



Dr Mark Egan
Commons Clerk of the Joint Committee on Human Rights
Committee Office
House of Commons
7 Millbank
London SW1P 3JA

1st May 2009

Dear Dr Egan,

Evidence from Anti-Slavery International to the Joint Committee on Human Rights on business and human rights, April 2009.

Synopsis

Forced labour and human trafficking for labour exploitation will remain a high-profit, low-risk crime and the UK will continue to be supporting modern day slavery unless robust penal measures are firmly in place and enforced. Also regulation, particularly of labour agencies and providers, must be extended and businesses need to be made aware of legislative measures and have access to guidance. Finally, workers at risk of slavery, exploited or in forced labour need adequate support and protection.

Anti-Slavery International was set up in 1839 and is the oldest international human rights organisation in the world. Today Anti-Slavery International works to eradicate all contemporary forms of slavery, including bonded labour, forced labour, trafficking in human beings, descent based slavery and the unconditional worst forms of child labour.

It is estimated by the International Labour Organization (ILO) that contemporary slavery, as defined in international law, affects a minimum of 12.3 million people in the world today, many of them in emerging economies.

Globally, profits generated from all forms of forced labour amount to US\$ 44.3 billion per year, with the majority of the profits generated in industrialised countries. The estimated annual profits of traffickers from forced economic exploitation are \$3.8 billion, with profits highest in industrialised countries (US\$ 2.2 billion).¹ About 80

¹ Belser, P., *Forced Labour and Human Trafficking: Estimating the Profits*, ILO, March 2005, p.11.

per cent of forced labour today is privately imposed² and a common feature is that some form of debt bondage³ or debt slavery is involved.

Anti-Slavery's supply chain programme, which is funded by the Department of International Development, is dedicated to eradicating forced labour from the production of goods sold in the UK. By working together with businesses (for example Anti-Slavery sits on the International Board of Cadbury's Cocoa Partnership, and is a member of the Ethical Trading Initiative) as well as undertaking research and eradication programmes in countries and communities affected by slavery; we are developing an in-depth understanding of how business practices relate to slavery.

This response focuses on Anti-Slavery's experience of the specific human right – prohibition of slavery and forced labour - as set out in Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The duty of the State to protect human rights

How UK businesses affect slavery

Slavery emerges at the conjunction of government inaction, prejudice against minorities, and poverty. The causes of slavery are rooted in social norms that often extend far beyond any factory or purely business environment. However thoughtless or malicious business practices can reinforce the social norms that enable slavery to thrive.

Companies' purchasing practices can encourage the use of forced labour, child labour or debt bondage. In manufacturing, downward pressures on costs and large demands given to suppliers with short lead times increase the likelihood of unregulated subcontracting. For example, in June 2008 BBC's Panorama exposed Primark's subcontractors in India who used child labour to embroider items of clothing.

In November 2008, over sixty workers picking leeks in Lincolnshire destined for our supermarket shelves were rescued from debt bondage; it is alleged that they were trafficked to the UK. The existence of illegal labour providers, who are able to provide legitimate businesses with workers at a reduced price, may be a reflection of the demand created by pressures that supermarkets put on suppliers to reduce costs in their price wars.

Industries supplied by forced labour are wide ranging and include agriculture, food packaging, construction, domestic work, care, and the restaurant and hospitality industry. Ascertaining a business's involvement in trafficking and slavery is important when considering an appropriate response. Involvement can lie between actively aiding and abetting to complete ignorance of the condition of its subcontracted workers (which itself is not an excuse). The reality is that labour exploitation and trafficking for forced labour often go undetected because they are largely hidden crimes.

² 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.

³ Debt bondage is defined by the ILO as a distinct form of forced labour.

The forms of coercion in recruiting forced labour are relatively subtle. Actual physical violence is rare. The person may be deceived into a situation of exploitation by accepting an initial promise of work and finding on arrival, that the work or working conditions do not meet that promise but the person has little or no choice but to accept it. Manipulation, psychological pressure and threats or simply the retention of their identification documents, are tactics used to coerce the person to accept inferior (and often exploitative) working conditions than what they had previously agreed. This is often combined with debt bondage, which is exacerbated by the obligation that the worker accepts further services at inflated prices such as accommodation and transport. The Daily Telegraph reported in March 2008 that some workers in a Tesco store in Malaysia had paid up to £1,500 in arrangement fees in Bangladesh but on arrival, found that they were earning only between £20 and £50 a month after deductions.

Exploitation and forced labour mostly occur in industries that depend on casual and temporary labour, offer low wages, are non-unionised, labour intensive, predominantly subcontract, and where it is often hard to track supply chains.⁴ Although there are companies that may not have actively participated in this exploitation, as beneficiaries, they should be held responsible for ending, remediating and preventing such abuses where they occur in their supply chains.

Anti-Slavery International believes that UK businesses have a specific and unique competence to contribute to the eradication of slavery both within the UK and around the world through the way in which they do business. Through their supply chain, companies can influence their suppliers to reduce the risk that goods sold in the UK are produced using forced labour. For example, Next Plc., a British clothing retailer, has worked with its supplier in Mauritius to improve its recruitment practices, which has greatly reduced the likelihood that its migrant workers are in debt bondage.

Gaps in the existing legal and regulatory framework that need to be addressed

Anti-Slavery's membership of the Ethical Trading Initiative, a tri-partite learning initiative, has shown that whilst voluntary mechanisms can make some headway in improving labour rights, meeting minimum labour standards (such as not using forced labour) remains an aspiration rather than a reality for many businesses. Although legislation and regulation is not a panacea, they act as stimuli for action and have a deterrent effect.

Currently in the UK prosecutions for forced labour are limited to cases where trafficking is involved. A significant gap is the lack of criminal legislation setting out penalties for the use of forced labour, a requirement set out in Article 25 of the ILO Convention 29⁵ to which the UK is a party. The penalties, which should be heavier than those set out in employment law, would have a deterrent effect on employers and would offer protection to those who had not been trafficked.

⁴ Skrivankova, K., *Trafficking for Forced Labour: UK Country Report*, Anti-Slavery International 2006 page 15

⁵ Article 25 reads: "The illegal exaction of forced or compulsory labour shall be punished 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."

Legislation and better regulation also levels the playing field between those investing in preventative measures and those free-riding on the benefits. The call for better regulation of labour agencies comes from within the industry itself. The largest labour agency, Manpower, has repeatedly called for more regulation at public forums and is leading a business initiative to address trafficking and forced labour.

The existing Gangmaster Licensing Act (GLA), which regulates the supply of labour by gangmasters in the agriculture and food processing industries, has proven effective at tackling exploitation in the areas it regulates. However to ensure that other industries are not offering “safe havens” for rogue labour providers, the remit of the GLA should be extended to include a broader range of sectors, particularly those which employ large numbers of migrant and low-skilled workers who may be particularly vulnerable to exploitation. These sectors include restaurant work and hospitality, care and nursing, domestic workers, contract cleaning and construction.

A particular challenge is balancing the need to introduce robust regulation to improve business transparency which enables NGOs, trade unions, investors and the public to hold companies to account, whilst ensuring that violations that emerge are addressed responsibly and not pushed underground.

UK government guidance for businesses

Although there is widespread support amongst companies against the use of forced labour the lack of guidance in law and regulation means that many are ignorant as to why or what actions they should be taking to prevent forced labour. The government should work with employers’ organisations to raise awareness amongst employers of legislation - the stick, as well as provide support and guidance setting out the practical steps employers should undertake in order to meet their obligations and commitments to ensure no presence of forced labour – the carrot.

Governmental efforts directed at businesses should complement measures directed at providing assistance to workers. The government needs to ensure systematic protection and assistance to people who are in forced labour. For example, current measures directed at migrant workers do not extend to the level required by trafficked people. Comprehensive rehabilitation programmes can prevent people from being re-trafficked,⁶ as well as increasing prosecutions.

Role of individual government departments

All businesses that receive substantial public support from government departments in their operations either in the UK or abroad, should have that support withdrawn where they are found not to have effective measures in place to identify and responsibly eradicate forced labour.

The responsibility of businesses to respect human rights

⁶ Skrivankova (2004) *op cit*

How UK businesses should take into account their impact on human rights

The establishment of the Cadbury's Cocoa Partnership seems to represent a sincere and sustained attempt by a UK company to address, in a critical part of its supply chain, a range of complex stakeholder issues including child labour, and environmental sustainability as well as broader questions of democratic development. This represents an example of good practice of business partnership with civil society, which Anti-Slavery believes is essential if businesses' policies and practices to address forced labour are effective and sustainable. Such partnerships should be encouraged by government.

The responsibilities of UK businesses to respect human rights should not vary depending on whether or not they are performing public functions or providing public services. Although it appears morally dubious to set varying degrees of responsibility for businesses according to the size, type or nature of the business in question, a reasonable starting point would be to focus efforts on businesses either performing public functions or benefiting from substantial governmental backing or support, as set out above.

Inevitably business decisions will be made in the current economic climate to reduce costs, such as to subcontract work, switch suppliers or put downward pressures on suppliers to reduce prices, which provide an opportunity for exploitative employment practices. However, slavery is not acceptable under any circumstances.

Effective access to remedy

Existing opportunities to access remedies

UK legislation sets forth several legal remedies for victims of criminal acts or violations of labour laws. Nevertheless, these remedies remain an illusory option for those trafficked or in forced labour in the UK.

Although there has been an increase in the number of convictions for human trafficking in the UK, legal remedies and compensation for trafficked persons have remained inaccessible. Undocumented workers, who may constitute a significant number of trafficked persons, are excluded from employment tribunals purely on the basis of their immigration status. Although their work will have generated profit for their employer, undocumented workers have no right to claim unpaid wages, as a consequence of their irregular status. This, together with the low level of penalties, creates an incentive for unscrupulous employers to exploit migrant workers. Furthermore, the lack of available legal aid for pursuit of civil claims or employment claims hinders trafficked or exploited persons from obtaining effective legal representation.⁷

Consequently, although UK law provides routes for victims of trafficking to seek compensation through criminal, civil and labour law, only a minority of trafficked

⁷ Skrivankova, K. and Lam, J., *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International 2009

persons actually have the opportunity to pursue this right, much less receive compensation, as demonstrated in Anti-Slavery's research.⁸

In addition, a report prepared by COMPAS in collaboration with the Trades Union Congress noted that in the UK enforcement of criminal law for offences committed in the context of forced labour has been weak. The report goes on to say that "although many serious abuses committed by employers – theft of documents, assault and blackmail - are offences under UK criminal law, competing police priorities and limited resources, combined with evidentiary problems, have meant that few cases are prosecuted."⁹

Changes to improve access to remedies

Effective judicial remedies are missing from the current mix of available remedies. Existing initiatives have demonstrated a number of limitations. For example, following the OECD UK National Contact Point's statement in August 2008 that the UK company Afrimex had failed to respect human rights by buying minerals in the Democratic Republic of Congo produced using forced labour, the lack of follow-up by the UK government to ensure its recommendations are implemented, limits the effect of this remedy.

Whilst complaints mechanisms, business initiatives and multi-stakeholder initiatives perform a worthwhile function, the gravity of forced labour and the reality of the scale of the problem of forced labour, require a judicial remedy that allows a person, wherever they are, to hold a company to account and prevent future violations of their right to freedom from slavery.

Employment law protections should be extended to enable all workers to enforce core statutory employment rights, regardless of their immigration status. In addition, the protection currently given to victims of trafficking should be extended to victims of forced labour to encourage victims to come forward and prosecute the perpetrators.

Please contact me for further information.

Yours sincerely,

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⁸ *Ibid*, page 35

⁹ Anderson, B., and Rogaly, B., *Forced Labour and Migration to the UK*, 2005 available at <http://www.tuc.org.uk/international/tuc-9317-f0.pdf> accessed on May 1st 2009.