

TRAFFICKING FOR FORCED LABOUR: ILO APPROACHES

**Testimony to U.S. Commission on Security and Cooperation in Europe,
hearing on “Combating Trafficking for Forced Labour Purposes in the
OSCE Region”, U.S. Congress, Washington, 11 October 2007**

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Distinguished members of Congress and the Administration,

I am glad and honoured to testify at today’s hearing, on a subject close to the ILO’s heart. I understand that the purpose of the hearing is to examine the scope and efficacy of OSCE and U.S. efforts on this subject; to assess the effectiveness of legal anti-trafficking instruments in combating forced labour in selected member states, and the adequacy of resources dedicated to identifying the victims of trafficking for forced labour, as compared with those directed at sex trafficking. Witnesses have also been invited to suggest additional measures that OSCE states or the U.S. Government to better address trafficking and the underlying factors that make people vulnerable to it.

These are several key questions on a fundamental human and labour rights concern which – though the knowledge base is still weak – is increasingly arousing the world’s attention. As the questions merit a detailed response, I am adding this written statement to my verbal testimony. I shall begin with a review of the ILO approaches to combating forced labour. I shall end with some comments on our cooperation with both the OSCE and the US Government, and what we see as the main priorities in order to use their resources as effectively as possible.

ILO Approaches to Trafficking for Forced Labour

The ILO promotes the eradication and prevention of forced labour, as part of its broader efforts to promote the fundamental principles and rights of work recognized in its 1998 Declaration on the subject (freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation). A Special Action Programme to Combat Forced Labour (SAP-FL) has been active for almost six years within this programme to promote core labour standards.

Many of SAP-FL’s activities have been carried out within the OSCE region, responding to demand from both developing and industrialized

countries. It has given particular attention to trafficking for forced labour purposes. It has carried out qualitative research and surveys, and is now assisting a number of countries to develop more quantitative assessments of forced labour and trafficking. This is considered essential, in addition to adequate laws and policy coordination, in order to develop an adequate policy response. Training materials have been prepared for different actors, including legislators and law enforcement. More targeted materials are currently being prepared for, among others, labour inspectors, judges and prosecutors, trade unions, and employers' organizations. Operational projects are also being undertaken – in Moldova and Ukraine, in the Caucasus, and most recently in Tajikistan – in particular bringing labour institutions together with criminal law enforcement to develop an integrated response to trafficking for forced labour, and also focusing on preventive strategies through local employment creation and improved migration management. Employers' organizations and trade unions have also been harnessed to these activities.

Some lessons of experience to date can be summarised as follows.

Research and surveys

Good research, founded wherever possible on specific case studies, is essential. SAP-FL has issued a series of country case studies on forced labour and trafficking in OSCE countries, so far covering Germany, Russia, France (with a specific focus on Chinese irregular migrants), and Portugal. The most recent of these, prepared together with the Portuguese Ministry of Labour, was distributed this week at an EU conference on trafficking, held in Oporto this week under the Portuguese presidency. Other completed research covers Chinese migrants in Italy and the United Kingdom. An ongoing research project covers Kazakhstan, Kyrgyzstan and Uzbekistan. This assesses secondary data on forced labour incidence in these countries, and the current national and international responses. Its preliminary results suggest that forced labour linked to trafficking is quite widespread in these countries the response however tends to focus very narrowly on sex trafficking, even though the available evidence suggests that the majority of trafficking cases are for labour exploitation.

Following the global and regional estimates on forced labour and trafficking, several OSCE countries are now being included in a new pilot programme to develop national estimates. This is a complex exercise, with so little official data available; the approach has varied in accordance with the main forms of forced labour believed to exist in the country concerned, and available statistical expertise. In Moldova, the ILO is cooperating with National Bureau of Statistics to incorporate forced labour and trafficking in its household survey on labour migration, attached to the broader Labour Force Survey. In Georgia, where a recent National Action Plan against trafficking calls specifically for better quantitative surveys, we are working with the Ministry of Economic Development's Department of Statistics (DS) to address forced labour and trafficking in a labour migration module attached to the next Labour Force Survey. A similar approach is now being discussed in Ukraine in the context of an EU supported project.

Training and capacity building

Many of the OSCE countries, as either source or destination countries or a mixture of both, now have legislation or national action plans against trafficking which include trafficking for forced labour. The ILO has sought to ensure that Ministries of Labour and other key labour actors are involved in the drafting of legislation, the preparation of national action plans (NAPs) and their subsequent implementation. As a first stage, some key training materials have been prepared. A guidance document on *Human trafficking and forced labour exploitation: guidance for legislation and law enforcement* has been published in Russian, and widely disseminated through the Russian-speaking countries of the region. A further training manual on *Trafficking for forced labour: How to monitor the recruitment of migrant workers* has been yet more widely disseminated in English, Czech, German, Polish, Romanian, Russian and Rumanian). As a sign of strong demand for this publication, the Czech Ministry of Interior requested ILO permission to issue a version in the Czech language.

An important part of this is clarifying concepts. For many of the OSCE countries the concept of forced labour has been little understood, let alone the further issue of trafficking for forced labour. The ILO has estimated an absolute minimum of 12.3 million persons in forced labour today, over 2.4 million of these as a result of human trafficking. For the ILO supervisory bodies, forced commercial sexual exploitation has been considered a form of forced labour. Thus victims of sex trafficking have therefore been included in our figure of 12.3 million¹. Of trafficked persons, we estimate that some 43 per cent are trafficked into forced labour for commercial sexual exploitation, while approximately one third are trafficked for other forms of forced labour exploitation. The remainder are trafficked for mixed or undetermined reasons.

For the purposes of this estimate, the ILO took the position that the offence of trafficking has the three elements of deceptive or coercive recruitment, movement (though not necessarily across international borders), and forced labour exploitation at the place of destination. For example bonded labourers in South Asia, who had not been moved from their places of origin through deceptive or coercive recruitment practices, were considered to be in situations of forced labour but not victims of trafficking.

Others however have considered that movement is not a necessary criterion for identifying a trafficking victim. The ILO accepts that there will be different views on the best conceptual and legal entry points for tackling such coercive practices today, between forced labour, slavery and slavery-like practices, and trafficking for forced labour exploitation. The most important thing is that there be strong laws against coercive exploitation of human beings, backed by vigorous law enforcement, and also strong measures for the protection and rehabilitation of victims

¹ For the purpose of the global estimate, forced labour situations were grouped into the three main types of: forced labour imposed by the state; forced labour imposed by private agents for commercial sexual exploitation; and forced labour imposed by private agents for economic exploitation.

A more serious point is how to apply the law, when law enforcement may find it difficult to identify and capture trafficking for forced labour, when there are very few prosecutions and convictions and judges have little precedent to which to refer. Moreover it is common wisdom that there is a continuum from the criminal offence of forced labour, through to other forms of labour exploitation which do not involve criminal coercion, and through to decent work conditions safeguarded by national law and international standards. All of this requires clear guidance to labour inspectors, police and prosecutors as how to identify the forced labour practices, many of which occur outside recognized workplaces. The above-mentioned ILO guidance manuals set out the various options, between criminal, labour and also civil law for securing penalties for offenders and compensation for victims.

A further challenge is to help countries actually implement policies and action plans against forced labour and trafficking. Since early this year, EU funding has enabled SAP-FL to develop new projects in several OSCE countries. One project addresses elimination of human trafficking from Moldova and Ukraine through labour market based measures. Addressing gaps in the implementation of current NAPs against trafficking, it seeks to enhance labour market information systems in the public service, to train labour inspectors and other Government authorities to better monitor private employment agencies, to improve vocational training curricula and promote entrepreneurship among returned victims of trafficking, as well as the data gathering referred to above.

In Ukraine – from where there is extensive emigration of an estimated two million persons, both west to Europe and eastwards to Russia – the NAP adequately covers trafficking for forced labour. The project is now providing capacity building for Government officials and other partners in western Ukraine. Under the EU project there is insufficient funding to cover those regions of eastern Ukraine from which there is sizeable irregular migration and trafficking to Russia. In Moldova, the project is working to incorporate labour concerns in the draft NAP, soon to be adopted. It is also using the above-mentioned materials to train Ministry of Labour officials responsible for licensing and monitoring of private employment agencies.

A further project is being implemented in Armenia, Azerbaijan and Georgia, together with the OSCE and International Centre for Migration Policy Development (ICMPD) as international partners. While seeking increased prosecutions for trafficking offences, including abusive recruitment practices, it also seeks to raise migrants' awareness of legal channels of migration.

We have also tried to stimulate more cooperation between the sender and destination countries of trafficked persons in Europe, again with a particular focus on labour institutions, but also bringing these together with police and criminal prosecutors, as well as business and trade union partners from the participating countries. A project was implemented between 2004-6 in seven countries of the OSCE region (Germany, Moldova, Poland, Portugal, Romania, Ukraine and the UK). With organizations such as EUROPOL and the International Association of Labour Inspection (IALI) involved in several of

the activities, this has involved the sharing of much relevant expertise, and identified the main needs for follow-up training on the forced labour aspects. An expert meeting with the involvement of Chief Labour Inspectors from Europe is planned for next month, to validate training materials and make sure they meet the needs of law enforcement on the ground.

Case law on forced labour and trafficking

Though there have been few prosecutions to date, the first cases on trafficking for forced labour are now coming before the courts. As the impetus for this grows, judges will need to know how to grapple with the issues. A collection of case law is now being developed, examining how judges in different jurisdictions have interpreted such concepts as force, menace or vulnerability, and also the extent to which the ILO's own forced labour Conventions have been used in judgments. The training materials, covering both common and civil law countries, are to be tested at expert meetings later this year.

Involving employers' and workers' organizations

On an issue like labour trafficking, it is essential to galvanise business and trade union organizations to action. Employers need to sensitize their members, to regulate their own conduct, to be on guard against abusive recruitment practices such as involuntary servitude or debt bondage for contract and migrant workers, particularly when such abuses can penetrate their own business supply chains. Trade unions need to monitor and denounce such practices, to organize those at risk of labour trafficking and promote cooperation between unions in sender and destination countries, also to provide direct support to those released from such trafficking,

We began some years ago with a project covering Russia and some Central Asian Republics, through which trade unions from several countries combined their efforts, organizing migrant workers and assisting them to send remittances back to communities and families of origin. A new country for this approach is Kazakhstan, where a start-up meeting was held in August this year to assist trade union capacity and meet the need for further training on means to assist migrant workers. More generally, the International Trade Union

Confederation has been assisted to develop a Workers' Alliance against Forced Labour and Trafficking. This is to be refined at a meeting of European trade union leaders and global federations later this month, before being presented to the ITUC general council in December.

In some countries, employers' organizations have now begun to address these concerns more systematically. In Russia, in cooperation with the European Development Bank for Reconstruction and Development, EBRD (which, like the IFC and other financial institutions now seeks to develop safeguards on core labour standards including forced labour for its private sector lending), there has been a particular focus on the forced labour affecting migrants from Central Asia in the construction industry. A survey has

been carried out among employers on the demand for migrant labour, the treatment of migrants and the feasibility of self-regulation through an industry-wide code of conduct or similar measure.

Cooperation with the US Government and the OSCE

Our programme has been able to work closely with the present and past OSCE Special Representatives on trafficking, and to appreciate their strong commitment to combating trafficking for forced labour. I was invited to address the two high-level OSCE conferences on trafficking for forced and bonded labour exploitation, in November 2005 and 2006 respectively, which did so much to draw the attention of member states to these problems. Just last week, on 2 October in Warsaw, member states reaffirmed their commitment to combat the forced labour dimensions of trafficking. Moreover, the ILO's cooperation with the OSCE against forced labour and trafficking also involves practical action through the field projects in the Caucasus mentioned above. Our programme has also benefited from close cooperation and sharing of experience with the Government of the United States. In recent years I have been invited to separate meetings or conferences of the Departments of Justice, Labour and State, and have been able to appreciate the coordinated efforts of so many departments and agencies. At all of these events there was a clear concern to focus more on the forced labour dimensions of trafficking. Last year I also testified at a hearing of the U.S. Congressional Executive Commission on China. This was an important opportunity to share with Congress the impact of the ILO's engagement with China on forced labour, including: cooperation with several Government agencies to promote the ratification of the ILO's two forced labour Conventions; a project on forced labour and trafficking, supported by the US Department of State; and capacity building for Chinese employers' organizations on the prevention of forced labour and trafficking in their enterprises and supply chains.

The US Department of State also funds a project on forced labour and trafficking in Jordan, which seeks to enhance law enforcement capacity and inter-Ministerial cooperation. And the US Department of Labour supports a number of ILO projects to prevent child trafficking in developing countries.

The Trafficking Victims Protection Reauthorization Act of 2005 indicated the sense of Congress that both the Department of State and the Department of Labour should give more attention to forced labour. The former's Office to Monitor and Combat Trafficking should intensify its focus in countries where forced labour continues to be a serious human rights concern. And the Department of Labour was to carry out additional activities to monitor and combat forced labour and child labour in foreign countries.

The increased attention to forced labour is clear from the US Government's annual Trafficking in Persons Report released in June this year. It contains thematic assessments of the forms and impact of human trafficking for forced labour, including labour trafficking in general, bonded labour, involuntary servitude, debt bondage and involuntary servitude among guest workers, and

forced child labour. Among the topics of special interest are sponsorship laws and forced labour, the responsibilities of source governments with regard to the trafficking of migrant labourers, and trafficking for involuntary domestic servitude. Moreover several of the countries placed in this report's Tier 3, particularly in the Gulf countries, are there specifically because the conditions of recruitment and employment for overseas contract workers are seen as amounting to trafficking for forced labour.

In concluding, let me say that this is a highly appropriate time to be addressing such human and labour rights concerns, both more specifically in anti-trafficking programmes, and more generally in our combined efforts to promote core labour standards in all development. These are critical aspects of labour market governance.

Just last month, an ILO mission came to Washington to meet with a wide group of policy makers and their advisers, explaining the positive impact of its past work on core labour standards in selected countries, much of this with US support. Today we are addressing the specific crime of trafficking for forced labour, the ways in which it can be placed higher on policy agendas, that the offenders can be prosecuted more effectively, the victims or those at-risk protected, the vulnerable given the chance of a better livelihood, and the structural factors behind these problems addressed.

I believe that a start has been made, with the very strong commitment of the OSCE, but that this is only a beginning. I have tried today to provide some examples of the practical measures that the ILO is taking, but most of these are pilot initiatives that need to be replicated on a far larger scale. We hope that, together with partners like the US Government, the ILO can continue to use its tripartite structure to address these urgent human and labour rights issues. They are the very antithesis of the decent work agenda for which the ILO stands, and tackling such problems head on as a first step is a very concrete way of moving this agenda forward.

Thank you for your attention.