

# FORCED LABOUR: THE CASE FOR CRIMINALISATION



## INTRODUCTION

Forced labour is defined by the International Labour Organization (ILO) as a situation in which a person is deceived into entering work, and cannot leave it without punishment or the threat of punishment. Put simply, it is an extreme form of exploitation. In Ireland, forced labour is dealt with under anti-trafficking law and not as a separate crime. This is a major problem given the inadequacies of this legislation and the near insurmountable difficulties in identifying and securing convictions on trafficking for forced labour. Separate legislation that criminalises forced labour is needed to ensure adequate protection and redress mechanisms for people who have experienced forced labour. Restrictive migration policies contribute greatly to creating the conditions for forced labour. Greater flexibility in the work permit system is thus also required in particular allowing work permit holders to move freely between jobs in a defined sector, if forced labour is to be tackled adequately. A range of supports are required when exiting forced labour situations, including appropriate secure accommodation, access to health care, psychological care, quality legal advice and employment supports.

### Ireland's International Obligations to Criminalise Servitude & Forced Labour

The following conventions impose obligations on the Irish State to protect people from slavery, servitude or forced or compulsory labour:

- ILO Convention No. 29 (Forced Labour Convention)
- ILO Convention No. 105 (the Abolition of Forced Labour Convention)
- European Convention on Human Rights (ECHR), Article 4

## FORCED LABOUR

It is estimated that at least 12.3 million people live in situations of forced labour worldwide, some 360,000 in industrialised countries.<sup>01</sup> The ILO also believes that forced labour is present in some form, on all continents, in almost

all countries, and in every kind of economy, and that in times of economic and financial crisis vulnerable workers, particularly migrants, are more exposed to forced labour.

### UK Criminalises Forced Labour & Servitude

In late 2009, as a result of a campaign led by Anti-Slavery International and Liberty, the UK amended their legislation to introduce criminal offences for forced labour and servitude accepting that their existing criminal laws did not provide effective protection and penalties for servitude and forced labour.

According to Anti-slavery International, "Almost all slavery practices, including trafficking in people and bonded labour, contain some element of forced labour".<sup>02</sup> They cite that the vast majority of cases of forced labour are used by private individuals seeking to make profits from the exploitation of other people. Forced labour involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance. People in situations of forced labour are frequently from minority or marginalised groups, and often face multiple forms of discrimination in their respective societies. Gender, ethnicity and social status are often key determinants in forced labour situations.

### TRAFFICKING IN HUMAN BEINGS (THB)

Forced labour is most commonly discussed within the context of trafficking in human beings. Trafficking is a complex process involving a number of core elements, including deceptive or coercive recruitment, transportation, and enforced exploitation. Before a person can be identified as having been trafficked all these elements need to be proven.

01 International Labour Organisation report, *The Cost of Coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at work (June 2009)

02 Anti-Slavery website: [http://www.antislavery.org/english/slavery\\_today/forced\\_labour.aspx](http://www.antislavery.org/english/slavery_today/forced_labour.aspx)

**ILO Indicators of Forced Labour**

1. Threats or actual physical harm to the worker.
2. Restriction of movement and confinement to the work place or to a limited area.
3. Debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.
4. Withholding of wages or excessive wage reductions, that violate previously made agreements.
5. Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.
6. Threat of denunciation to the authorities, where the worker is in an irregular immigration status.

The Criminal Law (Human Trafficking) Act 2008 was enacted to legislate against this crime. However, anti-trafficking legislation in itself is not sufficient to combat forced labour, as not all forced labour situations are as a result of human trafficking. Furthermore, establishing that a person has been subjected to forced labour or servitude, and identifying the person who subjected them to forced labour or servitude, would not be sufficient to establish a trafficking offence.

It is important, therefore to examine these emerging gaps in tackling forced labour and trafficking in Ireland, and to take action to address them. Focusing on forced labour is not without its problems, and there are difficulties in distinguishing between very poor working conditions and forced labour. Yet these definitional problems are not insurmountable. The ILO has developed indicators of forced labour (see box) which provide a valuable benchmark in the identification of forced labour. The emphasis on the exploitation experienced rather than other factors, such as how the person was recruited into the situation, offers real and meaningful possibilities for positive action and results.

**THE IRISH CONTEXT**

The Irish Government has demonstrated a valuable commitment to supporting international efforts to combat forced labour. Irish Aid gives high priority to working against forced and bonded labour with non-governmental human rights organisations, including Trócaire, Anti-Slavery International and the ILO, across the world. However, MRCI is concerned that there has been little attention or action on tackling forced labour within Ireland. Increasingly, MRCI comes across people in situations of forced labour as defined by the ILO. Many do not readily fit the narrow and rigid definitions of human trafficking as set out the Irish legislation. So while trafficking for forced labour is defined as a criminal offence, there is no stand-alone offence for forced labour and servitude.

At present, people who find themselves in situations of forced labour who have not been trafficked, or where trafficking is difficult to prove, are not protected under Irish law. Many are undocumented and are then considered to be in breach of Irish immigration law rather than being viewed as the victim of a serious crime. MRCI has come across individuals who have been charged with immigration-related offences, imprisoned and deported, despite acknowledgment from the authorities - including the judiciary - that the person was subjected to serious and extreme exploitation.

**Limitations of the Criminal Law (Human Trafficking) Act 2008**

1. Restrictive - only criminalises trafficking.
2. Vague and restrictive in how trafficking is defined.
3. Fails to name the elements involved in forced labour.
4. Does not define exploitation.
5. Limited protections for people who have experienced trafficking for forced labour.

**Experiences of Forced Labour**

Forced Labour in Ireland generally begins with deception about working and living conditions, followed by payment below the minimum wage, late and irregular payments and/or illegal wage deductions. Previous experiences of exploitation, withholding of legal/travel documents, uncertainty about legal status, the rigidity of the work permits system, are all contributing factors that can lead to a person finding themselves in a forced labour situation. MRCI has assisted individuals who have been employed as domestic, agricultural, restaurant and circus workers, along with seafarers, and workers in the care and construction sector, all of whom have experienced forced labour. In some cases people have received as little as €50 per week for a seventy to eighty hour week. In addition, MRCI found that perpetrators of forced labour use various forms of deception, coercion and psychological and emotional abuse to exercise control over workers. Many are duped and controlled through a variety of means, including debt bondage, the removal of passports, and the use of threats, intimidation and violence. Their families are often threatened overtly, or in subtle ways which are nevertheless very effective in preventing a person from leaving or seeking assistance.

**Case study: Muhammad**

Muhammad is an experienced chef from Pakistan. He came to Ireland in 2002 to work in the restaurant industry. His family joined him in 2004, and his wife gave birth to their second child in 2007. He was expected to work ten to twelve hours daily, six to seven days a week. He was paid €2.20 per hour.

Muhammad was constantly threatened with non-renewal of his work permit and deportation if he did not comply with his employers wishes. His passport was taken on the pretense of renewing his work permit, however this did not materialise. The passport was not returned until the birth of his second child. He became undocumented in this employment and had to endure harsh conditions of work for over two years, as he had his family to support.

Muhammad was not trafficked into Ireland but has been a victim of forced labour. He is not entitled to any State protections or supports.

**Case study: Maria**

Maria is from the Philippines. She was recruited to Ireland to work as a beauty therapist. However, she found herself unemployed after just three months. She had no money and could not return home. She found part-time work to help her survive but became undocumented during this time. A friend recommend her to a family in Limerick to work as a domestic worker. She cared for three children and did all the household chores. She lived in the employer's home and worked six and a half days, 7am to 10pm each day, i.e. a ninety-hour week.

Maria received €150 per week and €50 was deducted for her accommodation, which she shared with the six month old baby. The family did not apply for a work permit for her. Her food and hot water consumption were rationed and monitored. If she was seen speaking to anyone in the locality her employer would reprimand and verbally abuse her. She was constantly told she was stupid and useless. She left this employment after two years and seven months, when a concerned neighbour contacted MRCI for assistance. Maria is a victim of forced labour. She is not protected by the State and her employers cannot be prosecuted under existing trafficking for forced labour legislation.

**Common Forms of Coercion**

In most instances of forced labour, people have had their passports confiscated. They often live in fear of their employer, and are intimidated to such an extent that they fear coming into contact with law enforcement officers. A common threat is that of deportation. This can be based on what their employers have told them about their legal status, but can also be based on their experiences in their home countries. These control mechanisms can have immediate effect or be part of a cumulative process, where there is a gradual loss of control by a person over their

situation. The person finds that they are increasingly dependent on their employer, which makes it even more difficult to leave. Their working conditions deteriorate, wages go unpaid or are paid late, and a common feature of the exploitation involves working exceptionally long hours.

**WORKER MOBILITY AND ACCESSING REDRESS**

It is clear that Ireland's complex and restrictive migration regime is exacerbating migrant workers' vulnerability to labour exploitation, including forced labour. Despite changes to the work permits system, migrant workers cannot easily move jobs and the potential for exploitation to occur remains. The inflexibility of the system makes it extremely difficult to move between employment schemes and different immigration statuses. The fee of €1,000 for the work permit is prohibitive and places a massive financial burden on migrant workers who wish to leave their jobs. There are also bureaucratic delays involved in processing work permits. It is the MRCI's experience that these factors result in migrants ending up in informal employment situations, and as a result their vulnerability to forced labour and exploitation increases. Being an undocumented worker can also impact on a worker's right to seek redress for breaches of their employment rights. Furthermore, depending on a person's immigration status, they could be deemed an irregular migrant first and foremost and not primarily as the victim of a crime. It is the experience of MRCI that being undocumented leaves a person more vulnerable to exploitation and recruitment into forced labour situations.

**PROTECTIONS FOR WORKERS**

A lack of adequate protection measures contributes to workers in a forced labour situation remaining in their exploitative workplace. The legal framework as it stands is very weak on supports for potential victims of trafficking. A tiered approach to assistance is required as people have differing needs at different stages: Short term, as workers emerge from the exploitation and are in need of urgent protection and supports such as safe accommodation; medium term, when the person needs transitional supports; and in the longer term, when they are in recovery and want, for example, to re-enter the labour market. After reflecting on their experience for some time, many decide they want to seek some form of justice and redress. However, if the person is not deemed to have been trafficked, the existing legal provisions will not protect them, and they will not be entitled to access the limited support that is available to trafficked people. This puts a person at risk of re-entering or remaining in a forced labour situation. Equally, the perpetrators of these crimes will not be brought to justice.

**EMPOWERING WORKERS**

It is MRCI's experience that people exiting a forced labour situation rarely identify themselves as a victim. Labelling a person as a victim is often disempowering in itself. Responses that support a person's reengagement with

society, building on existing skills, re-establishing self esteem, are of central importance to the process of rebuilding a person's life. Responses by State and NGOs should aim to empower and restore dignity and self autonomy. Individuals who have experienced forced labour are frequently more than willing to engage in actions that seek to prevent this crime and to support others in similar situations. Groups like MRCI's Domestic Workers Action Group, the Restaurant Workers Action Group and the Agricultural Workers Association are all examples of structures that promote the participation of members, and work collectively to advocate for better laws, policies and supports to address the causes of exploitation and forced labour.

### **WORKING IN PARTNERSHIP**

Many agencies have a vital role to play in tackling this crime, and it is a concern not only of the labour rights movement and migrant organisations but rather for society as a whole. Politicians, law enforcement, labour inspectors, the judiciary and the business community all have a key role to play in tackling forced labour and working to ensure workers are protected.

### **RECOMMENDATIONS**

1. Criminalise forced labour by amending the Criminal Law (Human Trafficking) Act 2008 to include a provision on forced labour and servitude as a separate offence from trafficking.
2. Strengthen assistance to victims of human trafficking, including forced labour, by developing appropriate, tiered support systems, with a particular focus on housing needs and employment supports.
3. Amend the work permits system to ensure mobility for workers and reduce bureaucratic delays within this system.
4. Introduce systematic pathways for undocumented workers to become regularised, especially if they have experienced exploitation.
5. Develop effective partnership models inclusive of State actors and agencies, NGOs and the voluntary and community sector, that seek to develop effective policy responses and provide direct support to victims of forced labour.
6. Recognise the value of peer support groups and empowerment-based programmes for migrant workers who have exited forced labour situations, and provide resources for these.
7. Advance the recommendation of the EU Experts Group on Trafficking in Human Beings which holds that the exploitation element, rather than the movement and coercion dimension, of trafficking should be prioritised in the identification of potential victims of human trafficking.

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**The Migrant Rights Centre Ireland is a national organisation working to promote justice, empowerment and equality for migrant workers and their families.**

**55 Parnell Square West, Dublin 1**  
**T: (01) 889 7570 E: [info@mrci.ie](mailto:info@mrci.ie)**  
**F: (01) 889 7579 W: [www.mrci.ie](http://www.mrci.ie)**

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**This project is co-financed by the European Commission and supported by the Office of the Minister for Integration and Pobal.**

