
FORCED LABOUR

WHY IT IS AN ISSUE FOR EMPLOYERS



INTERNATIONAL ORGANISATION OF EMPLOYERS

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INTRODUCTION

Although forced labour is universally condemned and banned and many believe that it is no longer an issue, there is evidence that the problem persists around the world in different forms: the International Labour Organization (ILO) estimates that there are at least 12.3 million victims of forced labour worldwide¹.

Forced labour is the subject of widely ratified international instruments and within the private sector many codes, agreements and initiatives refer to the prohibition of forced labour. This is due largely to the inclusion of the elimination of all forms of forced or compulsory labour as a fundamental principle of the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

From a business perspective, relatively little effort has been made to address forced labour, as it is believed that this is a legal issue that does not concern the formal private sector. However, this is changing, mainly due to well publicized examples of the use of forced labour in business operations.

Unfortunately, the issue of forced labour is often misunderstood, underestimated or ignored, leaving the business sector in a potentially vulnerable position. In addition, the general public is being made aware of forced labour situations by non-governmental organizations, lobby groups and the media.

With this paper, the International Organisation of Employers (IOE) aims to clarify some of the issues surrounding forced labour. It gives guidance to IOE member federations and their affiliates on how to identify and prevent situations of forced labour and provides some direction on what can be done to address the issue.

¹ 2005 ILO Global Report "A Global Alliance Against Forced Labour"

WHAT IS FORCED LABOUR?

At the international level, the term “forced labour” is defined in the ILO Convention on Forced Labour, 1930 (No. 29) 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”.

ILO Convention No. 29 is supported by the ILO Convention on the Abolition of Forced Labour, 1957 (No. 105) that specifies that forced labour, as defined in Convention 29, can never be used as a means of political coercion, for the purpose of economic development, discrimination, labour discipline or as a punishment for having participated in strikes.

WHAT CHARACTERIZES FORCED LABOUR SITUATIONS?

According to ILO Convention 29, forced labour is characterized by the presence of **two** elements:

Menace of penalty. This menace can take different forms. It may consist in a punitive sanction or in the suppression of rights and privileges. Coercion can include use of violence, physical obligations, psychological threats or even death. Psychological threats can include, for example, the denunciation of an illegal worker to the authorities. Other penalties can be of a financial nature, including economic penalties linked to debts.

Work or service undertaken involuntarily. This refers to the principle that all work relations should be founded on the mutual consent of the contracting parties. It implies that both parties may leave the work relationship at any moment by providing the applicable notice period. If the worker is prevented from leaving the work previously accepted voluntarily, it may be considered forced labour, starting from the moment the possibility of withdrawal has been denied. Similarly, if the worker is made to work in circumstances where the agreement to work cannot have been freely given, this may also be considered forced labour.

When defining forced labour, it is important to remember that it is determined by the nature of the relationship between a “worker” and an “employer”, and not by the type of activity performed. Nor is the legality of the activity under national law relevant in determining whether or not the work is forced. Forced labour can take many forms that can include debt bondage and slavery. In some cases, forced labour can be the outcome of human trafficking and, in some jurisdictions, work performed by prisoners can also be considered forced labour.

WHAT ARE THE IMPLICATIONS FOR BUSINESS?

THE FUNDAMENTAL PRINCIPLE OF THE ELIMINATION OF ALL FORMS OF FORCED OR COMPULSORY LABOUR

ILO Conventions 29 and 105 have been defined as ILO core Conventions² and are the basis of the fundamental principle of elimination of all forms of forced or compulsory labour. The four fundamental principles³ enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work are drawn from eight core Conventions. The Declaration provides that all ILO member States, even if they have not ratified the eight core Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize the principles of fundamental rights.

As the four principles enshrined in the ILO Declaration are addressed to ILO member States, this means that governments are responsible for ensuring respect for the principles and rights, including the elimination of forced and compulsory labour, within their jurisdictions.

These four principles are also among the 10 principles of the United Nations Global Compact. In addition, many codes of conduct and numerous International Framework Agreements (IFAs) “commit” a company “to give effect to” or “adhere to” or “act in accordance with” or “support” these principles and/or the 1998 ILO Declaration on Fundamental Principles and Rights at Work as a whole. This raises the question of what exactly that means for the company concerned and how the company is expected to give effect to the commitment.

There is no clear response as to what the assumption of the obligation means for a company. As mentioned above, the principles of the 1998 Declaration represent a responsibility for governments to promote and to work towards their realization. This means that in some jurisdictions, law and regulations may already be in place. This is even more certain if the country concerned has ratified either Convention, as when a country ratifies a Convention, it has to translate its provisions into national law and legislation. Once that legislation is in place, businesses in that country are required to comply and to organise their operations accordingly. This should be the case even if the law itself is not enforced.

² ILO Conventions cover a broad range of subjects related to the world of work, including human rights at work, occupational safety and health, employment policy and human resources development. Among those Conventions on human rights, eight have been identified by member States as core Conventions:

- a. Freedom of Association and Protection of the Right to Organize Convention (No. 87), 1948
- b. Right to Organize and Collective Bargaining Convention (No. 98), 1949
- c. Forced Labour Convention (No. 29), 1930
- d. Abolition of Forced Labour Convention (No. 105), 1957
- e. Minimum Age Convention (No. 138), 1973
- f. Worst Forms of Child Labour Convention (No. 182), 1999
- g. Equal Remuneration Convention (No. 100), 1951
- h. Discrimination (Employment and Occupation) Convention (No. 111), 1958

³ The four fundamental principles are :

- a. Freedom of association and the effective recognition of the right to collective bargaining
- b. The elimination of all forms of forced or compulsory labour
- c. The effective abolition of child labour
- d. The elimination of discrimination in respect of employment and occupation

In the case of countries that do not have legislation and/or regulation in place on forced and compulsory labour, or if there are gaps in the law, business should take steps to ensure that forced or compulsory labour is not present in their operations..

WHY EMPLOYERS SHOULD ENGAGE IN ADDRESSING FORCED LABOUR

The following are some general reasons why employers and their representative organizations should not disregard addressing forced labour.

MANAGING THE SUPPLY CHAIN

Increased globalization has opened up economies, and supply chains are increasingly lengthening. On the one hand, businesses have improved their supply chain management and more issues are being revealed. On the other hand, the general public is being made aware of forced labour situations by non-governmental organizations, lobby groups and the media.

Legally, employers are responsible for their own hiring and employment practices. However, businesses are inextricably linked in supply chains and the firms that are closer to the consumer are increasingly demanding that their suppliers respect certain standards. Many international buyers will now only purchase from businesses that respect and can provide proof of specific criteria, including the non-use of forced labour.

The issue of forced labour is extremely complex and is compounded by the fact that much of the incidence of forced labour lies in the informal sector. However, there are cases where forced labour is transcending into the formal economy as many enterprises subcontract their production to smaller enterprises sometimes operating in the informal economy.

COMPLYING WITH CODES

As mentioned in the previous section, more and more businesses have adopted formal statements containing ethical principles that govern their conduct. These provisions state the non-use of forced or compulsory labour. This can apply from one-tier providers to the whole supply chain. Sometimes these provisions can even be a condition of doing business with suppliers and a reason to terminate a contract.

In the past, bigger companies have requested smaller businesses to comply with their codes, nevertheless this trend has changed and some buyers are now requesting large brand companies to adhere to other codes and initiatives. This requires business to consider how to manage the expectations of their buyers to their own supply chain and approaches.

MANAGING RISK AND REPUTATION

Civil society, consumers, buyers and other stakeholders are now paying more attention to forced labour. Reputation and business damage can arise from allegations relating to the involvement of forced labour in a company's operations.

International buyers and brand manufacturers wish to meet accepted standards and to avoid negative publicity and potential boycotts by consumers / buyers. Businesses that wish to maintain or expand their range of buyers need to ensure that forced labour is not used in their operations.

LEGAL COMPLIANCE

Nearly all ILO member States have ratified Conventions 29 and 105. Once a country ratifies an ILO Convention, it has to enshrine its content in national legislation, and forced labour therefore becomes a criminal offence. Companies operating in such countries have to comply with national law and failure to do so could result in criminal prosecution.

HOW CAN SITUATIONS OF FORCED LABOUR BE IDENTIFIED IN BUSINESS ACTIVITIES?

UNDERSTANDING NATIONAL LAW AND PRACTICE

Forced labour is a crime recognized by international law and almost all countries have condemned it in national law.

At the international level, ILO Conventions No. 29 and 105 address the issue of forced labour. Both Conventions have been widely ratified (174 countries and 169 ratifications respectively)⁴. If a country ratifies a Convention, it becomes, in effect, an international treaty with obligations on the country to ensure that its law is in conformity with the terms of the Convention. Once ratified, the country is bound to carry out the provisions of the Convention. The ILO, through its regulatory machinery, holds countries accountable.

One first step for business wanting to identify situations of forced labour is to examine the national law where they have operations. Business should be aware of how forced labour is defined in the law of the country and by the sectors. The country definition is important because it will allow the business to operate within the law, which is a minimum requirement for any business.

⁴ According to the public information available on the ILO's website: www.ilo.org as of September 2010.

TALK AND ASSESS THE SITUATION

One way to assess your business activities and those of your suppliers is by conducting interviews, inspections and audits. This might be costly and time consuming and the benefits, expected results, means and resources should be taken into consideration before committing to any exercise of this type.

Training your supervisors and making sure they understand the issue is beneficial for both your employees and your business activities.

Providing clear, written contracts to employees detailing the requirements of the job are also a good means of avoiding misunderstanding and risk.

Sharing your experiences can also help you understand how other businesses and organizations have dealt with the subject.

KNOW YOUR SECTOR AND THE RISKS

In very general terms, there are sectors that are more at risk than others of being involved in forced labour practices. In addition, some common practices in certain sectors can sometimes be considered as forced labour.

To name only a few, sectors such as agriculture, construction, garment, mining, logging, domestic service, and the sex industry can be considered at risk. This is purely based on cases of forced labour that have been identified in the past in those sectors.

Common practices in some sectors due to the nature of the activities such as retaining personal documents, compulsory overtime, locking doors of the workplace/lodging facilities can in many instances be considered as elements that can degenerate into forced labour.

Paying a fee to an agent to secure employment can also be considered as a risk factor that can result in a forced labour situation because of the creation of bonded debt. In this case, it is important to pay attention to details such as where the business is procuring its staff and if the employee is free to leave the employment regardless of the debt of the fee.

The following are a few ways in which employers can assess the risk of forced labour:

1. Careful selection/screening of suppliers
2. Provide information to suppliers on the requirements of your business
3. Write easy-to-understand contracts with suppliers or employees or both?
4. Monitor suppliers
5. Work with suppliers to improve conditions of work
6. Understand the definition of forced and compulsory labour in national and international law
7. Be proactive rather than reactive
8. Work within the sphere of influence
9. Monitor labour providers
10. Contact employers' organizations to obtain information regarding national law and practice

WHAT CAN BUSINESS DO TO REMEDIATE FORCED LABOUR SITUATIONS IN THEIR OPERATIONS?

The following are some suggestions on how to remediate the situations of forced labour if found in business operations.

- ▶ **Careful planning.** Remedial actions are expected to lead to good results and satisfactory outcomes. Nevertheless, if not well designed and planned, they can lead to negative, unintended consequences for the victims of forced labour. If a buyer rushes into complying with legislation and other demands and decides to terminate the business relation with a supplier for using forced labour, this can have negative effects on the affected workers, leaving forced labourers with little hope of getting out of such a situation.
- ▶ **Influence others and share good practices.** Employers and their organizations collaborate with other actors within and beyond their workplaces. This influence can be used to encourage, or even help others, to reduce forced labour, by raising awareness of the issue.

Employers are well placed to inform workers about the risks of potential forced labour situations in the workplace. Within this context, employers can get together and mount campaigns and networks to raise awareness of the risks of forced labour by sector, within regions and/or at national and international levels.

Trade union representatives are potential allies for employers in the fight to eliminate forced labour. Trade unions can reach many workers and represent a means to communicate risks to workers. It is important to recall that trade unions may not always understand the limitations of the private sector and sometimes employers can find it difficult to achieve their expectations. Nevertheless, there are numerous examples of successful alliances between the private sector and trade unions to tackle problems that affect both parties.

ADDRESSING THE ISSUE OF FORCED LABOUR

A key strategic question for employers and their organizations is with whom to collaborate when addressing forced labour. The decision to involve outsiders will generally be based on the need to gain assistance or recognition. This decision will be driven by the priorities and the means of engagement of employers.

THE ROLE OF EMPLOYERS' ORGANIZATIONS

Employers' organizations are important players in the efforts to eliminate forced or compulsory labour. At the global level, employers' organizations have supported the adoption of ILO Conventions against forced labour and they promote the Declaration on Fundamental Principles and Rights at Work.

At national level, employers' organizations can lobby for the elimination of forced labour; they can engage in tripartite dialogue on the issue, provide advice on legislation and encourage the government to take measures to tackle the issue of forced and compulsory labour.

In addition, employers' organizations can assist member companies in understanding national issues and realities so as to be more involved in that specific country's legal and regulatory requirements. Employers' organizations can encourage members to be more aware of the policies of their suppliers. They can also provide a platform for members to discuss and share issues of interest, challenges and successes.

At the international level, the IOE, the only recognized organization representing the interest of employers in all social and labour matters, is well placed to act as a unique platform for the business community to share experience and good practice in an international network of 147⁵ national employer organizations from 140 countries around the world.

NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

NGOs can be important partners for employers. They are a varied group; some are global, while others operate within a single country and/or region/sector. Specialized NGOs have developed knowledge and expertise on one issue. In addition, they are often well connected with the local and international community.

Some NGOs will be able to assist employers in developing specific programmes and projects. Generally, NGOs have access to funds and facilities that business could use when addressing forced labour.

There are numerous examples of successful alliances between the private sector and NGOs. Nonetheless, when building alliances with an NGO, employers and their organizations must be clear about their objectives and responsibilities.

⁵ As of June 2010, IOE membership consists of 147 national employer organizations from 140 countries from all over the world.

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