

## **ACTION AGAINST LABOUR TRAFFICKING: LESSONS OF EXPERIENCE**

**Presentation to OSCE Alliance Conference on "Prevention of Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice", Vienna, 20-21 June 2011**

*Roger Plant*  
*Independent expert/consultant*

Your Excellencies, Ladies and Gentlemen,.

This week's Alliance Conference has an important and highly topical agenda. It aims to strengthen action throughout the OSCE region against trafficking for labour exploitation: it seeks to build effective partnerships between the different agencies of government, NGOs and civil society, business and trade unions: and it seeks to build bridges between anti-trafficking activities and the promotion of the decent work agenda pioneered by the ILO.

A couple of years ago, I was responsible for the third of the ILO's global reports on modern forced labour, which we titled *The Cost of Coercion*. And I'll begin with some messages that we set out in the preface to that report. Forced labour is the absolute antithesis of decent work, and eradicating it is the first step on the long ladder towards the concept of decent work, in the sense of productive and meaningful jobs with full respect for the rights of workers. And along this ladder, there are degrees of exploitation and abuse which deprive workers of the full freedom of the employment relationship. Whether these abusive practices constitute the criminal offences of forced labour and trafficking, it is hard to say. We all know that, despite the global and regional estimates of the ILO and others, there have only been a handful of successful prosecutions and convictions for labour trafficking throughout the world. In the final analysis, in a functioning democracy with rule of law, only judges can determine what is and is not forced labour, and what are the appropriate penalties.

But the ILO's 2009 global report on forced labour, like its two earlier ones over the past decade, sought to build global awareness of forced labour and labour exploitation in today's globalized economy, and what can and needs to be done about these abuses.

In previous OSCE Alliance Conferences, I have addressed this distinguished gathering in the name of the ILO and its forced labour programme. Today, having left full-time employment, I have the freedom of doing so as an independent consultant. But I have been asked to share some lessons of this experience over the past decade.

There are two particular challenges. The first is to strengthen law enforcement against serious crimes, using the armoury of criminal and labour justice (and other forms of administrative justice), ensuring that the offenders are duly punished, and the victims adequately protected and compensated for the wrongs suffered. The second is to use the "trafficking discourse", and the broad group of actors involved in anti-trafficking alliances, to address the systemic problems on labour markets (and also financial and credit markets), which are at the root of modern forms of severe labour exploitation.

The stereotype of a labour trafficking offence is one where an irregular migrant is deceived by a recruitment agent, with inflated charges for travel, visas, accommodation and other expenses driving her or him into debt, receiving little or no wages, having a passport confiscated, subject to threats and perhaps under armed guards in a remote agricultural camp. There are such cases in Europe, the USA and elsewhere in the OSCE region. There have been high profile prosecutions of Polish gangs in southern Italy, Romanian traffickers in Spain, a Thai recruitment agency in the US, and others.

Yet it has been persuasively argued - not least in the last few annual Trafficking in Persons reports of the US Government - that people with a perfectly legal status in a destination country, with lawful contracts of employment, can also end up in a trafficking situation unless certain guarantees are

in place. The finger of responsibility has been pointed at “sponsorship” systems, particularly in the Gulf States, which tie migrant workers to one employer, and prevent them from leaving the job or negotiating conditions of work. Yet very similar arrangements, under which a quota of overseas workers are brought in through recruitment agencies and made available to employers to do the work in certain industries, have come in for criticism in Australia, Canada, Ireland and the US, to name but a few countries. In the US, according to NGO reports, Latin American workers have paid more than US\$ 10,000 a head to national recruiters to get work through these special visa arrangements. And in documented cases they have suffered the same spiral of exploitation as the irregular migrant workers: inflated charges, deductions from wages, appalling working conditions, and restrictions on the right to leave the place of assigned employment.

Let’s go back to law enforcement, and particularly to criminal justice. The forms of coercion and deception are frequently subtle, and difficult to prove. There is also a well known element of “self-exploitation”, when migrants may willingly put up with excessive hours of work and wages far below the minimum in the destination country, rather than run the risk of deportation. This is why the ILO and European Union developed their “Delphi indicators” of coercion and exploitation, in places of origin and destination, to try to capture these hidden forms of coercion. Originally devised for purposes of data collection, they have come increasingly in demand by law enforcement.

Since I left the ILO over 18 months ago, there has been a steady growth of thorough and country-specific research on labour trafficking. It addresses the legal framework, the evidence, the experience with law enforcement, the response by governments and other actors, and the challenges ahead. Broadly speaking, case studies from European countries, Australia and elsewhere seem to confirm what the ILO was arguing in its 2009 global report. Current approaches are struggling to find the right response to labour exploitation, particularly those affecting migrant workers in either legal or irregular situations. There are creeping forms of exploitation. But under most existing criminal law, the burden of proof is too great to prosecute and convict individual cases as trafficking for slavery, forced labour or servitude. However, as Fiona David has argued persuasively in a study for the Australian Institute of Criminology, these abuses are all *precursors* that create a breeding ground for the severe labour exploitation covered by the criminal offence of trafficking.

Too many abusive practices are slipping through the cracks between criminal and labour law. Sometimes the penalties under criminal law are too strong, and those under labour and other administrative law are too weak to act as an effective deterrent, when labour exploitation can bring high profits at low risk. One option is to legislate the various “stronger” indicators of forced labour as specific offences, without seeking to prosecute them as the more serious offences of forced labour and trafficking which involve long prison sentences as well as fines. Examples are the confiscation of identity documents, or irregular deductions from wages. So it is important to give labour justice more teeth, but also to build bridges between labour justice and criminal prosecution.

Creative approaches are also needed, to monitor the recruitment agencies, acting on the margins of the law, whose fee-charging practices are at the root of so much modern labour exploitation. The UK’s Gangmaster Licensing Authority (GLA) is a fascinating model, which should be closely watched and perhaps replicated elsewhere. It came out of a partnership of government agencies, business actors and trade unions, all of whom accepted that the proliferation of unregistered “gangmasters” was bad for legitimate business, as well as being morally repugnant. While the main task of the GLA is to license these recruiting agencies, and levy fines when the law is breached, it can also instigate criminal prosecutions in the cases of severe labour exploitation.

In conclusion, effective action against labour trafficking must be more than a “go for broke” and high profile effort by law enforcement to put the worst offenders behind bars for a long period of time. This is necessary in the most severe cases, and such efforts should continue. But it must always be matched by similar efforts to tackle the more systemic problems on labour markets, and particularly to ensure that the victims of labour exploitation receive compensation for the wrongs suffered.

For further information, contact: [anthonyrogerplant@hotmail.com](mailto:anthonyrogerplant@hotmail.com)