The ILO; Successes, Difficulties and Problems in Reducing Forced Labour in Different Parts of the World

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Introduction
The purpose of this paper is to assess the contribution of international labour standards and ILO’s cooperation with member States in different parts of the world to achieve justice for victims of modern slavery. It is the contention of this paper that criminal justice needs to be embedded within a broader system of “social justice”. While criminalization is strategically important to define the boundaries of socially acceptable behaviour and to hold those to account who violate social norms, in itself it will not transform deeply rooted practices of exploitation and abuse. The vast majority of the estimated 21 million victims of forced labour in the world today are not “slaves” of brutal warlords or mafia-type criminal networks. They are subjected to coercion in the informal economy and in mainstream economic sectors, tied to their work places by subtle means of coercion and control. In other words, their exploitation is not the result of some marginal deviant criminal behaviour; rather it is part and parcel of contemporary labour relations in certain parts of the economy. The fundamental injustice they suffer is to be deprived of a fair share of what economists call the “marginal product of their labour”. They are subjected to varying degrees of coercion by those who have control over their lives and incomes: feudal landlords, tribal chiefs, unscrupulous labour brokers, corrupt state officials or suppliers within global value chains.

Those who benefit from this exploitation have vested economic and political interests in maintaining the status quo and thereby keeping entire families and communities in abject poverty. According to ILO’s most recent estimates, forced labour generates US$ 150 billion illicit profits every year. The highest gains can be made in the sex industry (US$ 99 billion); however the majority of people in modern slavery are exploited in sectors where working conditions are often poor, such as agriculture, fisheries, construction, domestic work, and manufacturing, especially in low-tier supply chains. In countries, where forced labour is systematically imposed by state authorities, the situation is even more challenging, and criminal law may only be of limited value as long as repressive regimes are in power. Forced labour orchestrated by the state, such as through prison labour or the military, accounts for about ten per cent (or 2.4 million) of the total number of estimated victims.

The focus of this paper is on those underlying economic and political root causes of exploitation, which deprive millions of men, women and children of a life in freedom and dignity. Many of those systemic forms of exploitation are deeply embedded in practices of discrimination and social exclusion. The impact of international labour standards on transforming those deeply entrenched practices can offer important insights to the topic of this Academy which looks at issues “beyond criminalization”.

The paper is structured as follows: The first part traces the evolution of ILO standards against forced labour in parallel to the development of international standards against slavery and human trafficking. It will also discuss the ILO’s Forced Labour Conventions, the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and its specific provisions on prevention and remedies.

The second part of the paper will review the impact of ILO’s supervisory mechanism and its interaction with country-level interventions or what the ILO calls “technical cooperation programmes”. While the ILO’s unique system of supervision and its operational capacity have achieved significant progress much remains to be done to effectively eradicate all contemporary forms of forced labour. The concluding chapter will discuss some recommendations on the way forward.

1. The evolution of ILO standards related to slavery
The historical evolution of norms against slavery was part of a broader social movement which acted as a catalyst to the development of international labour law. [2] Humanitarian thinkers and enlightened politicians considered the abolition of slavery only as a first step towards the full liberation of working women, men and children from the chains that tie them to inhuman and degrading work places. Such “liberation” was not only regarded as a humanitarian issue; economists argued that it would also lay the foundation for more prosperous trade relations. The first attempts of creating an international system of labour standards were made in the late 19th and early 20th centuries. Although not tripartite in form, there was recognition that representation of those directly involved - and in particular the then increasingly assertive trade unions - was necessary. But it was only after the catastrophe of the First World War, and the subsequent revolutions in Europe, that labour law became subject of international treaties through the creation of the ILO in April 1919.

The Constitution of the ILO was contained in Chapter XIII of the Versailles Peace Treaty, and it specifically established a link between social justice and lasting peace. The creation of the League of Nations followed and it soon contemplated a Convention against Slavery. Parties to the Convention, which was adopted in 1926, agreed to prevent and suppress the slave trade and to end slavery in all its forms as soon as possible. Forced labour should be used for public purposes only, with certain exceptions, and the practice should progressively be abolished. The League of Nations then requested the ILO to further investigate the use of forced labour, especially in territories under colonial administration. This led to the adoption of the first Forced Labour Convention in 1930. While the drafters of the Convention focused on the use of forced labour for public purposes, they decided to adopt a very broad definition that is still applicable today:

“Forced and compulsory labour is all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

Despite the widespread use of forced labour in territories under colonial rule at the time, the ILO hence succeeded in establishing a standard that made its exaction illegal. The Convention requires ratifying parties to make forced labour a penal offence and to provide for adequate penalties in the case of non-compliance. It allows for certain exceptions, limited to the use of forced labour for public purposes or under public supervision, namely military service, minor community services, normal civic obligations, emergencies and prison labour under certain conditions.

Soon after the adoption of ILO’s first Forced Labour Convention No. 29, political developments in Europe, in particular the rise of the Nazi regime in Germany, threatened to undermine the consensus that forced labour should progressively be abolished. The brutal practices of forced prison labour in Germany and in countries under Nazi occupation as well as in countries under Communist rule, in particular the Soviet Union, posed a major challenge to the free world and to those seeking to uphold international standards. It became increasingly evident that forced labour would not only be used by colonial powers in some distant territories but also by dictatorial regimes in the midst of Europe.

In 1949, the UN and the ILO set up a joint Ad Hoc Committee under the leadership of the Indian diplomat Ramaswami Mudaliar. The original mandate of the Committee was to document forced labour as a means of political coercion and for economic purposes, on the assumption that this would be limited to countries of the Eastern Bloc. The Mudaliar Committee, however, interpreted its mandate in a rather liberal way and thereby re-opened the debate about the use of forced labour in colonial territories.[3]

Eventually, the findings of the Committee paved the way for ILO’s second Abolition of Forced Labour Convention, 1957 (No 105). It calls for the immediate abolition of forced labour as a means of punishment for holding or expressing political views, as a method of mobilising labour for economic development, as a means of labour discipline or punishment for having participated in strikes or as a means of discrimination. The new Forced Labour Convention was very much a product of the Cold War, and the issue itself deeply antagonized the Cold War powers. While Communist member States of the ILO viewed it as a tool to undermine their political and economic sovereignty, some Western countries tried to safeguard the continued, albeit limited, use of forced labour in their colonies.

Interestingly, the first complaint that was submitted under this Convention was directed against Portugal, the only colonial power that had not yet ratified ILO’s first Forced Labour Convention No. 29. The complaint was filed by the Government of Ghana that considered Portugal’s observance of Convention No. 105 in territories that were still under its rule, notably Mozambique, Angola and Guinea, as unsatisfactory. In 1961, the ILO’s Governing Body set up a Commission of Inquiry under the complaint procedure. The Commission investigated the complaint and in its report to the Governing Body shed light on the continued use of forced labour in Portuguese colonies, the cruelty of the colonial system and its underlying racist stereotypes.
In parallel to ILO standard setting and monitoring, efforts to eliminate slavery and remnants of the slave trade continued within the UN system. In many parts of Latin America and Asia, deeply entrenched systems of bonded labour survived in the post-colonial era. Independence, however, had created a new momentum to reform tenancy systems and redistribute land. In response to this new development, the UN Economic and Social Council appointed a Committee to draft a supplementary Convention to address “slavery-like practices” such as servitude and debt bondage which were not part of the 1926 Convention. Within about a year, the Conference of plenipotentiaries adopted a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery in 1956. For the first time, the case of children was given special consideration. The drafters of the Conventions concluded that where a child under 18 years is delivered by parents or guardians to another person for the purposes of exploitation should be considered an institution similar to slavery. Slavery and forced labour of children has later been addressed in more detail by the ILO Convention on the Worst Forms of Child Labour No. 182, which was adopted in 1999.

Up to this point, the UN and ILO instruments consistently called for penal sanctions to eliminate slavery and forced labour but they also recognized that an end of those practices would only be achieved over a certain period of time. This explains the "transitional provisions" in ILO’s first Forced Labour Convention which provided for the continued use of forced labour during a certain period of time, albeit subject to certain restrictions. More importantly, these instruments sought to address systemic practices and institutions of slavery, rather than individual cases of crime. This explains why none of these instruments provide for victim protection or compensation measures. It also explains why there is limited guidance on prosecution in any of these instruments even though they do imply that penal sanctions should be imposed on persons holding someone in slavery or exacting forced labour.

The adoption of the Trafficking Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime, can be seen as a departure from earlier thinking (henceforth Trafficking Protocol). The Trafficking Protocol, adopted at the beginning of a new millennium in 2000, emerged as a response to the perceived growth of irregular migration and transnational organised crime after the fall of the iron curtain. As a criminal justice instrument, it seeks to achieve justice for individual victims of crime rather than addressing systemic forms of exploitation and abuse. The drafters of the Trafficking Protocol linked the action and means of human trafficking to its ultimate purpose, namely “exploitation”. Exploitation includes at a minimum slavery, practices similar to slavery, forced labour and servitude, the exploitation of the prostitution of others and other forms of sexual exploitation as well as the removal of organs. The acts and means of trafficking are described in a way that is consistent with the instruments on forced labour and slavery but their enumeration goes well beyond earlier definitions.

The latest milestone in the evolution of international law against slavery, forced labour and human trafficking was achieved in June 2014, when employer, worker, and government delegates to the International Labour Conference (ILC) voted overwhelmingly in support of a new Protocol to the Forced Labour Convention, 1930 (No. 29) (henceforth Forced Labour Protocol), along with a non-binding Recommendation supplementing both the Protocol and the Convention. The successful vote was the culmination of a two-year process that began in June 2012, when the ILC held its first recurrent discussion on fundamental principles and rights at work and adopted conclusions calling for an examination of whether new standards on forced labour were needed.

The adoption of new international labour standards on forced labour – and of a binding legal instrument in particular – was far from a foregone conclusion. Some ILO constituents had expressed reluctance to tamper with one of the ILO’s oldest and most highly ratified Conventions, which also numbers among the ILO’s eight fundamental Conventions. Relatedly, some deemed existing ILO standards on forced labour and non-ILO international legal instruments – namely those addressing trafficking in persons – already sufficient to suppress contemporary instances of forced labour.

The eventual adoption of the Forced Labour Protocol and Recommendation is significant not only because a consensus developed in support of the new instruments despite these obstacles, but because they reflect a significant shift in perspective on how best to combat severe forms of exploitation, including forced labour. Rather than focusing primarily on criminalization the strategies outlined in the Protocol and Recommendation emphasize prevention, protection, and remedies. These are not new concepts, but their explicit inclusion and link to the Convention’s fundamental obligation to suppress all forms of forced labour demonstrates the recognition that broader and more comprehensive measures are needed. By expanding the range of key actors beyond criminal law enforcement, provisions in the instruments addressing the role of business and labour administration are particularly noteworthy, as are provisions emphasizing the process of law and policymaking through a requirement that national policies and action plans be developed in consultation with employers and workers.
To conclude, within little more than 100 years, a rich body of international law has emerged which defines slavery, forced labour and human trafficking in different but at the same time very complementary ways, and which calls for a wide range of measures to eliminate those illegal practices. The remainder of this paper will now look at the concrete application of standards against forced labour in a selected number of cases.

2. Changing attitudes and practices: case studies

A central question of this Academy is how to change underlying normative attitudes that contribute to the persistence of forced labour and human trafficking despite almost universal legal prohibition. In the following, I will discuss three cases of forced labour which had once been considered either as “normal” social behaviour or as a government’s prerogative to exact forced labour from its citizens. The actions of individuals are in part influenced by “institutions” which encompass “rules of the game” (i.e. formal rules and informal social norms) as well as organisations and their governance.[7] The ILO’s normative system and its transposition into national legislation are the “rules of the game” which seek to shape organisations and the behaviour of their members. Those rules can co-exist with informal social norms that take much longer to change. This is why the ILO uses a two-pronged approach: first, creating and monitoring standards which enjoy broad consensus not only from governments but also from actors of the “real economy” – workers and employers – and second, implementing “technical cooperation programmes” at regional and national levels, with the aim to overcome the stubborn persistence of opposing informal social norms.

In its recent history, the ILO has won major victories in related policy areas by using such a two-pronged approach. For example, the adoption of ILO’s Worst Form of Child Labour Convention, 1998 (No. 182) has led to an unprecedented movement against the exploitation of children and a universal recognition that children should be in school, not at work. As a result, the decline of the number of child labourers has accelerated from 215 to 168 million between 2008 and 2012.[8] Another example is the recent adoption of the Domestic Worker Convention, 2011 (No. 189) which contributed to changing behaviour of employers, recognizing that domestic workers should be treated as workers, not as underpaid “maids”. The following examples will demonstrate that similar social and behavioural changes have occurred in a selected number of cases related to forced labour.

2.1 Forced labour imposed by state authorities: the case of Myanmar

Forced labour has been used routinely by the military regime in Myanmar since its coming into power more than 30 years ago, and the ILO has criticised Myanmar’s the gross violation of Convention No. 29 for about as many years. Civilians were forced to build large infrastructure projects, to deliver porter services for the army and to clear roads of mines. Children have been recruited as soldiers into the army. Myanmar ratified Convention No. 29 in 1955, and soon thereafter the CEACR received the first allegations of its violation. After many years of stagnation and lack of progress, the International Confederation of Free Trade Unions (ICFTU) [9] filed a representation against Myanmar and a committee reviewed the case in 1994. As the Government continually failed to respond, the workers’ group submitted a complaint in 1996 (under Article 26 of the ILO Constitution) and a Commission of Inquiry was established. Although the Government refused to collaborate, the Commission nonetheless succeeded in collecting evidence of the widespread and systematic use of forced labour in Myanmar. It documented horrendous abuses, including the requisition of entire villages for forced labour and services, forced prostitution and other human rights violations.

The Government however still refused to change its practices and even referred to the “transitional provisions” of Convention No. 29.[10] In 2000, the Governing Body of the ILO took the unprecedented measure of invoking Article 33 of the Constitution, recommending that the International Labour Conference take additional action to secure compliance with the recommendations of the Commission of Inquiry. The Conference duly responded by calling on all ILO members, including employers and businesses, to review their relations with Myanmar so that they were not supporting forced labour in that country. Myanmar’s participation in ILO activities was forbidden unless it contributed to the elimination of forced labour. The growing isolation of the country and mounting international pressure slowly helped trigger a response from the Government.[11]

Eventually, it accepted the appointment of a Liaison Officer who for many years was the only international human rights officer with regular access to the country. In February 2007, the Government signed a Supplementary Understanding with the ILO which provided for the establishment of a complaints mechanism for individuals who have been subjected to forced labour. The agreement stipulated that the ILO Liaison Officer reports to the Governing Body on the number, type and outcome of complaints received under the mechanism. In the period between February 2007 and September 2014, the ILO received and registered 3,639 complaints. Of these, 1,744 have been accepted as falling within both the definition of forced labour and the scope of the complaints mechanism, while 472 cases are still being verified. In most of the cases, the ILO negotiated a settlement with the government. 272 perpetrators were punished either judicially or administratively.[12]
A major breakthrough was achieved in 2011 when a new government came to power. Following discussion with ILO, it signed a Memorandum of Understanding in March 2012 according to which forced labour should be eliminated by 2015. In the same year, it also revised the War or Village Tract Administration Act which had previously served as a legal basis for exacting forced labour. The government’s willingness to engage with the ILO opened the door for the development of large-scale technical cooperation programmes which are now under way, focusing on a wide range of labour-related issues, such as labour law reform, enterprise development, support for the creation of independent workers’ and employers’ organisations, freedom of association and collective bargaining and labour migration.

As a result of high-level policy change, legislative reform and many awareness raising and training activities, the behaviour of individuals in government, especially the military, started changing. The political situation is still unstable and ILO continues to monitor the situation closely. All of its governing and supervisory bodies are involved in this process until lasting change will be secured.

2.2 Traditional practices of bonded labour: the case of India

Pledging labour in exchange for credit or wage advances is a century old practice in South Asia, including in India. Millions of poor households juggle constantly with various credits and debts due to low and irregular income and lack of social protection nets.[13] As a consequence, many workers are “bonded” against a wage advance paid by the employer. The worker is only free to leave the employer once the debt has been fully repaid. In some instances, wages manipulations or high interest make it impossible for workers to pay the debt, keeping his or her entire family in bonded labour. If a debtor-creditor relationship between workers and employers creates a situation where workers cannot leave the employment relationship without risk of retaliation, are subject to coercion or have been deceived about the conditions of work, the ILO’s Forced Labour Convention would apply. Since bonded labour is prohibited in India, credits, such as wage advances, are either enforced by coercion and force or by the power of customary practice.

There is a correlation between the vulnerability of poor households to sudden income shocks and the risk of adults and children to end up in bonded labour.[14] But abject poverty is only one of the many root causes of bonded labour in South Asia. Another factor, at least as important, is the discrimination and social exclusion of scheduled castes and tribal people from education and the labour market. While not excluded by law, they effectively lack access to education, skills training and social protection schemes.

Bonded labour was and still is prevalent in traditional agricultural production and increasingly on plantations. In addition, bonded labour prevails in brick kilns, stone quarrying, mining, gem cutting, rice mills, looming, in fisheries and fish processing, bidi rolling and construction. It is also widespread in domestic work. Trafficking for sexual exploitation, including customary practices like the Devadasi system under which young girls are “married” to the gods in Southern India, also persists across the sub-continent.[15]

There are no national surveys on bonded labour in any of the South Asian countries but some studies, including micro-surveys, give an indication of the size of the problem. In 2009, the ILO carried out a survey in Nepal which focused on high-risk populations. It indicated that, out of an estimated total of 1.6 million working adults in high risk districts, 143,000 (9 per cent) were in forced labour. Haruwa-Charuwa and Haliya households accounted for the vast majority (71 per cent) of adults in forced labour. In addition, the ILO carried out a range of qualitative studies on brick kilns in India and various occupations involving bonded labour in Pakistan.[16] The absence of a reliable national survey on the pattern and incidences of forced labour however makes it very difficult to design and assess policy measures. The following will discuss some experiences and lessons learned of more than 20 years of ILO’s work on bonded labour in India.

Having ratified Convention No. 29 in 1954, India is subject to the ILO’s regular review mechanism. Prior to 2000, ILO’s interventions against forced labour in India were largely confined to the supervision of the application of the Forced Labour Conventions, in particular Convention No. 29. The case of bonded labour in India was discussed several times by the Committee on the Application of Standards during the International Labour Conference, including between 1994 and 2014 which is the reference period in this paper. The Conference Committee expressed deep concern over the lack of progress regarding the elimination of bonded labour in India but it did not recommend further action under the ILO constitution. Over the same period of time, the CEACR published twelve lengthy observations assessing the country’s institutional arrangements on bonded labour, identification, rehabilitation and enforcement.[17] It also made distinct observations on trafficking and child labour.

Each single observation published since 1994 deplored the lack of reliable statistics which impedes identification and monitoring of progress according to the CEACR. Although the government provided statistics
on the number of released bonded labourers, the CEACR insisted on the need to have a deeper understanding of the scope of the problem and urged the government to cooperate with the ILO in this regard.

A second major concern of the CEACR and its observations since 1994 is related to the enforcement of legislation against bonded labour and related practices. Bonded Labour is illegal in India. The Indian Constitution outlaws trafficking in human beings and forced labour. In 1976, the Indian Parliament adopted the Bonded Labour System (Abolition) Act which defines bonded labour, declares it an illegal practice and provides for monitoring and enforcement mechanisms. For example, it frequently deplored the fact that most vigilance committees did not fulfill their role and function in identifying and releasing bonded labourers. The CEACR was particularly concerned with the low number of prosecutions, convictions and the frequent acquittals of offenders. It requested further information from the government and continued expressing its dissatisfaction about the slow pace of progress on the ground. In more recent years, it also requested information about the effective abolition of the Devadasi system.

Other observations, though fewer in number and couched in softer language, concerned protection, prevention and rehabilitation. The CEACR highlighted the time lag between identification and rehabilitation, pointing out that many bonded labourers are never compensated. It also stressed the importance of organising workers in vulnerable sectors, taking special measures for children and providing adequate funding of rehabilitation schemes.

The responses of the government were not always forthcoming. At times, it expressed dissatisfaction with the fact that India was targeted by the ILO's supervisory system despite the various measures which it had already put in place. Given the seesaw between the CEACR and the government (with Indian social partners being largely absent from the debate), the ILO's operations on the ground were closely monitored. It was only in 2000 that the ILO was able to start large-scale technical cooperation projects against bonded labour in India. Given the critical position of the federal governments project interventions were mainly implemented at state level, starting in Tamil Nadu. In addition, the ILO carefully negotiated a non-threatening approach to bonded labour by focusing on prevention rather than enforcement. Essentially, the ILO's intervention models focused on testing practical solutions, such as the use of micro-finance, convergence of government welfare schemes to enhance access of “at-risk-populations”, inter-state migration agreements, improving the regulation and monitoring of recruitment, community empowerment, organisation of vulnerable workers and social dialogue. In 2011, the federal Ministry of Labour eventually requested ILO's support to scale up the Tamil Nadu model at a pan-India level.

ILO's work on the ground has contributed to the development of a rich body of studies, tools and assessments of bonded labour in South Asia, and more specifically in India. While the direct impact of research, training and capacity building is difficult to measure it has clearly contributed to greater political acceptance and a deeper understanding of the problem. In early 2000, for example, the ILO sensitized members of the Pakistan Federal Shariat Court on issues related to bonded labour. This is turn led to a decision by the Court in 2005 dismissing bonded labour as “being repugnant to injunctions of the Holy Quran and Sunnah”, in opposition to claims of powerful brick kiln owners. In order to justify its reasoning, the Court not only referred to Islamic principles on the treatment of labour but also to ILO Convention No. 29.

There is also evidence that the “agency” of bonded labourers has increased in recent years as a result of ILO interventions and the work of many other organisations on the ground. ILO projects supported various forms of collective action, including unionisation of workers in brick kilns and rice mills and community-based action targeted at the provision of public goods, such as drinking water, access to government welfare schemes, housing, education etc. The evaluation study of ILO's second generation of anti-bonded labour projects found for example that wages increased as a result of collective action.[18] Overall, interventions led to a significant reduction of vulnerability, a decrease in debts and increase in assets in target areas. It also contributed to the empowerment of women on financial matters and their greater involvement in community affairs. Strengthening the position of bonded labourers through collective bargaining is a challenging endeavour however. First because global restructuring of production, which also affects the Indian sub-continent, has led to a structural weakening of union power and a decline of the standard employment relationship on which collective bargaining is largely based. In addition, national trade union and employers organisations are often absent in informal sector activities such as brick kilns. Collaboration between small, informal sector unions, non-governmental organisations and large national federations is often problematic, and the ILO faced difficulties in overcoming those cultural differences and political conflict of interest.[19]

Lessons learned from ILO's micro-finance based approaches are mixed too. While project interventions demonstrated a positive impact on reducing household vulnerability to sudden income shocks (and hence reducing the risk of debt bondage), there are also challenges associated with micro-finance. For example,
is targeting “at-risk-households” feasible and ethical? Would macro-level poverty reduction strategies not be more effective and fair? Is it smart to involve bonded labourers in yet another credit scheme instead of breaking the cycle of debts and credits entirely? An assessment of ILO’s projects suggests that targeting has an impact on reducing vulnerability to bondage but linking micro-finance interventions to community based training and awareness raising activities is important. It also revealed that poor households need training to understand the concept of insurance and to make successful claims. There are gender aspects too. Institutional arrangements that are grass roots based and flexible provide greater opportunities for women’s empowerment.[20]

The “convergence approach” has provided access of the poorest to welfare schemes, but it is not a panacea to address unfair working conditions. “Working out of poverty”[21] is a major objective of ILO’s policies and standards. Wages and productivity are at the core of this debate, and both can and should not be replaced by welfare. So while many challenges still remain it can be concluded that ILO’s technical cooperation to eliminate bonded labour in India and other countries in South Asia has had an impact on reducing vulnerability. It has also brought to light the complexity of deeply entrenched practices of exploitation, discrimination and social exclusion.

### 2.3 Trafficking and exploitation of migrant workers: cases studies from the Middle East

The ILO has made comments on the treatment of migrant workers in relation to Convention No. 29 for many decades but the adoption of the Trafficking Protocol has created a new momentum for supervision and technical cooperation on this issue. In 2001, the CEACR published a general statement linking trafficking in persons to forced labour and henceforth requested information on trafficking-related offences more systematically from ratifying member States. It emphasized special protection measures for migrant workers, the elimination of abuses in the recruitment process and the prevention of labour trafficking through employment-based measures. Observations were addressed to countries in all regions, including major migrant receiving countries.

The focus here will be on the Middle East and the Gulf Cooperation Countries, in particular Jordan, Qatar and the U.A.E.

When analysing CEACR observations and direct requests over the last 20 years with regards to countries in the Middle East, one will notice a striking shift in emphasis. In the 1990s and early 2000, the primary focus of the CEACR was on prison labour (e.g. Jordan, U.A.E) and the freedom of public officials to quit service (e.g. Qatar). In 2002, a shift started to occur regarding the U.A.E. when the issue of child camel jockeys came to the fore, following a communication received from the International Trade Union Confederation (which collaborated with Anti-Slavery International).[22] The exploitation and abuse of children as camel jockeys quickly received international prominence and the case was put on the agenda of the Committee on the Application of Standards in 2003. The Government was requested to collaborate with a “direct contacts mission” to its country which was tasked to investigate the case further.[23]

Eventually, the U.A.E. adopted a law in 2005 that banned the use of children below the age of 18 in camel racing, and supported the repatriation of more than 4,000 children in collaboration with UNICEF.[24]

Also in early 2000, the ITUC started to raise the issue of trafficking in persons to the U.A.E., especially women for the purpose of sexual exploitation. As of 2008, the CEACR requested detailed information about trafficking in persons more broadly, including measures of prevention, prosecution and protection. The Government had enacted a new law against trafficking in 2006, and the CEACR was keen to assess its application in practice. It frequently called for measures to strengthen the protection of migrant workers, in particular migrant domestic workers, and insisted on the freedom to terminate employment (linked to the sponsorship system). In recent years, the ITUC has taken a stronger position against Qatar and the U.A.E., leading to a submission of a representation against both countries under Art. 24. Both cases are still pending.

As for Jordan, the shift in emphasis occurred in 2010 when the CEACR started to request information about the protection of migrant domestic workers from forced labour. In previous years, comments were concerned with the use of prisoners to work for members of the Jordanian army. The law was reformed in 2008 which was noted with satisfaction by the CEACR.

The alleged trafficking of migrant workers in Jordan’s emerging garment industry by contrast was mainly dealt with under ILO’s technical cooperation programmes. The number of migrant workers in Jordan’s garment industry rose quickly from 2000 onwards, notably in factories which were established in export processing zones. The factories produced garments for export to the US under a Free Trade Agreement which both countries signed in 2000. Migrants from Bangladesh, Sri Lanka, India and most recently Nepal and Myanmar account for the majority of workers in these factories. In 2006, US-based non-government organisations reported serious violations of labour law, including forced labour and trafficking in Jordanian export processing zones. Following an investigation of the allegations the Jordanian Ministry of Labour published, in 2007, an Action Plan to improve working conditions and to reinforce its inspection services. At the same time, the ILO
started Better Work Jordan, a garment factory monitoring programme in partnership with the International Finance Corporation (IFC).[25]

In parallel, the ILO supported the Ministry of Labour in the organisation of training courses for labour inspectors, provided advice on the amendment of the Labour Code and the drafting of a new anti-trafficking law and strategy which were adopted in 2009 and 2010 respectively. The government’s swift response and ILO’s technical support resulted in a significant decrease of forced labour cases in garment factories. According to recent reports under the Better Work compliance assessment, forced labour related practices like the retention of passports, restrictions on the freedom of movement and physical abuse have dropped significantly.[26]

There are still problems related to the recruitment of migrant workers and high recruitment fees, forcing many migrants to accept long working hours in order to repay debts. The ILO is currently piloting a “fair recruitment corridor” between Jordan and Nepal under its Fair Recruitment Initiative.[27]

It also started a major migrant governance programme in 2013 which supported legislative changes, helped workers to organise and engaged with media and civil society organisations, and thus contributed to greater openness towards worker representation, protection of migrant workers from exploitation and freedom of employment.

3. Concluding remarks

What can be learned from those selected case studies? First, in all cases, criminalization of certain practices is not enough to bring about lasting change but the enactment of laws prohibiting bonded labour, human trafficking and forced labour was an important starting point. Those laws are also the normative basis of assessing compliance with international standards and their effective implementation. It will certainly take more time until the migration system of certain Arab countries will be reformed so that workers truly enjoy freedom of movement and representation. It will require continued monitoring to ensure that authorities in Myanmar are complying with the reformed Ward and Village Tract Administration Act. And eventually, India may consider a reform of its Bonded Labour System (Abolition) Act to strengthen prosecution and enforcement. All legislative reform processes have to pass the test of universally recognized international standards so that egregious practices of exploitation cannot be justified on the basis of cultural differences, as a means of political repression or for purposes of economic development.

ILO’s Conventions against forced and child labour are almost universally ratified, and ratifying as well as non-ratifying countries are subject to regular reporting and monitoring systems. In addition, the ILO’s complaint procedures can be invoked to bring countries into compliance. The strength of the ILO’s mechanism is to combine normative action with technical assistance, based on dialogue and the soft power of persuasion. This may seem ineffective at times or distanced from the realities on the ground, but ILO standards are important signposts for governments, employers, workers, and civil society organisations. They create a level playing field in an increasingly integrated economy, and as such, they are complementary to other international norms.

Second, normative standards, although important, are not enough. They need to be effectively implemented. As the case studies demonstrated, it sometimes takes a certain amount of external pressure before the ILO will be able to show its effectiveness. Workers’ and employers’ organisations, often in collaboration with civil society, play a key role in raising international consciousness and pressure. Through their membership in the ILO’s governing and supervisory bodies, the voice of the most excluded and exploited is being heard. When workers and employers take concerted action – and they often do on the issue of forced labour – it is very difficult for governments to remain silent. The supervisory system functions as a catalyst of change; however, it is through sustained presence on the ground that the ILO can be most effective. It takes years and sometimes decades before deeply rooted practices change, and before political or economic interests will be aligned with the goal of ending forced labour. Implementation of international and national standards therefore requires “technical cooperation”, such as community-based interventions, strengthening of institutions, and building the capacity of governments and other actors, facilitating the exchange of good practices and maintaining positive and negative incentives to stimulate change.

Third, while progress is happening, a healthy dose of scepticism is necessary to remain vigilant. The exploitation of the poorest and most vulnerable for economic benefit is not a vice or unhealthy habit like smoking. It is part and parcel of an economic system which has brought wealth and well-being to many but which has also exacerbated inequalities and social exclusion. In today’s global economy, there is a constant pressure on labour costs which can lead to a downward spiral of worsening labour standards. Furthermore, over 201 million people were unemployed in 2014 and their number is likely to grow. Social unrest is to be expected where unemployment is high, especially among young people.[28]

An over-supply of desperate and vulnerable people seeking employment at home or abroad brings opportunities for unscrupulous labour brokers, some employers and criminal traffickers who will be tempted by quick profits. Criminal justice is therefore intrinsically tied to social justice, and their joint promotion is not
an option but a necessity. The decent work agenda of the ILO, in particular its system of international labour standards, is therefore an integral part of the struggle against forced labour and human trafficking.

FOOTNOTES

[*] Head, ILO Special Action Programme to Combat Forced Labour (andrees@ilo.org).
[6] The Trafficking Protocol has also taken a different approach from earlier instruments which focused on the “white slave trade” and the suppressions of the traffic in persons and the prostitutions of others. See Kristina Kangaspunta’s (UNODC) contribution to this Academy.
[16] Download at: www.ilo.org/forcedlabour
[18] The study was carried out by the French Institute of Pondicherry in 2006; see also Guérin et al. (2009), op. cit.
[22] Camel jockeying is a Bedouin sport, and children from Bangladesh, Pakistan, Sudan, Mauritania and other countries were recruited to train the camels, resulting in frequent injuries including death of the children involved. Children have now been replaced by robots.
[23] Child camel jockeys were also by Qatar on which the CEACR made comments in this respect since 2002 and until the practice stopped.
