monitoring, e.g. dubious job offers

Prosecution and penalties

The credibility of labour inspectors ultimately depends on the existence of a sufficiently dissuasive enforcement mechanism. Forced labour and human trafficking are crimes that often take place against the backdrop of labour law violations. Enforcement therefore relates to labour law as well as criminal law. According to the ILO's Forced Labour Convention No. 29, forced labour should be a penal offence and penalties should be adequate and strictly enforced. The penalty can comprise imprisonment as well as fines. Hence, while labour inspectors have discretion to choose not to impose penalties, forced labour cases will generally require prompt legal and criminal law enforcement responses. Labour inspectors need knowledge and good judgement to be able to distinguish between serious or wilful non-compliance and an involuntary or minor violation. For example, retention of identity documents of workers is illegal in all countries and can be used as an indicator of forced labour. Some employers, however, may not retain identity documents in bad faith, though it may be difficult to prove. Before initiating criminal proceedings, labour inspectors should therefore try to understand the **intention** of employers.

Prior to imposing criminal sanctions, labour inspectors have a wide range of administrative sanctions at their disposal. One commonly used sanction is to impose a fine. Fines, however, have to constitute and remain an effective deterrent. Some countries have established methods of determining the amount of fines. They are based on criteria such as repetition of the offence, business turnover, the number of workers affected by the offence, or the nature and consequences of the violation. A more serious sanction would be revocation of a licence to operate the business or closure of the enterprise. While forced labour and trafficking are crimes that would usually lead to penal proceedings, it is important to tackle related labour law violations that may degenerate into forced labour in specific situations.

In addition, labour inspectors can use other punitive measures that act as a deterrent. In Brazil, for example, the labour inspection secretariat publishes names of employers who were convicted by courts as offenders regarding forced labour. The "black list" has enabled public institutions to restrict access to credit, subsidies and social benefits. Such a "black list" has to be handled with care to avoid misuse and corruption. The Government of Brazil has also enabled federal law enforcement and judicial authorities to work closely together



and to issue penalties against employers on the spot in order to end impunity. Previously, employers were often able to escape prosecution because of corruption or inadequate judicial responses. In a similar attempt to stigmatize offenders and to warn the public, Philippine authorities publish on their website information on criminal recruitment agencies.

Below is an overview of possible administrative, civil and criminal sanctions:

- Injunction to introduce changes
- Payment of fines
- Temporary closure of firm until changes are introduced
- Reinstatement of a worker
- Temporary or permanent withdrawal of licence (e.g. of private employment agency)
- Refund of financial damage caused to victim
- Repair of moral damage with a lump sum
- Confiscation of assets
- Deprivation of rights to sign contracts or to commit funds
- Home confinement or imprisonment

How to treat victims

Most prosecutions against forced labour and trafficking will require testimonies of victims even though intelligence-based evidence can sometimes be sufficient to bring a case to court. When dealing with potential or actual victims of forced labour, human rights concerns should always override necessities of criminal law enforcement. The UN High Commissioner for Human Rights has issued *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, which provides useful guidance in this regard. In some countries, law enforcement and victim assistance organisations have signed a Memorandum of Understanding to facilitate cooperation while at the same time protecting the interests of victims. Labour inspectors are advised to take note of these cooperation agreements and to develop their own partnerships with trade unions and other organisations that ensure a [victim-centred approach](#) to identification and prosecution.

The following principles should guide victim identification and assistance:

- Victims should be fully informed about possible choices, in particular with regard to testifying in court. They need to know about procedures and possible risks involved.
- Victims should be exempted from criminal investigations should they have committed a crime while being in forced labour (“non-punishment clause”).
- The privacy of victims should be respected, and information given by victims should be treated with confidentiality.

- The safety of victims and their family members should be guaranteed. Before sending trafficked victims back home, possible risks should be carefully assessed.
- Victims should be provided with assistance according to their need, such as medical, psychological or legal assistance.
- Victims should be empowered to make their own informed choices and decisions and to participate as much as possible in the decision-making process regarding them.
- Victims should be informed about compensation independent of criminal proceedings.
- Special procedures have to be in place to account for the rights and needs of children. All assistance and protection provided to children should be in the best interest of the child.

Inspectors should be aware that the relationship between potential victims and offenders can be complex and sometimes contradictory. Victims should first of all be seen as workers who may have lost some of their free decision making power but who are nonetheless individuals with some degree of willpower. Indeed, while the emphasis on [victims](#) is needed to develop law enforcement responses, most forced labourers would not see themselves as such.

Migrant workers, for example, tend to calculate their risk in a rational way: “from slave to entrepreneur” is a common perception among those who have to endure a lot of hardship during their journey and employment. But many of them manage in the end to improve their living and working conditions. Other likely forced labour victims may belong to a group of people that has suffered serious discrimination over generations. Resistance to exploitation may therefore be beyond their power or imagination.



Sometimes, victims can be complicit and even try to cover up the wrongs of their employers because they do not see a viable alternative to their present conditions. They can also become part of the criminal network that exploited them previously. Inspectors should therefore be cautious about looking for the “pure” victim. It is more important to look for objective indicators of coercion that can be used to indict employers. At the same time, it is important to assess realistically the constraints of a likely victim and not to be overzealous in the intervention despite the fact that labour inspectors are usually obliged to communicate all legal infringements to the relevant authorities.

ILO Conventions No. 81 and No. 129, however, do not contain any provision suggesting that any worker be excluded from the protection afforded by labour inspectors on account of their irregular employment status. Labour inspectors therefore play an important role protecting rights of actual or potential victims arising out of the employment relationship, such as payment of wages.

In countries, where a **National Referral Mechanism (NRM)** for victims has already been developed, labour inspectors and other law enforcement authorities will find it easier to respond to the specific needs of victims. A NRM is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of forced labour and trafficking victims, co-ordinating their efforts in a strategic partnership with civil society, workers’ and employers’ organisations. The structure of a NRM will vary in each country; however, NRMs should be designed to formalize co-operation among government agencies, trade unions and non-government groups dealing with forced labour victims. A NRM usually includes a national coordinator, round-tables and working groups at national as well as local levels.³ The NRM model has been developed in the context of trafficking but it can very well be used in the context of forced labour more generally. Such a NRM should also take into account that some victims of forced labour and trafficking may have been infected with HIV/AIDS or other diseases and need special treatment. In any case, it is recommended that labour inspectors develop a database with certified service providers in cooperation with the police and other authorities in order to refer victims for further assistance.

Ethical conduct of labour inspectors

Since forced labour and trafficking often involve criminal networks, labour inspectors like any other public authority may be exposed to bribery or other unethical practices. Corruption is a sensitive issue but has to be confronted within the national strategy to eradicate forced labour as well as under the overall objective of promoting good governance. Corrupt or unethical behaviour of labour inspectors in a situation of possible forced labour is particularly critical as it may endanger the life of victims.

There have been cases where victims of forced labour and trafficking managed to escape from their abusive employers and were returned by corrupt law enforcement officials. This is unacceptable. The ILO has developed recommendations and a model Code of Ethical Behaviour that should form the basis for any inspectorate’s efforts to combat corruption and protect workers who are particularly vulnerable.⁴

³ OSCE/ODIHR: National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, Warsaw, 2004

⁴ ILO: A Tool Kit for Labour Inspectors: A Model Enforcement Policy, A Training and Operations Manual, A Code of Ethical Behaviour, edited by Annie Rice, Budapest, 2006

Cooperation with other stakeholders

Forced labour and human trafficking are complex crimes that need holistic responses. When organised criminal networks are involved, cooperation with other countries will often be necessary. Furthermore, likely victims need targeted assistance that labour inspectors cannot provide. The scope of cooperation can vary across countries, from sharing information (including reports and data collected within each authority), participation in inter-agency commissions, joint investigations and joint support for victim protection programmes or awareness raising campaigns. Cooperation with workers' and employers' organisations is essential. It should be embedded in mechanisms of social dialogue through which labour inspectors and social partners can share information and take corrective action if necessary.

In short, cooperation ensures effective prosecution and victim protection, information management and overall policy implementation against the backdrop of scarce resources and competing priorities. But there are many obstacles to cooperation, such as language barriers, lack of awareness, competing mandates and lack of resources.

Government partners:

- **Police**

Since forced labour and trafficking are often linked to organised crime, effective support from the police can be essential. Allowing labour inspectors to call on the support of the police when they are obstructed or threatened can have a deterrent effect, but more importantly, it will safeguard the inspector's own physical safety.

- **Judiciary**

The effectiveness of the sanctions available to labour inspectors depends to a large extent on the way in which judicial authorities deal with the case files referred to them. Close cooperation and coordination between labour inspectorates and the judicial authorities (e.g. labour or criminal courts) can be helpful to ensure effective sanctions which, as in the case of Brazil, could be enforced on the spot. Collaboration is also a way to raise the awareness of judicial authorities of the role of labour inspectors in the fight against forced labour.

- **Immigration authorities**

Close cooperation with immigration authorities is necessary to protect potential victims of human trafficking from deportation, as many of them are irregular migrant workers. They will also be involved in granting temporary residence permits for victims of human trafficking. Such cooperation, however, should be designed in a way that it does not impede the basic objective of labour inspectors to protect the rights and interests of all workers (whatever their legal status) as well as to improve working conditions. While labour inspectors tend to focus on infringements of employers, immigration authorities can be overzealous in detecting irregular workers who may have been victims of serious exploitation. Close coordination between immigration authorities and labour inspectors is therefore necessary to avoid possible tensions in the enforcement of different laws and to protect workers from any reprisals.

- **Border guards, customs and tax authorities**

Forced labour and trafficking are often linked to other criminal activities, such as smuggling, tax evasion or money laundering. Border guards can have useful information about possible trafficking or smuggling activities

while cooperation with tax or customs authorities is essential to seize assets of traffickers or criminal employers. Sometimes, investigations on tax evasion can lead to the detection of forced labour cases or vice versa provided that authorities are sensitized about the issue.

- **Social security and social insurance institutions**

Most victims of forced labour or trafficking are not covered by social security or social insurance schemes. Data on benefit fraud and other related information should be communicated systematically to labour inspectors in order to identify high-risk establishments and activities. By the same token, labour inspectors should be required to inform social security and social insurance institutions about workplaces where conditions of health and safety pose a particular risk to workers.

Social partners:

- **Workers' organisations**

Trade unions can play a key role in the identification of possible victims, lodging complaints that victims themselves are too afraid to put forth. Trade unions can also provide legal advice to workers, including migrant workers in order to prevent the worst from happening. In 2007, the International Trade Union Congress (ITUC) adopted an Action Plan against forced labour. It publishes a newsletter that denounces cases of forced labour and calls for action. In many parts of the world, trade unions are already actively involved in the prevention of forced labour and protection of victims (see box below).

- **Employers' organisations**

Employers can and indeed often do cooperate with inspectors in various ways, such as informing inspectors of likely offenders or participating in sensitization, awareness and prevention campaigns. Employers' organisations play a key role in preventing irregular employment and exploitative practices through the dissemination of advice to their members and the promotion of ethical business standards.

Other partner organisations:

- **NGOs and other victim assistance organisations**

NGOs and other civil society organisations are essential in economic sectors that are not covered by trade unions and that are difficult to reach for labour inspectors or the police. Examples are domestic service, sex and entertainment or other types of work that are out of scope for labour inspectors. In many countries, NGOs have established a hotline through which victims can receive first assistance. The hotline often serves also to prevent forced labour and trafficking from occurring since persons at risk can receive information on how to protect themselves from exploitation. Cooperation with NGOs is essential since law enforcement authorities have to rescue identified victims from a situation of forced labour and they need such partners to refer victims so that they can receive the right assistance, be it medical, legal or psychological.

- **International organisations**

International organisations have advocated more effective action against forced labour and trafficking over recent years and started many programmes around the world to improve the situation. Labour inspectors are usually not part of these national or regional, externally funded programmes, and yet they provide a useful entry point for cooperation, capacity building and exchange of good practice.

Trade union action in collaboration with labour inspectors

In 2002, the All-China Women's Federation (ACWF) in collaboration with the Chinese Ministry of Social Science set up a legal supervision system in organisations affiliated with ACWF to check working conditions of women workers. The main tasks of the trade union supervisors are to focus on gender discrimination, compliance with labour law regulations regarding women workers, arrears in wage payments, abuse of women workers, illegal child labour and employment situations without contract. In parallel, several workshops focusing on women labour rights have been organised to further strengthen legal regulations.

Source: ILO: China Project to prevent trafficking in girls and young women, 2004-2008

Modes of cooperation

There are various forms of cooperation. What should be avoided, however, is cooperation that is based on individuals and that will falter as soon as they leave. Structured cooperation raises several important questions. First, it is necessary to know where the work of the labour inspectors ends and that of the police or other authorities begins. Second, cooperation with partners that may be new to labour inspectors, such as community based assistance organisations, has to be developed and nourished over a prolonged period of time in order to build trust.

- **Cooperation agreements**

Cooperation agreements or memoranda of understanding can be concluded with other national or international stakeholders. They provide a more structured basis for cooperation as compared to informal information exchange.

- **Participation in national commissions**

Labour inspectors usually participate directly or indirectly in tripartite national commissions where labour law enforcement is being discussed. In many countries, however, national commissions have been set up to address forced labour and trafficking more specifically. Sometimes, they are led by Ministries of Internal Affairs, which explains why labour inspectors are often absent from these commissions.

Joint inspections in Italy

Personnel from the Carabinieri Command for the Protection of Labour operate under the Ministry of Labour to monitor the application of labour law and social security regulations. They target especially vulnerable groups of workers such as foreigners or minors. Their main task is to fight against illegal and disguised employment, exploitation of labour in “sweatshops”, trafficking in human beings and the elimination of inhuman working conditions, including slavery. The detection of fraud, the illegal deduction of social contributions and the receipt of public funding under false pretences are also detected by this specialized unit.

The personnel are trained to qualify as Labour Inspectors as well as Agents and Officers of the Judiciary Police. Operations are carried out autonomously, or to support the Carabinieri territorial units or other law enforcement authorities (such as Labour Inspectorates and police) in enforcing labour legislation. The Command (including 102 local groups at district level) monitors, prevents and suppresses violations of labour and social security legislation, carries out analysis and studies on economic and labour market trends, and also provides workers with legal advice.

In 2005, the Command carried out more than 24,500 inspections (covering 128,000 workers), and denounced to the judicial authority more than 10,000 persons of which 188 were arrested, mainly for crimes linked to labour exploitation of third-national irregular immigrants. In the Operation “Marco Polo”, carried out at national level, more than 90 persons linked to Chinese businesses have been arrested for offences related to the exploitation of irregular migrants.

Source: Combating human trafficking for forced labour exploitation. Good practice from Europe, ILO/ICMPD, 2006.



Annex 4 contains examples of countries where such inter-agency cooperation agreements have already been developed.

Safety of labour inspectors

Forced labour is a serious crime even though cases may vary from subtle to more dangerous forms of coercion. Risks to the physical safety of labour inspectors can seriously affect their work. It is not uncommon for inspectors to be threatened, insulted and even attacked physically by employers who object to their presence. Employers who disregard the basic rights of workers are also inclined to demonstrate aggressive behaviours towards labour inspectors. In Brazil and France, for example, labour inspectors were killed in 2004 when visiting agricultural undertakings where workers were subjected to serious exploitation. Certain workplaces may be perceived as “no-go areas” because of their potentially clandestine nature and dangerous environment. In the most serious forced labour cases that have so far been detected, employers actually use armed guards to prevent workers from running away.

Governments therefore have to show clear commitment to guarantee the safety of its inspectors, to abstain from political interference and to punish employers who obstruct or slander the work of labour inspectors. It is therefore important to provide clear and deterrent sanctions to punish obstruction of the work of labour inspectors. Governments should also encourage cooperation agreements with police and other law enforcement authorities in order to reinforce state presence in potentially dangerous environments and to ensure the safety of unarmed inspectors.



LINKS TO THE INFORMAL ECONOMY AND ILLEGAL EMPLOYMENT

The importance of prevention and awareness raising

Labour inspectors often operate in an overall socio-economic context that can be challenging. Countries with a large proportion of informal labour and irregular (migrant) labour in relation to regular work pose particular challenges. It is therefore important to create linkages between the work of labour inspectors and national development plans as well as employment policies. Experience has shown that a strategy based on prosecution alone will not be successful. It has to be complemented by long-term measures that tackle the roots of the problem, such as poverty, lack of awareness, discrimination or overly restrictive migration policies. Preventing forced labour by eradicating the root causes is a major challenge. Labour inspectors can play a multifaceted role in the implementation of this long-term objective.

- **Awareness raising**

Ignorance of workers about their rights, as well as of employers about their legal obligations, is widespread. Through their participation in tripartite commissions as well as awareness raising projects, labour inspectors can play a key role in educating social partners and society as a whole. Awareness raising activities can include information on how to obtain work permits in sectors such as domestic service, how to avoid abuse in the recruitment process, how to lodge complaints, how to treat migrant workers fairly, or how to avoid forced labour in the supply chain. In many countries, labour inspectors have experience in working with the media and disseminating information through TV or radio.

- **Anti-discrimination policies**

Many countries have national anti-discrimination policies in place that could be used as an entry point to reduce the vulnerability of special groups of workers, such as female migrant workers. Where an anti-discrimination policy is in place labour inspectors may already be trained on how to ask sensitive questions, how to check if there is a notification procedure, whether a company has already any policy to counter discrimination at the workplace as well as aggression and violence.

- **Programmes for vulnerable groups of workers**

Vulnerable groups of workers fall into many different categories and are present in different sectors of economic activity, often those that are also vulnerable to forced labour. Also, there are many different types of workers, under different regulatory frameworks, and who due to different circumstances can be described as “vulnerable.” When dealing with any category of vulnerable groups of workers, in an integrated approach, labour inspectors will check a range of “unfair labour practices,” relating for example to wages and employment contracts.

Most forced labour victims are not aware of their rights, and sometimes employers may not be aware of specific legislation, such as the prohibition of retaining identity documents against the will of the document holder. Information campaigns are therefore a key element in national strategies against forced labour. In some countries, labour inspectors have gained valuable experience in working with the media to raise awareness about the labour law. When working with the media it is important not to expose likely victims to any risks. It is therefore recommended to work with workers' and employers' organisations or NGOs when designing awareness raising campaigns.

Forced labour in the informal economy

There is no universal definition of "informal economy" but there is consensus that it comprises a wide range of economic activities that are not covered under law or practice by any formal arrangements. Informal employment can take on many forms, such as undeclared self-employed workers, working family members that are not remunerated or paid employees in the informal economy. It is widespread in agriculture, small and medium sized enterprises, domestic work and other services. Undeclared work is often used interchangeably with illegal work, especially in developed countries even though the activity as such may be legal. According to the OECD, illegal work refers to work that is not legally authorized. This often affects irregular migrant workers and is discussed in more detail below. The following section discusses the kinds of forced labour in the informal economy that are most widespread in developing countries.

According to ILO research, many traditional forms of forced labour take place in rural areas that are often isolated and difficult to reach for labour inspectors, often due to the simple lack of transport means. Most workers employed in agricultural work, especially in developing countries, are not aware of their rights. Illiteracy rates are usually higher in rural than in urban areas. Many of the bonded labourers in India, for example, are living in rural areas and have very low or no formal education. Traditional practices may also come into play. In Niger, for example, descendents of slaves are still suffering discrimination in the labour market despite official prohibition of slavery and slavery-like practices. Many slave descendents therefore stay with their "masters", carrying out hard work for no or very little pay. Furthermore, agricultural work is often seasonal and involves migrant workers. Some of the most abhorrent forced labour cases in Europe, for example, involved seasonal migrant workers in agriculture.

Identifying and combating forced labour in the informal economy requires a concerted effort of all stakeholders. An important prerequisite is to hire a sufficient number of labour inspectors to monitor both formal and informal sectors, as well as to train them adequately. ILO research has revealed that the shortfall in the number of labour inspectors is between 40,000 and 45,000 globally. Without a sufficient number of labour inspectors, reaching out to workers in the informal economy will be difficult. In addition, as discussed above, labour inspectors have to develop partnerships with community based organisations (e.g. vigilance committees), trade unions, employers' organisations, private auditors and other stakeholders in order to strengthen their outreach capacity.

This should be combined with a range of complementary measures that could be initiated by different stakeholders, such as:

- Education, literacy and awareness raising programmes for workers in the informal economy;
- Development of micro-credit schemes or other income generating measures for released forced labourers and members of their families;
- Promotion of the right to organise for workers, such as domestic worker's associations or special organisations of agricultural workers;
- Development of social security and other social protection schemes especially targeted at workers in the informal economy;
- Dissemination of the ILO WISE methodology (Work Improvements for Small Enterprises) as well as other initiatives to cover SME, and mainstream anti-forced labour activities.

A special case is the inspection of domestic household workers because of the principle of the inviolability of the private home. The isolation of many domestic workers, language barriers and lack of skills make them especially vulnerable to trafficking and forced labour. Hotlines and cooperation with community based organisations can be helpful to receive information, and in the case of suspicion, labour inspectors tend to use the "element of surprise" asking whether they can enter, and once permission is given, they can proceed with their investigation. Contacting the local media may be another channel to bring to light such "hidden cases" of forced labour. In serious cases, labour inspectors will have to inform the police.



Vigilance committees and labour law enforcement to combat bonded labour in India

According to various studies and surveys, bonded labour is prevalent in India and other countries of South Asia in different sectors of the informal economy, including agriculture, quarrying, gem cutting, silk industry, beedi making, handloom and power loom weaving, brick kilns and rice mills. Many workers in the informal economy are unable to cope with risks and economic shocks, and have only few means to cover their basic consumption needs. Borrowing money is often the only way to escape destitution but it often leads to debt bondage. The bonded debt denies workers their negotiating power and puts them at greater risk of exploitation.

The Government of India has outlawed bonded labour through The Bonded Labour System (Abolition) Act in 1976. Vigilance Committees are established in most places under the law; however, they are often ineffective in identifying the victims and rehabilitating them. The ILO therefore recommends a strengthening of enforcement systems that would work hand in hand with vigilance committees at the local level. For example, by active enforcement of the Minimum Wages Act in India combined with regulation of production units (under Factories Act), debt bondage can be prevented. Labour administration and factory department should make periodic inspection of worksites and establishments and register complaints with senior officials regarding non-payment of minimum wages and back wages.

In parallel, the Government should conduct orientation workshops for the Vigilance Committees to enable them function effectively. The role of these committees should not be limited just to follow-up on identified cases but should be to actively monitor vulnerable groups and sectors.

Source: Sathya Maria: Bonded Labour in Tamil Nadu - A Challenge for Labour Administration, ILO 2005

Control of illegal employment

Most countries assign labour inspectorates the task of supervising the legality of employment and prosecuting violations, including both clandestine workers as well as migrant workers in an irregular situation. More and more countries have also reinforced penalties against employers using illegal labour. The employment of irregular migrant workers is a particularly emotive subject that poses many challenges to policy-makers and law enforcement authorities. The informal economy often acts as an important “pull factor” for irregular immigration. Combined measures should be developed that tackle demand arising from the informal economy, offer possibilities of legal immigration, and provide adequate punishment for employers who use irregular labour.

The ILO Committee of Experts on the Application of Conventions and Recommendations 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 as a primary activity. It also noted the fact that workers residing illegally in a country are often doubly penalized: in addition to losing their job they face the threat of expulsion. Labour inspectors should therefore focus on the abusive working conditions to which irregular workers are most often subjected, and they should ensure that all workers benefit from statutory rights resulting from the employment relationship. In practice, however, penalties against employers using irregular migrant workers are too low to act as an effective deterrent whereas migrants face difficulties claiming their rights, especially if they are in an irregular situation.

Combating illegal employment, France

Successive revisions of the Labour Code now envisage the following set of penalties for violations of provisions on illegal employment: up to three years of imprisonment (five if minors are involved), up to 45,000 EUR fines, up to five years prohibition of operating as employer in the same sectors and possible publication of the verdict.

The Government has established an Inter-ministerial Directorate against Illegal Labour (DILTI) comprised of a number of ministries, such as Justice, Labour, Agriculture, Transport, Interior, Finance and others with the responsibility to:

- Define the policy for control of illegal employment and conditions for compliance;
- Coordinate the public services charged with controls;
- Organise joint training of officials in a given region or department;
- Give juridical and methodological support for networks of officials and;
- Commission research for the evolution of illegal employment.

Prosecution under criminal law is also possible for subjecting a person to inhumane working or housing conditions by preying on his or her vulnerability or situation of dependence, or for obtaining services from such as person for no payment, or for a wage which is manifestly disproportionate to the value of the work performed. In 2005, France was requested by the European Court for Human Rights to strengthen provisions against forced labour. The judgment was based on a case of a minor from Togo who was held in servitude and did not receive adequate compensation and social justice. Hence, combating illegal employment has to be complemented by strong victim protection measures and adequate penal sanctions.

Source: W. Frhr von Richthofen: The Role of Labour Inspectors in Combating Human Trafficking and Forced Labour in Europe, ILO Geneva, 2007

Monitoring private employment agencies and supply chains

Victims of forced labour and trafficking are often recruited by unscrupulous intermediaries who deceive them about conditions of work, cheat on recruitment fees and are sometimes part of a larger criminal network. It is therefore important to strengthen regulations on private employment agencies and to improve monitoring mechanisms in order to promote ethical business standards in the recruitment industry as well as to cut back the market for illegal or informal recruiters.

Labour inspectors have an important role to play in identifying and monitoring private employment agencies and sub-contractors, including agencies operating under disguise, such as travel, model, au-pair or other agencies. The ILO has published guidelines on private employment agencies as well as a training handbook that addresses more specifically recruitment of migrant workers with a view to preventing trafficking in human beings.⁵ The subject can be studied further by using these ILO tools. Both tools are targeted at labour inspectors among other relevant agencies.

⁵ ILO (2007): Private Employment Agencies: Regulation, Monitoring and Enforcement, Geneva, 2007; ILO (2006): Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers, Geneva, 2006

Forced labour and trafficking often takes place far down the supply chain. Competitive pressures in certain industries can have an adverse impact on conditions of employment and, at their extreme, can lead to forced labour. Many suppliers are paid a product price which barely allows them to break even. If they wish to make a profit, one area in which suppliers attempt to reduce costs is labour. In such cases, suppliers can pass on the burden to labour contractors, who in turn may use migrant workers who are in a precarious situation. Often, labour contractors use migrant workers who are more likely to submit to exploitation.

While the commitment of business actors to the prevention and eradication of forced labour and trafficking remains somewhat limited, key initial steps have been taken. One initiative was the adoption of the “Athens principles” in January 2006, focusing in particular on trafficking for sexual exploitation, which have since been endorsed by the CEOs of some major companies. The ILO presented its [10 Principles for Business Leaders](#) in 2007, to guide a Business Alliance against Forced Labour and Trafficking. These were widely disseminated at the UN Global Compact’s 2007 Leaders Summit.

In addition, business action against forced labour and trafficking is often embedded in company policies on protecting fundamental rights at work. In many companies, these policies are implemented through social auditing, reporting and in-house training. Voluntary initiatives of companies to address forced labour in their supply chain should be complemented by targeted labour inspection action. For example, companies can collaborate with labour inspectors to identify at-risk-suppliers, to share information of private auditing as well as their non-financial reports.

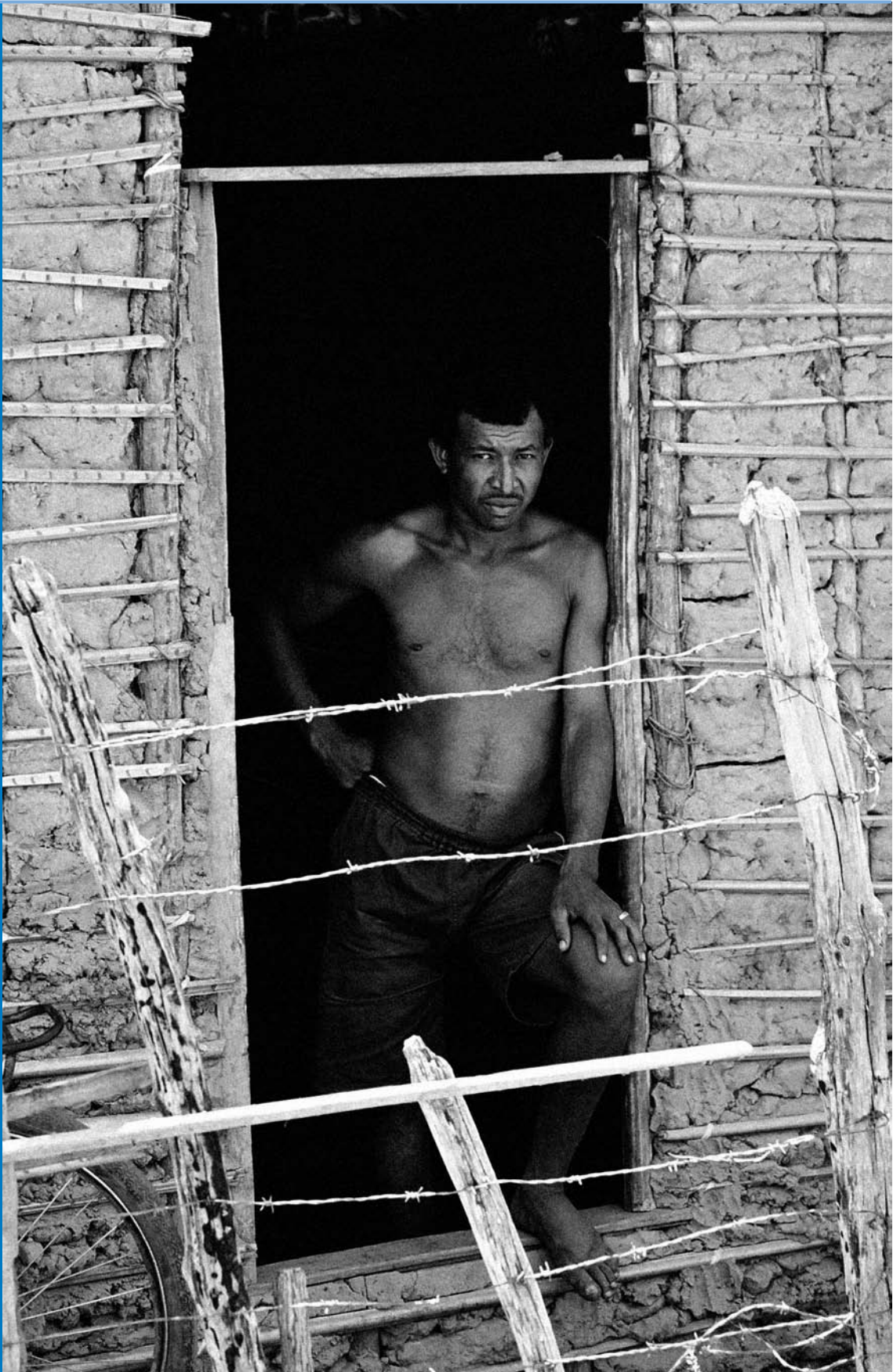


Complementary action of labour inspectors and employers against forced labour in Jordan

In 2006, the US-based National Labour Committee (NLC) investigated labour practices in the Qualified Industrial Zones (QIZ) of Jordan and denounced abusive working conditions, including forced labour in a highly publicised report. The study looked at factories, which benefited from preferential access to the US market. The NLC report caused great concern in Jordan and the Ministry of Labour initiated an inspection campaign shortly after. As a result of the campaign, a total of 114 penalties were issued and two establishments were closed. While some of the NLC allegations, especially those regarding physical violence and restriction of freedom of movement, could not be proven, it was noted that migrant workers may have been intimidated prior to and during the interviews. It was further noted that enforcement tends to focus on violation of work permits of migrant workers instead of labour violations such as forced overtime or irregularities in wage payments. Furthermore, the insufficient number of labour inspectors and their weak capacity to regularly inspect QIZs was noted.

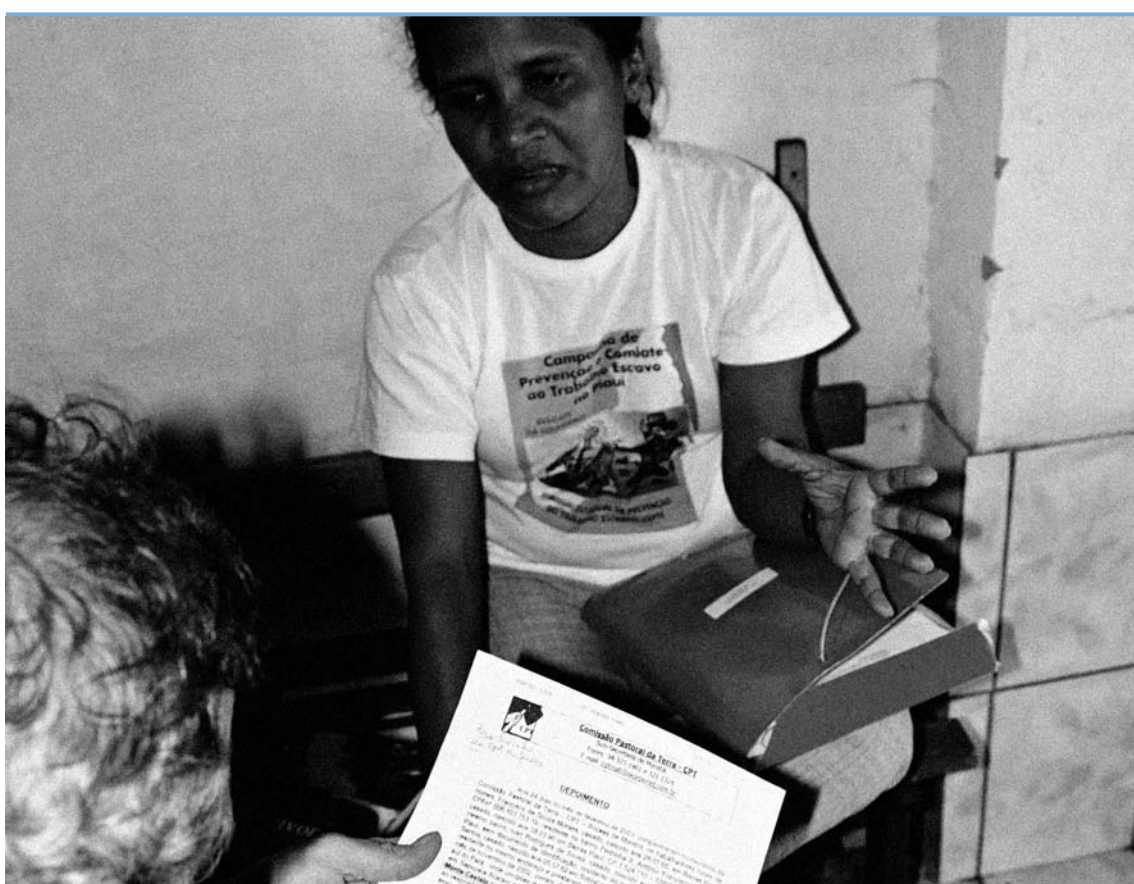
In response to the NLC's report, employers in the QIZs and the Jordan Garments, Accessories & Textiles Exporters' Association (JGATE), in co-operation with ILO, have undertaken training and awareness raising activities to address the abuses found at factories. These activities have engaged employers directly and encouraged improvement in working conditions, employment practices and recruitment of migrant workers. Company managers and JGATE also work closely with global buyers that source from Jordan and, in the context of corporate social responsibility programmes, seek to comply with codes of conduct and voluntary certification systems. Ongoing activities support calls for a uniform and comprehensive social auditing mechanism to regularly monitor the factories that produce for export.

Source: Ministry of Labour Report on Status of Migrant Workers in Qualified Industrial Zones, Ammam, 2006.



TRAINING MODULES AND LEARNING ACTIVITIES

This section brings together training modules and learning activities that make up two programmes, one lasting five days and the other three days. They are only examples, and we recommend you to adapt these ideas to the needs and interests of the labour inspectors in your country. The numbers in brackets refer to the learning activities or documents in the annex which could be integrated into the training programme.



Five-day workshop

Day 1 Forced labour – an issue for labour inspection

Morning session

- Welcome remarks
- Introduction and expectation of participants
- Overview of the course
- Definitions and concepts
- Distinguishing forced labour from exploitation and trafficking from smuggling – group activity (1)

Afternoon session

- Forced labour across economic sectors and regions: facts and figures
- Forced labour video – discussion
- Forced labour and trafficking in your region/country – group activity (2)

Day 2 Legal and policy frameworks

Morning session

- Recapitulation of previous day – definitions and concepts
- Basic principles of international instruments against forced labour and trafficking
- Relevant national laws and regulations – group activity (3)

Afternoon session

- Regional and global policies against forced labour and trafficking
- National action plans against forced labour and trafficking
- Assessing the national response – group activity (4)

Day 3 Role and mandate of labour inspectors

Morning session

- Recapitulation of previous day – national responses
- Applying the functions of labour inspectors to combating forced labour
- Assessing institutional structures and resources – group activity (5)
- Challenges of enforcement

Afternoon session

- Indicators of forced labour
- Indicators and investigation of cases – group activity (6)
- Prosecution and penalties
- Links to the informal economy and illegal employment

Day 4 Prevention, protection and cooperation

Morning session

- How to treat victims of forced labour: issues of protection and rehabilitation
- Short video clips on trade union and NGO work with victims
- National referral mechanism - group activity (7)

Afternoon session

- Prevention and the role of labour inspectors
- Monitoring recruitment
- Cooperation with other stakeholders
- Preventing forced labour and looking for partners – group activity (8)

Day 5 Future planning

Morning session - working groups

- Developing operational guidelines – group activity (9)
- Inspection reports – group activity (10)
- Action planning – group activity (11)

Afternoon session

- Reports from working groups
- Evaluation of course
- Closing remarks

Three-day workshop

Day 1 Forced labour – an issue for labour inspection

Morning session

- Welcome remarks
- Introduction and expectation of participants
- Overview of the course
- Definitions and concepts
- Forced labour across economic sectors and regions: facts and figures

Afternoon session

- Basic principles of international instruments against forced labour and trafficking
- Regional and national action plans against forced labour and trafficking
- National policies, laws and regulations – group activity (3)

Day 2 Areas of intervention

Morning session

- Indicators of forced labour
- Investigation of cases – group activity (6)
- Prosecution and penalties

Afternoon session

- Protection of victims and referral to assistance
- Prevention activities: awareness raising and social dialogue
- Cooperation with other stakeholders

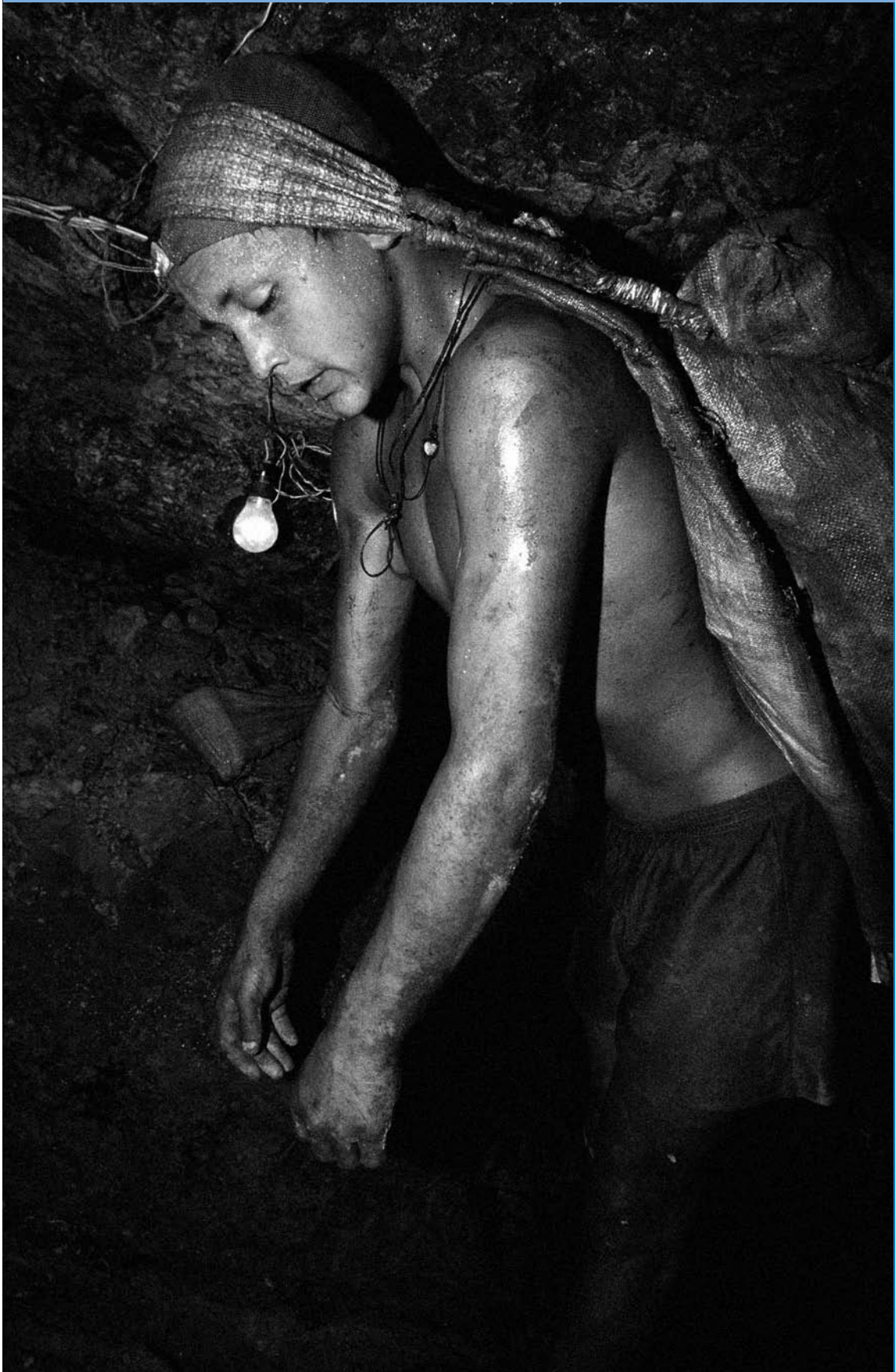
Day 3 Future planning

Morning session - working groups

- Developing operational guidelines – group activity (9)
- Inspection reports – group activity (10)
- Action planning – group activity (11)

Afternoon session

- Reports from working groups
- Evaluation of course
- Closing remarks



Annex 1: Learning activities

Activity 1 Distinguishing forced labour from exploitation and trafficking from smuggling

- Aim** To help you identifying possible forced labour/trafficking situations and distinguishing them from other forms of exploitation or movement.
- Task** Read cases 1 - 4 in annex 2 and decide which possible offences (forced labour, trafficking, smuggling or violations of other statutes) are relevant in each case. Base your judgment on definitions of international instruments that you will find in annex 3.

Activity 2 Forced labour and trafficking per region/country

- Aim** To learn more about different forms of forced labour and trafficking across the world and to share information from your country/region/province with other participants.
- Task** Map existing forms of forced labour/trafficking, explain where you found the information and highlight grey areas or practices that may be forced labour but would need further research. Share experiences with data gathering in your country, including deficiencies or good practice.

Activity 3 Relevant national laws and regulations

- Aim** To discuss and assess the existing legal framework in your country
- Task** Discuss relevant provisions of the labour and criminal code with members of your group and assess whether they are in conformity with international standards. Also discuss whether the existing framework is sufficient and provides labour inspectors with a strong mandate to take action against forced labour.

Activity 4 Assessing the national response

- Aim** To discuss and assess the national policy against forced labour/trafficking
- Task** Obtain the national action plan against forced labour/trafficking of your country. Prepare a short report on the key features of the plan, especially those that are relevant to enforcement and labour market regulation. Highlight strengths and weaknesses of the action plan as well as the role of labour inspectors if specified. Develop proposals for a revision of the action plan as well as for labour inspection policy on forced labour/trafficking.

Activity 5 **Assessing institutional structures and resources**

- Aim** To discuss and assess implementation of the national action plan and the role of labour inspectors
- Task** Discuss implementation as well as impact of the national action plan with members of your group. Pay particular attention to the institutions involved, their strengths and weaknesses as well as budget allocations. Identify possibilities and limitations of a more active involvement of labour inspectors.

Activity 6 **Indicators and investigation of cases**

- Aim** To apply indicators to real cases as well as to discuss investigation procedures and techniques
- Task** Look again at the cases you have discussed at the beginning of the course (annex 2). Prepare a list of indicators for each case. Based on the assessment, suggest investigation procedures with a view to protecting victims from retaliation and indicting offenders. Make clear which steps you would take in your own capacity and for which type of action you would request other organisations to come in, such as police or NGOs.

Activity 7 **National Referral Mechanism (NRM)**

- Aim** To understand the role of labour inspectors in the protection and referral of victims
- Task** Check whether a NRM has been institutionalised in your country. If so, identify the main partners and guiding principles. Develop proposals for an involvement of labour inspectors in the NRM. If not, make a list with possible partners, especially NGOs and trade unions, to whom you could refer potential victims for further assistance. Discuss the possibility of a Memorandum of Understanding with these organisations.

Activity 8 **Preventing forced labour and looking for partners**

- Aim** To understand the role of labour inspectors in prevention and to develop concrete proposals
- Task** Imagine your institution has been requested to develop an awareness raising campaign against forced labour and trafficking. What are the issues you would like to address with that campaign, who are the partners and what would be the overall strategy of such a campaign?

Activity 9 Developing operational guidelines

Aim	To develop operational guidelines for inspection on forced labour/trafficking
Task	<p>Your task is, with a group of colleagues, to develop operational guidelines for the identification of forced labour. The following items may provide a useful basis for such guidelines:</p> <ul style="list-style-type: none">• Contents of workplace policy on forced labour/trafficking• National laws and regulations• Indicators• Treatment of actual and likely victims <p>Don't limit yourself to these suggestions. Drafts can be exchanged between groups for improvement. It is suggested that one inspector then takes responsibility for producing a final version that can be presented in the plenary.</p>

Activity 10 Inspection reports

Aim	To help you to prepare a forced labour reporting tool
Task	<p>Working in a group, take an existing report form used in your inspectorate. Add a section for reporting on forced labour in the workplace. It is again suggested that drafts be exchanged between groups for improvements, and that one inspector then takes responsibility for producing a final version for distribution.</p>

Activity 11 Action planning

Aim	To prepare the follow-up to the workshop
Task	<p>Look back over what you have discussed on this workshop. Think about the actions you are going to take as well as action that you would others like to take (e.g. policy makers or chief labour inspectors). Prepare a list with the following items:</p> <ul style="list-style-type: none">• Which type of action is required?• When should it be accomplished?• Who should be involved?• What resources will be required?



Annex 2: Case studies

The following cases have been collected through ILO's field based and research activities in different regions of the world. They shed light on the wide range of exploitative practices that can constitute forced labour. When preparing a training course, it is recommended to use cases relevant to the specific context in a particular country. Participants should read the cases carefully and specify indicators of forced labour. They should decide whether a case would constitute forced labour and/or trafficking in their opinion and recommend appropriate interventions.

Case 1

Linh is a young Vietnamese woman trained in sewing. She was looking for a factory job in her home town and applied to a recruitment agency. The agency is a sub-contractor of a large garment factory that produces textiles for international buyers. Linh was interviewed and soon offered a job. The agency required her to pay a recruitment fee of 200,000 Dong and to deposit another 1 million Dong that she would get back upon termination of her contract. Linh did not have that much money so the agency required her to hand over her identity papers that it would keep until Linh had worked off the recruitment fee. Linh did as requested and soon started to work in the factory. The working conditions, however, turned out to be very different from what was stipulated in her contract. She had to work long hours. The overseer did not allow the women to use the bathrooms as they required and put a lot of pressure on the workers. After a month, Linh complained to the agency and wanted to leave the job. The agency refused to hand over her identity documents as she had not yet worked off the recruitment fee. Linh returned to the factory and after a second month, wanted to leave again. Now the agency returned the identity papers as she had paid the fee but wanted to retain half of the deposit she paid initially. Linh refused to accept this and filed a complaint with the local labour inspectorate.

Case 2

Den is an unskilled peasant who left his village in a remote part of China to look for work in the nearest city. He heard that construction companies were always looking for temporary workers and was given the name of a place where workers were recruited on a daily basis. Den was soon hired for a week and started to work at the construction site. He was given very hard work and bullied all the time. He also had to work day and night and was very tired at the end of the week. He never received an employment contract and was not sure whether it was legal to work like this but he did not dare to ask. At the end of the week he only received 100 RMB, much less than his co-workers. He wanted to complain but the employer said he would not receive more than this as he was just an unskilled peasant.

Case 3

Manuel used to work in slave-like conditions in the South of Para state in Brazil, in a fazenda raising cattle, deep in the Amazon forest. He was working seven days a week, drinking the same water as cattle, without being paid, and with no proper accommodation, just a piece of cloth to sleep under. Premises were guarded by armed men, who prevented anyone from leaving. When he was supposed to get his money, he was told that he had “eaten” everything. Indeed he had to pay for food, housing and even for the tools he used at work. The only shop in the area was owned by their employer, and prices were outrageously high. When he claimed his back wages, he was informed that he had to stay and work more if he wanted to earn money. After four years of living this way, he was released by a Mobile Labour Inspection Unit.

Case 4

The Portuguese Inspectorate General of Labour (IGT) dealt with a very serious situation involving a labourer from Sao Tome and Principe working on a farm and made to live in sub-human conditions. He was constantly being threatened by the gun-wielding female owner of the farm but managed to get a message out to the authorities. Eventually, officials of the National Republican Guard (GNR) and Aliens and Border Service (SEF) rescued him. The IGT is investigating a similar case of another worker on the same smallholding. The woman threatens labourers with firearms to make them work and stay on the smallholding, but they are not paid and are sometimes forced to live with the animals.

Case 5

The German labour office in Frankfurt/Main reported a case of exploitative employment of four women from Lithuania in an underground tailoring operation. Inspectors found a hidden sweatshop that was protected with video cameras and iron doors. The labour inspectors, posing as clients, obtained access and found 15-20 sewing machines in the sweatshop and four intimidated Lithuanian women. In the course of a long interview, the women described the circumstances of their employment: they had to work 12-15 hours daily for a salary of € 400 for six weeks, an hourly wage of € 1.25 – €1.50. The women were locked up in the workshop. Once every two weeks they were allowed to go shopping without a guard. They claimed to be afraid of their employer, a Jordanian citizen. The sweatshop had been running for several years with 10-12 illegal employees who changed regularly. The total value of the production amounted to € 1 million; not one employee was registered. The labour inspector said this was one of the most shocking incidents in his seven years of professional experience and that it was rare for victims to be so cooperative with labour inspectors. Nonetheless, the victims had to leave the country once the case was reported to the immigration authorities.

Case 6

Landilani is a 22 year old man from a family of 7 children, from Mushoro village in Chipata, Zambia. At the age of 19 his father arranged for Landilani to get a job with a businesswoman he knew in Chipata who would come to their village buying gemstones. When he got to Chipata, Landilani and the employer agreed on a salary of K 150,000 per month. He was accommodated at a restaurant where he had his meals. He further served as the guard at this restaurant. His duties included sweeping, cleaning, washing plates, watering flowers, working at the farm, moulding bricks and burning them. He worked for three months in Chipata without receiving his salary but only an occasional K 10,000 to buy clothes. He was enticed to leave this employment by the nephew of the employer and promised a job in Katete being in charge of pool tables at a salary of K 350,000. He ran away from his Chipata employer to work for the nephew at the night club. He worked at the night club for two years without receiving a salary. Landilani's work hours started as early as the patrons arrived and lasted as late. At times he just slept on the chair while people played pool. On average, he would cash in K150,000 to K180,000 per day. When Landilani started to bother his employer for his money he was told to stop work as another person had been recruited in his place and offered to provide Landilani transport to the village. To survive, Landilani began doing piece work and eating from friends. He also paid a bailiff to collect his outstanding salary. The bailiff and the employer were friends and this case stalled. The employer only paid K 100,000 towards the settlement of the claim. Unfortunately for Landilani the bailiff ran away with all company money swindling a lot of people in Katete.



Case 7

N is a Musalli woman (Muslim Sheikh) illiterate, married, and working in the haveli of Z. in Pakistan, Z owns N's home, although she built it herself. In her house, she has electricity but no other amenities. She has four daughters and two sons. Her husband, M, also works in Z's house. Their two daughters live in Multan. N and her daughter, T, clean the floors, wash the clothes and do the dishes in G's house. Her husband looks after the animals and their sons water the lands. They work from five in the morning until eight at night. Their own house is right next to the *haveli*, so that they can be summoned in case work is needed at any time. Z's wife is particularly cruel, and hits them with her shoes. If they are sweeping she follows them around hitting them with her shoes saying they are working too slowly or not doing the job right. Z also hits her husband and sons but N isn't sure for what reason.

N came here six years ago. Before that, she used to live in a village whose landlord, Chaudhry (landed employer), loaned her Rs. 80,000 to marry off her son and daughter. But it was very difficult to repay the loan, so the outstanding Rs. 60,000 was "re-financed." That is, Z paid the amount to his friend the Chaudhry. In effect he bought them by taking on their debt and so they came to work for him. T says that if a flowerpot breaks during cleaning, and if it is worth Rs. 25, then it is added to the loan at a rate of Rs. 500. If an animal dies, its value is also added to the loan. The loan has gone from Rs. 60,000 to 300,000. This system of deducting money for every item damaged is called *parchi charhana*. By way of some compensation, every person is given 200 rupees and one sack of wheat. They use the wheat to reduce their loan and do not take it. Here, kidney and eye problems are common. T was married off, but she got divorced and that is why she is back. Z often has men friends over who drink, and think nothing of bothering the Musalli girls.

Annex 3: Legal instruments

A – ILO Forced Labour Convention No. 29 (1930) - excerpts

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Article 2

1. For the purposes of this Convention the term *forced or compulsory labour* shall mean 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.

2. Nevertheless, for the purposes of this Convention, the term *forced or compulsory labour* shall not include –

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of 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;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Article 25

The illegal exaction of forced or compulsory labour shall be punishable 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.

B – Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime - excerpts

Article 2: Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3: Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Article 6: Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 9: Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

C – ILO Labour Inspection Convention No. 81 (1947) - excerpts

Article 2

1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

Article 3

1. The functions of the system of labour inspection shall be:

- (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 5

The competent authority shall make appropriate arrangements to promote:

- (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; and
- (b) collaboration between officials of the labour inspectorate and employers and workers or their organisations.

Article 6

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 9

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement

of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

Article 10

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular--
 - (i) the number, nature, size and situation of the workplaces liable to inspection;
 - (ii) the number and classes of workers employed in such workplaces; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 11

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with –

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

- (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
- (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular –
 - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
 - (iii) to enforce the posting of notices required by the legal provisions;
 - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 17

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Annex 4: Further references

1. ILO resources

- **ILO:** *Labour Inspection. ILO Survey for the 96th Session of the International Labour Conference*, Geneva, 2006
The survey summarizes reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133).
- **ILO:** *A Tool Kit for Labour Inspectors. A model enforcement policy, a training and operations manual, a code of ethical behaviour*, Budapest, 2006
This tool kit is designed to serve as reference tool for labour inspectors at all levels in the service and to help inspectors in their day-to-day activities.
- **ILO:** *Combating Child Labour: A Handbook for Labour Inspectors*, Geneva, 2002
This handbook provides those working in the field of labour inspection with basic information to understand and take action against children's work that is dangerous and exploitative. It offers suggestions on how to assess abuse and risk, how to evaluate a particular situation holistically, and how to work towards action-oriented decisions.
- **ILO:** *Integrated Labour Inspection Training System (ILITS)*, Geneva, 2006
ILITS provides a framework through which each national labour inspectorate can develop their own training systems and packages that are best adapted to their own needs, and tailored to meet available resources.
- **ILO:** *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement*, Geneva, 2005
This is a legal guide that has been designed to provide lawmakers and law enforcement authorities (both police and labour inspectors) with practical aid to understand and implement international standards on human trafficking and to take action accordingly.
- **ILO:** *Trafficking for forced labour: How to monitor the recruitment of migrant workers*, Geneva, 2005
This is a training manual that has been developed for labour inspectors and other enforcement authorities responsible for the monitoring of private employment agencies and other agencies recruiting under disguise.

- **ILO:** *A global alliance against forced labour. Global report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, 2005

This is the second ILO Global Report on Forced Labour that provides an overview of different manifestations of forced labour and trafficking worldwide and means of eradication. Most importantly, it calls for a global alliance against forced labour that has since began to take shape.

- **ILO:** *Action against Trafficking in Human Beings*, Geneva, 2008

This document presents a brief overview of the ILO approach against human trafficking and ILO-led responses.

2. UN Reports

- **United National Office on Drugs and Crime (UNODC)**

Toolkit to Combat Trafficking in Persons, New York, 2006

This Toolkit aims to suggest ways in which various relevant governmental and other organizations are able to develop elements of a comprehensive strategy to prevent and address the problem of trafficking, to identify victims of trafficking and offer effective protection and assistance, and to work in partnership with each other in order to combat trafficking and to develop effective measures against it.

- **The Office of the High Commissioner for Human Rights (OHCHR),** *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, New York., 2002.

OHCHR developed the Guidelines with the aim to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of trafficked persons and with a view to facilitating the integration of a human rights perspective into national, regional, and international anti-trafficking laws, policies and interventions. The Guidelines and their implementation will be considered within the broader framework of the Palermo Protocol.

3. Other relevant sources

- **US State Department:** *Trafficking in Persons Report 2008*
<http://www.state.gov/g/tip/rls/tiprpt/2008/>

The annual TIP Report by US State Department is one of the most comprehensive worldwide reports on the efforts of governments to combat severe forms of trafficking in persons. It describes each government's efforts to enforce laws against trafficking, protect victims, and prevent trafficking. Each narrative explains the basis for rating a country as Tier 1, Tier 2, Tier 2 Watch List, or Tier 3.

- **International Centre for Migration Policy Development (ICMPD):** *Anti-Trafficking Training for Frontline Law Enforcement Officers: Training Guide, Vienna, 2006.*

This training material aims at providing a modern and easy to use training package for non-specialised personnel who may be dealing with human trafficking cases in the course of their duties. The training package comprises a "Training Guide" and a "Background Reader".

- **IOM:** *The IOM Handbook on Direct Assistance for Victims of Trafficking, Geneva, 2007*

This handbook provides guidance and advice necessary to effectively deliver a full range of assistance to victims of trafficking from the point of initial contact to the effective social reintegration of the individuals concerned.

4. Cooperation agreements

- **Thailand and Cambodia (Bilateral agreement)**

A Memorandum of Understanding between Thailand and Cambodia on bilateral cooperation for eliminating trafficking in children and women and assisting victims of trafficking was signed in 2003, stipulating that the two Governments shall take appropriate measures in the areas of prevention, protection, prosecution, repatriation and reintegration.

- **Bulgaria (Various stakeholders at the national level)**

The National Human Trafficking Task Force was set up in 2001 in order to provide a unified and coordinated law enforcement response to trafficking. Under the lead of the National Service for Combating Organised Crime, the Task Force is composed of the National Police Service, the National Border Service, the National Gendarmerie and the National Interpol Bureau. The functions include the gathering and analysis of intelligence, coordination of police work as well as ensuring cooperation and information exchange with other authorities and NGOs.

- **Germany (Concerned Ministries, Police and others at national level)**

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth of Germany has set up a nationwide working group "Trafficking in Women" in 1997 with involvement of various federal and Land ministries, the Federal Criminal Police Office as well as the specialised advisory services. The task of the working group is to ensure the mutual exchange of information among its members concerning measures to combat trafficking in women, to analyse the problems which could stand in the way of effectively combating trafficking in women, and to elaborate joint activities and proposals.

- **Thailand (State agencies and NGOs)**

A Memorandum of Understanding on Operations between State Agencies and Non-Governmental Organizations (NGOs) engaged in addressing trafficking in children and women was signed in 2003, with the aim of promoting joint operations between state agencies and NGOs in combating trafficking in children and women, as well as reducing any obstacles arising from practical operations.