

OSCE
“Alliance against trafficking in persons”
Technical seminar on trafficking for labour exploitation, focusing on the
agriculture sector, Vienna 27-28 April 2009

Presentation by Caroline O’Reilly
Special Action Programme to combat Forced Labour,
International Labour Office, Geneva

Distinguished participants, ladies and gentlemen,

It is a great honour for me to address you this morning. I would like first to thank the organizers for their initiative in bringing us together to focus on the issue of trafficking for labour exploitation, with an emphasis on the agricultural sector, and for giving me this opportunity to address you. The Office of the OSCE Special Representative clearly plays a key role in drawing global attention to the serious problems of trafficking for labour exploitation and in facilitating the sharing of information and good practice in combating these problems. That’s why it is such a pleasure for me to be here. In the ILO SAP-FL, our strong emphasis is exactly on tackling these forced labour outcomes of human trafficking – largely outside sexual exploitation. This is where the ILO has a comparative advantage, and where we believe that the “tripartite” constituents with whom we work principally – governments, employers’ and workers’ organisations, each has a critical role to play in combating these forms of modern day slavery, working closely with other partners.

Let me start with an example. It is a case reported in a UK national newspaper in November last year. Some 60 eastern Europeans were released in a raid by the police from vegetable fields in the east of the country, in probably the UK’s largest single action against trafficking for labour exploitation, involving no less than 9 organizations and 6 months planning. Police believe the workers, aged between 15 and 67, were paid far below the minimum wage, for working up to 16 hours a day, six days a week, without proper health and safety measures, and living in cramped accommodation. Most were quite legally in the UK and had been recruited through advertisements and agencies in countries including Lithuania and Poland. Police believed that their passports had been confiscated, and pay deductions made for rent and transport to the fields – which took up to 4 hours per day. The Serious Organised

Crime Agency, which carried out the investigations and the raid, described the system as “debt bondage”. Seven men and one woman were arrested on suspicion of people trafficking.

It is hard to believe that such things are happening on our doorsteps, but sadly it is true. And we see similar patterns in all world regions. Forced labour and trafficking today is not usually about physical violence (although it still can be), but more often about many different, sometimes more subtle forms of deception and coercion, that come together to give rise to these problems.

So this meeting is important and timely. To the best of my knowledge, it is also the first international meeting to focus on trafficking in a specific economic sector, with the exception of course of trafficking for sexual exploitation. It is certainly in line with our own thinking at the ILO that it makes sense to adopt such a sectoral perspective when looking both at problems of and solutions to trafficking and forced labour, as well as at broader labour rights issues. Clearly, there may be a need for differences in prevention and assistance strategies in say domestic work, agriculture or manufacturing, linked for example to whether it is primarily men or women or both sexes who are the victims, the age groups, migrants or nationals, the specific type of problems encountered, linked in part to the nature of the production process or service in question. Focusing on a sector can also help us to dig deeper into the causes and effects of trafficking, taking into consideration supply chain issues that might otherwise be overlooked, as well as the particular labour arrangements prevailing in the sector that may increase the vulnerability of its workers to severe exploitation at the hands of their employers.

In my presentation I will first touch on some of the conceptual issues that need to be better understood in order for law-makers to formulate laws and enforcement mechanisms that really capture the reality of today’s trafficking for labour exploitation.

I will then highlight some of the characteristics of agriculture that make it especially susceptible to trafficking for labour exploitation and consider the potential magnitude of the problem.

And finally, I will present some examples of the positive steps that are being taken by different partners, including the ILO and its constituents, to tackle these intransigent problems and look to the way forward.

First, another example. It concerns Mexican guestworkers in the United States, recruited to work in the forestry industry in Arkansas in late 2006, as reported by the Southern Poverty Law Centre, an Alabama-based civil rights organization that takes up cases on behalf of exploited migrant workers. But on arrival the employer took their passports and visas, and sent them to work on a sweet potato farm in Louisiana, for which they were paid a piece rate, by bucket harvested. Wages were extremely low and irregular, from zero to \$70/week. Hours were 5 am to 5 pm with 30 minutes for lunch. Their accommodation was abysmal, an abandoned house with no heating, no glass in the windows and a few mattresses without blankets. When the workers complained and asked for their passports back, they were told they had to pay the contractor \$1,600. They couldn't, so left without paying, but then their wives back in Mexico started receiving threats that the contractor would report the men to immigration to have them deported or imprisoned.

These cases illustrate the many facets of trafficking for labour exploitation in agriculture, and in other sectors. Migrant workers are most vulnerable; labour contractors or recruitment agents are involved; workers may initially be “willing entrants” to the job but then find themselves unable to leave it due for example to confiscation of passports; false promises are made about wages and other conditions; accommodation is employer-provided and of unacceptable standard; hours are long and the work tough; excessive wage deductions are made, and coupled with very low wages or piece rates, that can give rise to debt bondage situations; physical violence and threats are used, including against family members back home.

How can this complexity be captured in laws and other mechanisms that can be effectively applied for both the prosecution of offenders and the relief of their men, women and child victims? This is not an easy question to answer, and there are many on-going debates that I am sure will be echoed in our discussions here in the coming two days.

For the ILO, the criminal offence of “forced labour” has 3 defining elements: first, that work or service is provided; second, that the worker has not offered him or herself voluntarily; and third, that the work is performed under the menace of a penalty. The examples I cited have, at least *prima facie*, all the elements present to qualify them as forced labour.

The definition of human trafficking in the Palermo Protocol however, goes further than the ILO definition, to encompass other notions such as the abuse of power or a position of vulnerability, and the broader concept of “exploitation” as an outcome of trafficking – a term not yet defined in any international legal instrument, as well as “slavery”. Further, it provides that none of the “means” listed is required to be proven to qualify a case of trafficking of a child aged less than 18 years.

Some recent national legislation extends the definitions in other directions. Belgium and France, for example, have provisions in their criminal legislation which consider the offence of human trafficking to involve the imposition of living and working conditions “contrary to human dignity”. Under Germany’s penal code, the offence of trafficking for labour exploitation, which is applicable only to non-nationals, includes the concepts of slavery-like conditions and debt bondage. One criterion for the offence is the payment of wages markedly less than those paid to nationals. In Brazil -- a country that suffers serious problems in the agriculture and forestry sectors -- the penal code as amended in 2003 criminalizes “slave labour” which encompasses practices which cause workers to work in degrading conditions, arduous hours, restricting freedom of movement by reason of a debt or under forced labour conditions.

There has been much discussion about whether coercion is a necessary element in cases of trafficking and also about the degree or severity of labour exploitation that needs to arise. Common sense would suggest that people are exploited when others derive unfair advantage, or make unfair profits, from them, by subjecting them to severe or excessive conditions of work. But there is no clear and definite line that can be drawn between what is exploitative and what is not, just as between what is “forced” and “free” labour. For both concepts, there are gradations, a spectrum of

situations. Ultimately, each case has to be examined on an individual basis. And difficult decisions need to be taken by law makers and the judiciary as to whether a particular offence should be punishable with long custodial sentences, fines, closure of enterprises or other lesser penalties.

The most flagrant abuses obviously call for severe sanctions, strictly enforced. But less serious offences may better be dealt with in other ways. For example, in India where bonded labour systems are firmly embedded in the structure of the rural and informal economies, we are currently working with the Government, employers and workers to look at how advance payment systems can be better regulated and so as to avoid abuses, and minimum wages guaranteed. This seems preferable to pursuing an immediate enforcement of the bonded labour law which prohibits such practices – the strict application of which (even were it feasible) could lead to thousands of informal enterprises closing and hundreds of thousands of extremely poor workers losing their jobs.

Let me now turn quickly to address the agriculture sector and touch on some of the features which make it particularly vulnerable to labour exploitation, trafficking and forced labour. It goes without saying that agriculture – and its allied industries – is a key economic sector for the vast majority of countries. Employing more than 1 billion people worldwide, agriculture remains the second greatest source of jobs globally (after services) and occupies the greatest portion of the rural workforce. It is especially important for women's employment as well as youth, especially in African and Asian countries. If we include all associated activities, such as food processing, packaging and transporting, its importance grows even further. It is also linked with poverty – $\frac{3}{4}$ of the world's poor live in rural areas. The importance of agriculture as an employer was recognised in the early years of the ILO, following its establishment exactly 90 years ago last week. In its third session held in 1921, three international labour standards were adopted covering basic worker protections in agriculture, including minimum age, workmen's compensation, and even the first right of association Convention. The first forced labour Convention came 9 years later, in 1930.

What are the factors that make this sector in many ways very different from other forms of economic activity, and arguably more open to worker abuse? Let me cite just a few. In the non-mechanised production systems which dominate large parts of the world, the work is clearly physically demanding involving long hours of exposure to the elements, often using dangerous tools and chemicals. Much labour is low or unskilled with consequent low wage rates, especially when such labour is in bountiful supply as in many developing countries. These and other factors mean the work is unattractive to those with other options – so that it is often unskilled migrants, women, youth and other disadvantaged or discriminated groups who take up the jobs as they have few alternatives. The seasonality of agriculture means that employers value a flexible workforce than can be mobilised at short notice when needed, but let go when not. To achieve this, rather than hire a permanent or long term labour force, they may prefer to rely on labour contractors, leading to what is known as a “disguised” employment relationship, where it is far from clear who bears ultimate responsibility for the workers, whether the farm owner or the contractor. Much agricultural activity takes place in isolated areas far from towns, so it is more difficult for workers to mix with other people, to leave the workplace or to lodge complaints in case of ill-treatment. In many countries agricultural workers, especially migrants and temporary workers, are excluded from the coverage of labour legislation including the right to organize to defend their rights. Even if covered, it is often beyond the capacity of overstretched labour administrations to enforce the law in remote rural areas. I think this is more than enough evidence that agriculture is a “difficult” sector in which to ensure that workers’ rights are upheld, a scenario which unscrupulous employers who want to derive an unfair advantage at the expense of their workers can and do exploit, including through means that amount to labour trafficking.

And what do we know of the extent of the problem of trafficking in agriculture? Unfortunately, far too little, as few if any reliable surveys have been undertaken. The small number of prosecutions and convictions reveals only the tip of an iceberg, the true size of which is as yet unknown. ILO estimated in 2005 that there were a minimum of 12.3 million victims of forced labour, a fifth of whom had been trafficked. 7.8 million were in economic, as opposed to sexual exploitation. For industrialised countries, the majority (3/4) of forced labour victims have been trafficked. But we do not have any sectoral or national estimates. We know that it

exists in very many countries at all stages of development, including many OECD participating states, and others throughout Latin America, Africa, the Middle East and Asia. But reliable statistics are sorely needed as a basis for more effective action to tackle the problem.

One step in this direction, in which the ILO has taken a lead role, has been an exercise with the European Commission to develop a set of indicators of trafficking that can be used, in the first instance, in surveys to measure its nature and extent, as well as to inform the development of legislation and action. The indicators were developed through a methodology known as the Delphi method, which builds consensus among a group of experts on the subject. This is explained in greater detail in a leaflet I have brought along. We hope that these indicators will be widely used in EC member states and beyond to improve the quality and usefulness of data collection efforts.

Let me then come finally to say a few words about the types of action and good practice that have emerged to tackle trafficking for labour exploitation. Many have been documented in the background paper, and I am sure that others will be discussed during this meeting. One of the best examples we know in agriculture is that of Brazil, where the problem is largely one of internal trafficking of male migrant workers to remote regions of the Amazon, where they become indebted and work in unspeakable conditions from which they cannot escape. The government, working with partners has taken many bold steps over more than 10 years to tackle these problems head on. A national action plan was adopted in 2003 to fight against this “slave labour”. There has been mass awareness-raising including campaigns at all major airports, in the press and on TV. The action of a mobile inspection unit that comprises labour inspectors, prosecutors, and federal police officers has resulted in the release, up to December 2008, of more than 32,000 workers from slave labour conditions, who are entitled to receive their wage arrears and state welfare assistance. A constitutional amendment is pending that provides for the expropriation of the property of landowners using forced labourers. ILO has been working in Brazil supporting this process since 2002.

In the US, the Trafficking Victims Protection Reauthorization Act allows victims to file cases, obtain compensation and apply for immigration relief including the non-

immigrant T visa. In 2007, 279 victims were granted such a visa allowing them to stay for up to 4 years. The labour department also pursues action under the Fair Labour Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, regardless of whether the migrant is regular or irregular. Officials of the Wage and Hour Division interview workers to assess whether they may have been victims of trafficking for referral to appropriate law enforcement authorities and also review payroll records and inspect migrant farm worker housing. Agricultural workers have also organised themselves to claim their rights, such as the Coalition of Immokalee Workers in Florida, whom I believe may be with us here today.

Trade unions have been active in many countries, particularly with respect to organising migrant workers in agriculture. The Global Union Federation the IUF – with its national affiliates who represent workers in food, agriculture and allied sectors across the world – has placed a special focus on supporting the rights of migrant workers. We are currently seeking to collaborate with them in a programme focusing on labour exploitation in southern Africa.

In the UK, the Gangmaster Licensing Authority is responsible for monitoring and regulating labour providers in the UK, who operate in agriculture, forestry, horticulture, shellfish gathering, food processing and packaging industries. It has the power to revoke licenses of contractors who do not respect the law, and it does so strictly when it encounters such illegal operators. A case in 2008, for example, involved a gangmaster who did not pay the minimum wage, paid no tax, employed workers who had no right to work and who had fake passports and national insurance cards. It can, when necessary also go down the criminal justice route; earlier this year, it filed its first criminal case.

These and many other examples demonstrate that innovative and effective responses do exist, in law and in practical action. The challenge facing us all is to make sure that these are widely known, replicated and adapted wherever problems occur and to prevent them happening in the first place.

Finally, no presentation at this time would be complete without some reflection on the impact of the global financial, economic and jobs crisis. Daily we see the impacts of

this around the world. Let us keep this in mind during our discussions. We can anticipate that competitive pressures will increase even further in agricultural enterprises already feeling squeezed. We can imagine the effects this will have on already vulnerable migrant and other workers.

If the task before us was important and urgent when this meeting was first planned, it is all the more so now.

Thank-you