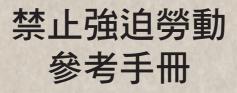




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廣告





中華民國112年11月 編印



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# 壹、前言

消除一切形式的強迫或強制勞動為國際勞工組織 (International Labour Organization,以下簡稱ILO)長 期關注及重視的議題,近年先進國家在雙邊或多邊經貿合 作協定中,多已將消除強迫勞動列入相關勞動章節規範, 我國政府亦持續致力於提升相關勞動權益,以符合國際勞 動趨勢。

我國勞動基準法第5條規定:「雇主不得以強暴、脅 迫、拘禁或其他非法之方法,強制勞工從事勞動。」,違 反者,處5年以下有期徒刑、拘役或科或併科新臺幣75萬元 以下罰金。其立法意旨即係參照ILO「廢止強迫勞工公約」 訂定,以防止雇主利用非法方法強迫勞工工作。

「人口販運防制法」業於112年6月14日修正公布,該 法第2條、第30條已將強迫勞動範圍擴大並明定相關刑責亦 擴大處罰範圍,不適用勞動基準法者亦納入適用,以周延 保障被害人,亦有助於禁止強迫勞動之落實。

為幫助「第一線」刑事執法人員、勞動檢查員、工會 幹部、NGO工作人員及其他人員等,有效辨認可能處於強 迫勞動狀態,以及需要緊急協助的勞動者,ILO提出11項 強迫勞動指標,包括:濫用弱勢處境、欺騙、行動限制、 孤立、人身暴力及性暴力、恐嚇及威脅、扣留身分文件、 扣發薪資、抵債勞務、苛刻的工作及生活條件、超時加班 等,涵蓋強迫勞動情形之主要可能要素,協助相關人員進 行綜合評估及個案辨識,以消弭強迫勞動情事,爰本部特 中譯ILO強迫勞動指標供各界參考。

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# 貳、ILO 強迫勞動指標<sup>1</sup> 指標介紹

ILO強迫勞動指標手冊旨在介紹ILO的強迫勞動指標。該指標係為幫助「第一線」刑事執法人員、勞動檢查員、工會幹部、NGO工作人員及其他人員,辨識出可能處於強迫勞動狀態,以及需要緊急協助的勞動者。這套指標反映出強迫勞動最常見的情況或「線索」。

這套指標係由ILO特別成立的「打擊強迫勞動特別行動方案」 (Special Action Programme to Combat Forced Labour; SAP-FL)彙整理論及實務經驗而來。此處的強迫勞動係根據1930 年 ILO《強迫勞動公約(第 29 號)》之定義:「以懲罰為脅迫手 段,且非自願情況下的工作或服務。」

ILO強迫勞動指標手冊提出十一項指標,並就各指標提出實 例,以簡要的解釋說明該指標的實務意義。這套指標將幫助吾 人瞭解強迫勞動如何發生,及其如何影響受害者。

<sup>1</sup> 翻譯自國際勞工組織(ILO)01 October 2012發布之「ILO indicators of Forced Labour」,參考網址:https://www.ilo.org/global/topics/forced-labour/ publications/WCMS\_203832/lang--en/index.htm。

#### Introducing the indicators

This booklet presents an introduction to the ILO Indicators of Forced Labour. These indicators are intended to help "front-line" criminal law enforcement officials, labour inspectors, trade union officers, NGO workers and others to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance. The indicators represent the most common signs or "clues" that point to the possible existence of a forced labour case.

The indicators are derived from theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). They are based upon the definition of forced labour specified in the ILO Forced Labour Convention, 1930 (No. 29) as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

The booklet presents the eleven indicators in turn, providing reallife examples to illustrate each one, accompanied by a brief explanation of what the indicator means in practice. The indicators will help you to understand how forced labour arises and how it affects its victims.

#### 指標如下:

- · 濫用弱勢處境
- 欺騙
- · 行動限制
- ·孤立
- · 人身暴力及性暴力
- 恐嚇及威脅
- · 扣留身分文件
- · 扣發薪資
- · 抵債勞務
- · 苛刻的工作及生活條件
- · 超時加班

在某些案例中,於在特定情形下,僅單一指標的出現,即意味 著強迫勞動的存在。然而,其他案例可能需要同時指認出多 項指標,並加以綜合評估,才能辨識強迫勞動之情形。總而言 之,這十一項指標涵蓋了強迫勞動的主要可能元素,故可作為 評估依據,研判個別勞工是否淪為強迫勞動罪行的受害者。

ILO所製作用以辨識及調查強迫勞動案件的電子學習工具,提 供了實務上如何運用指標的進一步說明與指導。

#### The indicators are:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case. Overall, the set of eleven indicators covers the main possible elements of a forced labour situation, and hence provides the basis to assess whether or not an individual worker is a victim of this crime.

Further guidance on how to use the indicators in practice is provided in the ILO e-learning tool on identifying and investigating cases of forced labour.





「一位 365 天全年無休的中國籍女傭, 除了『早安』及『晚安』外,不會說任何法語。 因為語言隔閡、持續工作及孤立,處於依賴情況而無法自立。 這位女傭就是名符其實的奴隸。」。

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任何人皆可能是強迫勞動的受害者。然而,如果對當地語言或法令 不熟悉、缺乏生計選擇、隸屬少數宗教或族裔、失能或其具有不同 於多數人的其他特性,這些人就特別容易受到虐待,亦更容易蒙受 強迫勞動。

若只是單純處於弱勢地位,例如:欠缺其他生計選擇,並不必然導 致強迫勞動。但是若雇主利用勞工之弱勢處境,強迫其超時工作或 扣發薪資,則強迫勞動就可能發生。強迫勞動也可能發生在勞工對 雇主有多重依賴之情形下,例如勞工的工作不僅來自雇主的提供, 連住宿、食物及其親戚之工作皆依賴雇主時,強迫勞動的風險也跟 著提高。

#### Abuse of vulnerability

"A Chinese maid who worked 365 days a year did not speak a word of French except "good morning" and "good evening". She was kept in a situation of dependence because of the language, continuous work and isolation. That maid was a veritable slave. "

A labour inspector in France

Anyone can be a victim of forced labour. However, people who lack knowledge of the local language or laws, have few livelihood options, belong to a minority religious or ethnic group, have a disabilitity or have other characteristics that set them apart from the majority population are especially vulnerable to abuse and more often found in forced labour.

The mere fact of being in a vulnerable position, for example, lacking alternative livelihood options, does not necessarily lead a person into forced labour. It is when an employer takes advantage of a worker's vulnerable position, for example, to impose excessive working hours or to withhold wages, that a forced labour situation may arise. Forced labour is also more likely in cases of multiple dependency on the employer, such as when the worker depends on the employer not only for his or her job but also for housing, food and for work for his or her relatives.



「我母親跟我說,她的姐姐打算接我過去與她共同生活。 我阿姨原先答應會支付我的學費, 但她並未履行承諾。而是讓我變成女傭。」

- 尚比亞的某位年輕女性

欺騙意味著並未履行原先對於勞工之口頭或書面承諾。強迫勞動之 受害者,當初在招聘時被承諾的就業機會,通常是合宜且待遇優渥 的職務。然而一旦開始工作後,這些被承諾的工作條件並未實現, 甚至還發現自己被困在惡劣的環境下,且無脫逃的能力。在此情況 下,勞工的同意受僱,既非出自真正的自主同意,也未經過充分告 知。若其知道真相,他們決不會接受這份工作。

欺騙的招聘方式可能包含不實之工作條件及薪資的承諾外,也包括 工作型態、住宿及生活條件、移民身分的取得,乃至於工作地點或 雇主身分的欺瞞等。孩童亦可能因為本人或其父母聽信虛偽承諾, 誤以為有機會就學或經常能與父母見面,而接受招聘。

#### Deception

" My mum told me her sister was planning to come and get me so that I could start living with her. It was my auntie who promised to pay for my school expenses but did not fulfil her promises. Instead she turned me into a maid."

A young Zambian woman

Deception relates to the failure to deliver what has been promised to the worker, either verbally or in writing. Victims of forced labour are often recruited with promises of decent, well-paid jobs. But once they begin working, the promised conditions of work do not materialize, and workers find themselves trapped in abusive conditions without the ability to escape. In these cases, workers have not given free and informed consent. Had they known the reality, they would never have accepted the job offer.

Deceptive recruitment practices can include false promises regarding working conditions and wages, but also regarding the type of work, housing and living conditions, acquisition of regular migration status, job location or the identity of the employer. Children may also be recruited through false promises, made to them or their parents, concerning school attendance or the frequency of visits by or to their parents.



「像監獄一樣,窗戶有欄杆及鐵門。 想都不用想,根本不可能逃走。 持續兩個月的期間,他們把我帶去客戶那裏再帶我回去。 總是有人看守。」

-被販運至俄羅斯賣淫的 16 歲哈薩克女孩

強迫勞動受害者者可能遭到拘禁和看守,以防其於工作或運送期間 逃脫。

如果勞工並不能自由進出工作場所,且受到某種被認為合理的限制,這種情形就可以視之為明顯的強迫勞動指標。合法的限制則可 能包含在危險工作環境下的勞工安全保障的限制,或就醫前夕須先 徵求管理者同意等規定。

透過廠方監視攝影器材或設置守衛,使得強迫勞動的受害者在工作 場所內的行動可能遭到控制,即使要離開工作場所時,往往雇主也 會派人陪同監視。

#### **Restriction of movement**

"There were bars on the windows and an iron door, like a prison. It was impossible to escape, not even worth contemplating. It lasted two months, they took me to clients and brought me back. Always under guard."

A 16-year-old girl from Kazakhstan trafficked for prostitution in Russia

Forced labourers may be locked up and guarded to prevent them from escaping, at work or while being transported.

If workers are not free to enter and exit the work premises, subject to certain restrictions which are considered reasonable, this represents a strong indicator of forced labour. Legitimate restrictions might include those relating to protection of the safety and security of workers in hazardous work sites, or the need to request prior permission of the supervisor to attend a medical appointment.

Forced labourers may have their movements controlled inside the workplace, through the use of surveillance cameras or guards, and outside the workplace by agents of their employer who accompany them when they leave the site.



「工作營區位於很難到達的地區。 要去市中心的話,必須在幾天前就得作出計畫。 運輸工具只有小飛機或河船,旅程可能要花上 22 天。」

-秘魯境內某位脫逃的原住民工人

強迫勞動受害者經常被孤立於偏遠地區,無法與外界接觸。

勞工可能不知其身在何處,工作場所也可能與居住地相隔甚遠,且 可能無交通工具可接駁。但即便置身人口稠密地區,勞工同樣可能 遭到孤立,被拘禁、手機或其他通訊工具被沒收,致使無法與其家 人聯繫或向外尋求協助。

孤立亦可能伴隨營業場所非屬正式機構或未經登記等狀況,導致執 法者或其他機關難以掌握其營業位置,從而亦無法監測勞工處境。

#### Isolation

" The camp was in an area that was very difficult to reach. To travel to an urban centre, you had to plan the journey several days in advance. Transport was only possible by small plane or by riverboat, which could take up to 22 days."

An escaped indigenous worker in Peru

Victims of forced labour are often isolated in remote locations, denied contact with the outside world.

Workers may not know where they are, the worksite may be far from habitation and there may be no means of transportation available. But equally, workers may be isolated even within populated areas, by being kept behind closed doors or having their mobile phones or other means of communication confiscated, to prevent them from having contact with their families and seeking help.

Isolation can also be linked to the fact that the business premises are informal and not registered, making it very difficult for law enforcement or other agencies to locate the business and monitor what is happening to the workers.

# 人身暴力及性暴力

「虐待幾乎在我一抵<mark>達後就開始了,而且變得</mark>更頻繁、更暴力。 我時常被甩巴掌、鞭<mark>打與挨揍。」</mark>

—— 馬來西亞某位 22 歲的柬埔寨籍家務工

強迫勞動受害者、其家庭成員及關係密切友人,均可能遭受實際的 人身暴力或性暴力。暴力亦可能包含強迫服藥或酒等行徑,俾利更 嚴厲掌控。也有可能透過暴力,強迫勞工從事非最初契約規定之任 務,如被迫與雇主或其家庭成員發生性行為,或在其『正常』工作 外,強迫其從事額外的家務。以人身誘拐或綁架方式強迫其工作, 則屬於暴力之極端型態。

在任何情況下,暴力皆屬非法且無法被接受的懲處手段,所以可以 視為非常有力的強迫勞動指標。

#### Physical and sexual violence

"The abuse started almost immediately after I arrived and became more frequent and violent. I was regularly slapped, whipped and punched."

A 22-year-old Cambodian domestic worker in Malaysia

Forced labourers, their family members and close associates may be subjected to actual physical or sexual violence. Violence can include forcing workers to take drugs or alcohol so as to have greater control over them. Violence can also be used to force a worker to undertake tasks that were not part of the initial agreement, such as to have sex with the employer or a family member or, less extreme, to undertake obligatory domestic work in addition to their "normal" tasks. Physical abduction or kidnapping is an extreme form of violence which can be used to take a person captive and then force them to work.

As violence is not acceptable as a disciplinary measure under any circumstances, it is a very strong indicator of forced labour.



「當我告訴女老闆我想離開時,

她威脅我交出600美元來,否則她就要向警察告發我是非法打工。 因為我沒有合法文件,

我什麼也不能做,而且我知道警察不會幫我。」

一黎巴嫩某位 31 歲的衣索比亞籍移工

強迫勞動受害者一旦抱怨所處環境或想辭職時,可能會面臨恐嚇及 威脅。

除了人身暴力威脅外,其他常見的威脅包含向移民主管機關告發、 扣發薪資、失去居所或土地、家庭成員遭解雇、更為惡劣的工作環 境,或『優惠』被取消,如離開工作場所的權利。持續羞辱及貶低 勞工,亦屬一種心理脅迫的形式,其目的在強化其弱勢感受。

威脅的可信度及其影響,應從勞工本身的角度來評估,並應將其個 人信仰、年齡、文化背景及社會經濟地位納入考量。

#### Intimidation and threats

"When I told the woman I was working for that I wanted to leave, she threatened me and said that unless I paid \$600, she would go to the police and tell them I had no papers. There was nothing I could do because I don't have papers, and I know the police will not help me."

A 31-year-old Ethiopian migrant worker in Lebanon

Victims of forced labour may suffer intimidation and threats when they complain about their conditions or wish to quit their jobs.

In addition to threats of physical violence, other common threats used against workers include denunciation to the immigration authorities, loss of wages or access to housing or land, sacking of family members, further worsening of working conditions or withdrawal of "privileges" such as the right to leave the workplace. Constantly insulting and undermining workers also constitutes a form of psychological coercion, designed to increase their sense of vulnerability.

The credibility and impact of the threats must be evaluated from the worker's perspective, taking into account his or her individual beliefs, age, cultural background and social and economic status.

## 「當我通過入境海關,司機就搶走我的護照。 我無法離開,因為我的護照在雇主哪裡, 沒有護照我哪裡也去不了。」

扣留身分文件

一阿拉伯聯合大公國的某位尼泊爾籍清潔工

雇主一旦扣留身分文件或其他有價值的個人財產,而勞工卻缺乏管 道以取得及討回這些文件或財產,或判斷自己選擇離職恐將失去相 關文件或財產的情況,亦可視為強迫勞動的構成要件。在許多情形 下,若沒有身分文件,勞工將無法獲得其他工作或得到基本服務, 也很可能不敢向主管機關或非政府組織求助。

#### **Retention of identity documents**

"As I passed through immigration, the driver grabbed my passport. I cannot leave because my passport is with the employer, and I cannot move around without it."

> A Nepali man working as a cleaner in the United Arab Emirates

The retention by the employer of identity documents or other valuable personal possessions is an element of forced labour if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss. In many cases, without identity documents, the worker will not be able to obtain other jobs or access essential services, and may be afraid to ask for help from authorities or NGOs.



「剛開始的時候,他答應會支付我工資,因此我開始工作。 期間他給我食物,有時買衣服給我。但就是等不到我的薪資。 當我詢問他薪水,他就說:『等賣掉這些貨後。』 我只好繼續幫他工作。一晚,我告訴他我想拿回薪資, 因為我想要離開了。他跳到我面前開始打我, 並對我大吼『你想走就走,但我不會給你任何東西。』 我哭著離開了。我在他那裡待了 16 個月卻一分錢也沒拿到。」

一尼日的某位 16 歲男孩

勞工在等待積欠薪資撥付的期間裡,可能被迫繼續服務苛刻的雇 主。不定期或延遲核發薪資,未必構成強迫勞動情形,但若薪資是 有系統地、蓄意地遭到扣押,以迫使勞工繼續工作,並剝奪勞工轉 換雇主之機會,就算是強迫勞動的情形。

### Withholding of wages

"At the beginning, he promised me a salary and I started to work. He gave me food and sometimes bought me some clothes. But I was still waiting for my salary. When I asked him about my salary, he would say: 'After selling these products'. I would continue working with him nevertheless. One night, I told him I wanted what he owed me because I wanted to leave. He jumped at me and started beating me and shouting at me 'You can leave if you want but I won't give you anything.' I left crying. I had stayed 16 months at his place, but got nothing. "

A 16-year-old boy in Niger

Workers may be obliged to remain with an abusive employer while waiting for the wages that are owed to them. The fact of irregular or delayed payment of wages does not automatically imply a forced labour situation. But when wages are systematically and deliberately withheld as a means to compel the worker to remain, and deny him or her of the opportunity to change employer, this points to forced labour.



「一位工人向一名仲介借了20,000盧比。 後來工人清償了大部分債務,只剩4000盧比時, 該名仲介卻宣稱這位工人欠他40,000盧比。 他被派來礦坑工作,仲介的兒子就在外面監視。」

一巴基斯坦的某位礦工領袖

強迫勞動受害者者經常是為了清償既有債務,甚至是繼承而來的債 務而工作。債務發生的原因可能是預支薪資或貸款,以支付招募或 交通費用,或是每日生活支出,或緊急開銷,如醫療費用。債務可 能因為帳目被造假而膨脹,這在受害勞工不識字的情況尤為嚴重。 抵債勞務亦可能發生於以招募孩童為條件,迫使必須借錢的父母或 親戚不得不同意等情形。雇主或招募者亦可能透過蓄意降低勞務對 價、提高貸款利率,或以食宿費用抵減為名目,導致勞工難以擺脫 債務。

抵債勞務—或以工抵債—反映了勞方債務人以及資方債權人之間的 權力不平等。這造成勞工在長短不一的未知期間內,被迫只能替該 名雇主工作,該期間可能從一季到幾年,甚至連續好幾個世代。此 種債務完全不同於從銀行或其他獨立貸款機構借貸,且還款條件是 經由雙方同意且接受的正常借貸方式。

#### Debt bondage

"A worker borrowed Rs. 20,000 from a middleman. When he had paid back all but Rs. 4000, the middleman falsely claimed that the worker owed him Rs. 40,000. He was made to work in the mine, while the middleman's son kept watch outside."

A labour leader in a mine in Pakistan

Forced labourers are often working in an attempt to pay off an incurred or sometimes even inherited debt. The debt can arise from wage advances or loans to cover recruitment or transport costs or from daily living or emergency expenses, such as medical costs. Debts can be compounded as a result of manipulation of accounts, especially when workers are illiterate. Debt bondage may also arise when children are recruited in exchange for a loan given to their parents or relatives. Employers or recruiters make it difficult for workers to escape from the debt, by undervaluing the work performed or inflating interest rates or charges for food and housing.

Debt bondage – or bonded labour – reflects an imbalance in power between the worker-debtor and the employer-creditor. It has the effect of binding the worker to the employer for an unspecified period of time, anything from a single season, to years, or even successive generations. It bears no resemblance to taking a "normal" loan from a bank or other independent lender, for repayment on mutually agreed and acceptable terms.

# 苛刻的工作及生活條件

「勞工住在塑膠棚、飲用污水,為了把他們藏起來, 他們被關在灌木叢後的洞裡,直到我們離開。」

- 某勞動檢查員描述巴西一處農場的情況

強迫勞動受害者,可能必須忍受著一般勞工在自由選擇下絕對不會 接受的生活及工作條件。工作可能是在惡劣(受辱或骯髒)或危險 (處境困難或危險,缺乏適當保護措施)的環境下執行,同時嚴重違 反勞工法規。強迫勞動受害者亦可能處於低於標準的生活環境,不 得不住在過於擁擠、不健康且毫無隱私的環境下生活。

若只是處於極度糟糕的工作或生活條件裡,尚無法證明必然存在強 迫勞動;不幸的是,勞工可能會因為缺乏其他工作選擇,而「自 願」接受惡劣的條件。然而,嚴苛的條件應該代表一項「警訊」, 暗示著為了防範受剝削勞工離職或逃跑,所施加的脅迫亦可能存 在。

#### Abusive working and living conditions

"The workers were housed in plastic shacks, drinking contaminated water, and they were kept in holes behind bushes in order to hide them until we left."

A labour inspector describing the conditions in a Brazilian fazenda

Forced labour victims are likely to endure living and working conditions that workers would never freely accept. Work may be performed under conditions that are degrading (humiliating or dirty) or hazardous (difficult or dangerous without adequate protective gear), and in severe breach of labour law. Forced labourers may also be subjected to substandard living conditions, made to live in overcrowded and unhealthy conditions without any privacy.

Extremely bad working and living conditions alone do not prove the existence of forced labour; unfortunately, people may sometimes "voluntarily" accept bad conditions because of the lack of any alternative jobs. However, abusive conditions should represent an "alert" to the possible existence of coercion that is preventing the exploited workers from leaving the job.





「我必須一天工作19小時,中間沒有任何休息, 也沒有加班費或假期。他們對我宛如牲畜。」

一尼泊爾的某移工

強迫勞動者可能被強迫超時工作,工作時數超過國家法律或團體協約所議定之時數或日數限制。他們無法休息或休假,必須接手缺勤同事的班別及工作時間,或處於每日 24 小時,每周工作7天的待命狀況。

超時工作是否構成強迫勞動罪名,判斷可能十分複雜。依照基本經 驗法則,若受僱者受到某種形式的威脅(例如:解僱),或為了至少 能賺取最低工資,以致逾越了國家法令所允許的超時上限,這就構 成強迫勞動。

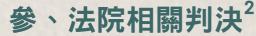
#### **Excessive overtime**

" I had to work 19 hours a day without any rest and overtime payment or holiday. They treated me like an animal."

A Nepali migrant worker

Forced labourers may be obliged to work excessive hours or days beyond the limits prescribed by national law or collective agreement. They can be denied breaks and days off, having to take over the shifts and working hours of colleagues who are absent, or by being on call 24 hours a day, 7 days a week.

The determination of whether or not overtime constitutes a forced labour offence can be quite complex. As a rule of thumb, if employees have to work more overtime than is allowed under national law, under some form of threat (e.g. of dismissal) or in order to earn at least the minimum wage, this amounts to forced labour.



#### -、臺灣高雄地方法院97年審簡字第1309號刑 事判決摘錄:

核被告甲〇〇所為,係犯勞動基準法第5條強制勞動禁止罪,應依 同法第75條處斷。又被告同一強制勞動禁止之行為,雖自民國95 年4月1日起持續至96年8月29日為警查獲時止,然上開行為,本質 上即含有反覆為之之特質,並具有場所、時間密接性,足認被告自 始即基於反覆實施之犯意,應屬具有預定同種類行為將反覆實行之 集合犯。爰審酌被告為圖謀己利,基於強制勞動之故意,強制勞工 超時工作,並苛扣薪資,所為實有不該,且否認犯行,態度非佳等 一切情狀,量處如主文所示之刑,並諭知易科罰金之折算標準,以 資懲儆。

#### 二、最高法院104年度台上字第2189號刑事判決 摘錄:

- (一)然甲〇〇於九十八年六月一日以前之行為,斯時人口販運防制 法或未制定公布或已公布尚未施行,何以該時之行為得適用上 開規定予以處罰?原判決未說明其理由,嫌有理由欠備之違 失。且依罪刑法定主義,原判決依甲〇〇行為時無處罰明文之 法律據以論罪科刑,併有法則適用不當之違法。
- (二)勞動基準法第五條規定:「雇主不得以強暴、脅迫、拘禁或其 他非法之方法,強制勞工從事勞動。」「違反第五條規定者, 處五年以下有期徒刑、拘役或科或併科新台幣七十五萬元以下 罰金。」勞動基準法第七十五條定有明文。勞動基準法第三條 明文規定應適用行業之範圍。本件樺欣公司、迪耐公司是否屬 應適用上開規定之行業?倘結論為肯定,則如原判決所認定之 甲〇〇在九十八年六月一日以前,有以脅迫之方法,強制外勞

<sup>2</sup> 「人口販運防制法」已於112年6月14日 修正公布全文 47 條,施行日期 由行政院定之,修正後條文所稱「勞動與報酬顯不相當」之定義,係參酌現 行人口販運防制法施行細則第4條增訂,相關判決仍可參考。 從事勞動,是否該當前開規定應予論處?原判決何以未適用上 開規定?其理由為何?均未加說明,同有理由欠備之違失。

(三)人口販運防制法第三十二條規定,乃係針對「勞動剝削」的人 口販運犯罪行為,所為之規範;包括兩種使人從事勞動與報酬 顯不相當之不同行為型態。該條第一項之犯罪,主觀上須有「 意圖營利(剝削)」之犯罪動機或目的,客觀上祇要有為求牟 利而剝削之行為,即足構成,至於實際得利與否,則非所問。 因此包括不給予對待給付,剋扣應給予之對待給付,或為其他 顯失公平或不相當之對待給付,甚或因而減少成本或費用支 出,以及其他類似變相作為等情形,倘綜合各情(包括長時間 觀察),客觀上足認勞工所得報酬,與其所從事之勞動,顯不 相當而遭剝削,即該當。又人口販運行為之不法手段範圍廣 泛,除事實強制外,尚包括心理強制;諸如透過暴力威脅或使 用暴力手段,或透過其他形式之脅迫、誘拐、欺詐、濫用權 力、濫用脆弱境況,或透過授受酬金或利益而取得對另一人有 控制權的某人的同意等手段,包括行為人使用不法手段,縱事 先得到被害人之同意或承諾,仍不發生阻卻構成要件該當或違 法之效力。因此「勞動剝削」之認定,除應注意前揭要件外, 並應體察國際公約精神,除強制(手段不法)勞動外,是否違 背當事人之意願(指真實的同意)乙節,尤其重要。另外我國 法之勞動條件法規,亦屬勞動剝削判斷準據之一。

#### 三、臺灣彰化地方法院109年度訴字第826號刑 事判決摘錄:

被告丙〇〇、乙〇〇就犯罪事實二(一)、(二)、(三)、(四)、(五)、(六)部分, 係不以人道相待,而以毆打、拘禁、餵食狗屎等、剃髮、不合理債 務約束等、綑綁、以空氣槍射擊、電擊等方式,甚至以不確定故意 為殺人未遂犯行,任意處置被害人林〇〇、少年羅〇〇之生命、身 體、自由權利,使被害人2人居於其不法實力支配之下,喪失獨立 自主、自由支配的能力,而失去其普通人格者應有之自由,即喪失 意思行動自由,居於類似奴隸之地位,並以上述強暴、脅迫、恐 嚇、拘禁、監控等違反被害人林OO、少年羅OO本人意願之方 法,使被害人林OO、少年羅OO人無償從事勞動而與報酬顯不相 當之工作。

#### 四、臺灣臺中地方法院111年度訴字第2566號刑 事判決摘錄:

意圖營利,以強暴、脅迫、恐嚇、拘禁、監控、藥劑、詐術、催眠 術或其他違反本人意願之方法,使人從事勞動與報酬顯不相當之工 作者, 處7年以下有期徒刑, 得併科500萬元以下罰金, 人口販運 防制法第32條第1項定有明文。又「勞動與報酬顯不相當」,係指 綜合考量被害人實際勞動所得報酬與其工時、工作內容、工作場所 或工作環境等勞動條件相較顯不合理而言,人口販運防制法施行細 則第4條定有明文。意即須考量被害人之主觀認知及客觀一般人之 通念,綜合比較被害人從事之勞動與所得報酬,均認被害人從事之 勞動與所得報酬之對價關係顯不合理。杳告訴人指稱:我們在「長 |鴻公司 | 全部都集中在園區的某間工作室 , 利用交友軟體 「探探 | 、「檸檬」等把臺灣人招募到柬埔寨工作,我們工作時間為上午11 時至下午11時,每周工作7日。因為怕我們逃走,我的護照、雙證 件、手機都被收走,我們不能離開園區,每個出入口都有多名攜帶 雷擊棒的保安,四周都有監視器在監控我們的一舉一動,讓我感到 非常害怕。每周會給我們使用1次手機的時間,向家人報平安,我 在園區期間不詳身分大陸主管指使員工打我巴掌,因為我犯了不能 拍照、不能視訊、刪除招攬客人訊息的錯,我每2、3天就被打。我 都沒有領到薪水,賠付金約美金2萬4.000元,就被轉賣到中國城, 之後再被轉賣到其他公司等語,本件依告訴人之指訴,足認其遭以 **強暴、拘禁、監控之方法從事與報酬顯不相當之勞動工作**,該當人 口販運防制法第32條第1項之構成要件。

#### 五、最高法院110年度台上字第2054號刑事判決 摘錄:

人口販運防制法第32條第2項所稱勞動與報酬顯不相當,指綜合考 量被害人實際勞動所得報酬與其工時、工作內容、工作場所、工作 環境等勞動條件相較顯不合理者;所稱利用他人不能、不知或難以 求助之處境,指人口販運加害人利用被害人非法入境、非法居留、 身處異鄉、語言不通,或其他相當情形之弱勢處境;人口販渾防制 法施行細則第4條、第6條定有明文。本件原判決於事實欄載敘甲 ○○等3人利用A1為外籍勞工無法在臺自由尋找雇主,為免遭期前 解約遣返,僅得容忍雇主不法勞動指揮,且對臺灣環境陌生、語言 不通等難以求助之弱勢處境,除代繳健保費、仲介服務費及〇〇公 司之貸款外,未給予A1應得之薪資及加班費共新臺幣(下同)1萬 1.951元等情,已就A1之勞動情形、報酬及難以求助之弱勢處境予 以記明,並於理由內說明其所為之勞動與報酬顯不相當,參諸上開 有罪判決書之犯罪事實得與理由合併記載規定之意旨,既與甲〇〇 等3人犯前揭違反人口販運防制法罪名之論斷不生影響,縱於事實 欄未詳加記述勞動與報酬顯不相當之旨,無礙於判決結果,同非適 法之第三審上訴理由。又原判決依上開事證,就甲〇〇以代為保管 名義收回應給付A1之薪資,A1事實上未取得報酬,甲〇〇等3人 明知此情而為,有貪圖免支付報酬之犯意,主觀上自具營利意圖, 且非單純獲有利益,已達剝削A1勞動力之程度等情,理由內已析 論明白,符合論理法則日不諱背社會經驗之合理判斷,依所確認之 事實,論以前揭違反人口販運防制法之罪名,洵無違誤,無所指理 由不備、證據調查未盡之違法。



附錄一、勞動基準法、人口販運防制法相關規定

# 法規名稱:勞動基準法

## 第5條

雇主不得以強暴、脅迫、拘禁或其他非法之方法,強制勞工從事勞動。

# 第75條

違反第五條規定者,處五年以下有期徒刑、拘役或科或併科新臺幣七十五 萬元以下罰金。

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## 法規名稱:人口販運防制法

本法112.06.14修正公布全文47條,施行日期由行政院定之。

#### 第2條

本法用詞,定義如下:

- 一、人口販運:指基於剝削意圖或故意,符合下列要件者:
  - (一)不法手段:以強暴、脅迫、恐嚇、拘禁、監控、藥劑、催眠 術、詐術、故意隱瞞重要資訊、不當債務約束、扣留重要文 件、利用他人不能、不知或難以求助之處境,或其他相類之方 法。但對未滿十八歲之人從事人口販運,不以符合不法手段為 必要。
  - (二)不法作為:
    - 1.從事招募、買賣、質押、運送、交付、收受、藏匿、隱避、 媒介、容留國內外人口。
    - 2.使他人從事有對價之性交或猥褻行為。
    - 3.使人為奴隸或類似奴隸、強迫勞動、從事勞動與報酬顯不相當之工作或實行依我國法律有刑罰規定之行為。
      4.摘取他人器官。
- 二、人口販運罪:指從事人口販運,而犯本法、刑法、勞動基準法、兒童 及少年性剝削防制條例、人體器官移植條例或其他相關之罪。
- 三、不當債務約束:指以內容或清償方式不確定或顯不合理之債務約束他人,以履行或擔保債務之清償。
- 四、勞動與報酬顯不相當:指綜合考量實際勞動所得報酬與其工時、工作 內容、工作場所、工作環境等勞動條件,與相類工作之一般勞動條件 相較顯不合理。

#### 第30條

以強暴、脅迫、恐嚇、拘禁、監控、藥劑、詐術、催眠術或其他相類之方 法,使人提供勞務者,處五年以下有期徒刑,得併科新臺幣三百萬元以下 罰金。

意圖營利犯前項之罪者,處一年以上七年以下有期徒刑,得併科新臺幣五 百萬元以下罰金。

前二項之未遂犯罰之。

#### 第31條

以強暴、脅迫、恐嚇、拘禁、監控、藥劑、詐術、催眠術或其他相類之方 法,使人從事勞動與報酬顯不相當之工作或實行依我國法律有刑罰規定之 行為者,處一年以上七年以下有期徒刑,得併科新臺幣五百萬元以下罰 金。

利用不當債務約束、他人不能、不知或難以求助之處境、扣留重要身分證 明文件,使人從事勞動與報酬顯不相當之工作或實行依我國法律有刑罰規 定之行為者,處三年以下有期徒刑,得併科新臺幣一百萬元以下罰金。

利用未滿十八歲之人,使之從事勞動與報酬顯不相當之工作或實行依我國 法律有刑罰規定之行為者,處一年以上七年以下有期徒刑,得併科新臺幣 五百萬元以下罰金。

意圖營利犯前三項之罪,依下列規定處罰:

- 一、犯第一項或前項之罪者,處三年以上十年以下有期徒刑,得併科新臺
  幣七百萬元以下罰金。
- 二、犯第二項之罪者,處一年以上七年以下有期徒刑,得併科新臺幣五百 萬元以下罰金。

前四項之未遂犯罰之。

#### 第33條

意圖剝削,以強暴、脅迫、恐嚇、拘禁、監控、藥劑、催眠術、詐術、不 當債務約束、利用他人不能、不知或難以求助之處境或其他相類之方法而 對他人從事招募、買賣、質押、運送、交付、收受、藏匿、隱避、媒介、 容留者,處五年以下有期徒刑,得併科新臺幣三百萬元以下罰金。

意圖剝削,對未滿十八歲之人從事招募、買賣、質押、運送、交付、收 受、藏匿、隱避、媒介、容留者,處七年以下有期徒刑,得併科新臺幣五 百萬元以下罰金。 前二項之未遂犯罰之。



附錄二、第29號公約:強迫勞動、1930年

#### 第二十九號公約:強迫勞動、一九三〇年 (C029 -Forced Labour Convention, 1930)

國際勞工組織大會,經國際勞工局理事會召集,於一九三〇年六月十日在 日內瓦舉行其第十四屆會議,經決定採納本屆會議議程第一項關於強迫或 強制勞動的某些提議,並經確定這些提議應採用國際公約的形式,於一九 三〇年六月二十八日通過以下公約,引用時得稱之為一九三〇年強迫勞動 公約,供國際勞工組織會員國依照國際勞工組織憲章的規定予以批准。

#### 第一條

 1.凡批准本公約之會員國,應允諾在最短可能期間內,廢止各種強迫勞動。
 2.在全面廢止前的過渡時期,只有因公共目的及作為例外措施,且須遵守 本公約下列之條件及保證,始得使用強迫或強制勞動。<sup>3</sup>

3.本公約發生效力五年後,國際勞工局理事會,當其編撰按本公約第三十 一條所規定之報告時,須審查能否不再延長過渡時期而立刻廢止各種強 迫或強制勞動;及可否將此問題列入大會議程。<sup>4</sup>

#### 第二條

 本公約所稱「強迫勞動」係指一切勞動或服務,得自於某種懲罰之威 脅,而非出於本人自願者。

2.雖然如此,基於本公約的目的,所稱「強迫勞動」不包括下列各項:

(a)任何勞動或服務,為義務兵役法所徵取,而純屬軍事性質者。

(b)任何勞動或服務,為完全自治國普通公民義務之一部分者。

(c)任何勞動或服務,為法院判決之結果者,但其勞動或服務,應受主管

- <sup>3</sup>根據1930年強迫勞動公約2014年議定書第7條刪除。
- <sup>4</sup> 根據1930年強迫勞動公約2014年議定書第7條刪除。

機關之監督及管理,而從事該工作的個人,不得由私人、公司及社團 任意僱用或受其處置。

- (d)任何勞動或服務,因緊急事變而徵取之者;所謂緊急事變,係指戰爭 或已發生或即發生之災害、如火災、水災、饑荒、地震、惡性傳染 病,或寄生蟲病,禽獸侵害,昆蟲及植物之毒害,概言之,凡危害全 體或一部份人民生命或福祉之任何情況。
- (e)社區成員所履行的某種簡易服務,與該社區有直接之利益關係,得視為該社區成員之普通公民義務者,但此項服務之需要與否,該社區成員或其直接代表應有受諮詢之權。

#### 第三條⁵

基於本公約的目的,所稱之「主管機關」,係指宗主國之機關或有關領地 之中央最高機關。

#### 第四條

- 主管機關不得徵取或允許徵取強迫或強制勞動,為私人或公司或社團之本身利益。
- 2.凡會員國於批准本公約向國際勞工局局長登記之時,如仍存有為私人或 公司或社團利益之強迫或強制勞動,須於本公約對該會員國生效之日 起,應全面廢止此種強迫或強制勞動。

#### 第五條

 1.凡私人、公司或社團之獲得特許經營權者,不得因此而涉及使用任何強 迫或強制勞動,以為從事生產或採集其欲利用或販售之產品。
 2.如該種特許中已附此類強迫或強制勞動權利者,此項條件,應從速取

消,以符合本公約第一條之規定。

<sup>5</sup> 第3條至第24條<sup>,</sup>根據1930年強迫勞動公約2014年議定書第7條刪除。

#### 第六條

縱使行政官員負有鼓勵所屬人民在其管轄下從事勞動之責任時,仍不得強 迫全部或個別成員為私人,公司或社團之利益而勞動。

#### 第七條

1.凡無行使行政權之酋長,不得徵用強迫或強制勞動。

 2.有行使行政權之酋長,在獲得主管機關的明確許可時,依據本公約第十 條之規定,得徵用強迫或強制勞動。

3.凡被正式認可之酋長,如未受領其他方式之適當報酬者,得允許其在規 定之下享受個人之服務,並須採取一切必要措施防止濫用。

#### 第八條

1.決定徵用強迫或強制勞動之責任,應為有關領地之最高民政機關。

2.雖然如此,倘強迫或強制勞動,為無需勞工離開其通常居住地者;則主 管機關得將徵用之權,委托地方最高機關。倘強迫勞動,為需勞工離開 其通常居住地者,則為便利行政官員執行職務時之行動,及運輸政府之 貨物起見,該機關亦得將徵用之權,委托地方最高機關;但其期間與條 件須受本公約第二十三條規定之限制。

#### 第九條

除本公約第十條另有規定外,凡有權徵用強迫或強制勞動之主管機關,於 未決定徵用之前,須查明;

- (a)所操之勞動或所作之服務,乃對提供該勞動與服務之社區有直接重要 之利益者。
- (b)該種勞動或服務,乃當前或迫切之必要者。
- (c)在提供之工資率及勞動條件,並不劣於當地類似之勞動與服務,而不 能得到自願勞動者履行該勞動與服務者。
- (d)從可提供的勞動力及其工作能力上,該勞動或服務不致予當地人民以 過重之負擔者。

#### 第十條

- 1.徵取強迫或強制勞動為租稅者,以及由有行政職權之酋長,為推行公共
  工作而徵用之強迫或強制勞動,均應逐漸廢止之。
- 2.因上述情形而徵取或徵用強迫或強制勞動時,有關機關首應查明:
  - (a)所操之勞動或所作之服務,乃對提供該勞動與服務之社會有直接重要 之利益者。
  - (b)該種勞動或服務,乃為當前或迫切之必要者。
  - (c)從可提供的勞動力及其工作能力上,該勞動或服務不致與當地人民以 過重之負擔者。
  - (d)該種勞動或服務,無須勞工離開其通常居住地點者。
  - (e)該種勞動或服務,係按宗教、社會生活,及農業之需要而行者。

#### 第十一條

- 1.惟體格健全之成年男子,其年齡明顯在十八歲以上四十五歲以下者,得 被徵用強迫或強制勞動;除本公約第十條所規定之各種勞動者外,須受 下列各項之限制:
  - (a)凡可能時,在決定之前,先須經行政機關指定之醫事官員,檢查有關 人員確無感染傳染病,且體能適宜於該項工作及執行該項工作的相關 條件。
  - (b)凡學校教師學生及一般行政官員,概應豁免。
  - (c)為各地社區保留若干健全之成年男子,為家庭及社會生活不可少者。(d)尊重夫婦及家庭之關係。
- 2.為前項第(c)款之目的,應依本公約第二十三條所指之規定,將住區之成 年壯丁,每次可被徵用強迫或強制勞動者,訂出比例。但此比例,在任 何情形之下,不得超過百分之二十五。並在訂定比例之際,主管機關應 考慮該地人口之密度,社會及物質之發展,季節之關係,及人民自已必 須要完成之工作;概言之,應顧及該社區正常生活上之經濟及社會之必 要。

#### 第十二條

 任何人從事各種強迫或強制勞動之最長期間,在任何一個的十二個月期 間內,不得逾六十日;往返工作地點所費時間,併計在內。

 2.凡經被徵取強迫或強制勞動者,均須給以證書,以證明其完成此項勞動 之時期。

#### 第十三條

- 1.無論何人,被徵用強迫或強制勞動者,其正常工作時間,須與自願勞動 者相同,逾此正常工作時間,其報酬率,亦應與自願勞動者延長工作時 間之報酬相同。
- 2.凡被徵用強迫或強制勞動者,每週應有一日之休息,該休息日應儘量與 該領地或地區之傳統或習俗一致。

#### 第十四條

 1.除本公約第十條所規定之強迫或強制勞動外,一切強迫或強制勞動,應 以現金支付其工資,且工資率不得少於工作地區或招募地區同類工作之 工資率,且該兩地之工資率取其較高者為標準。

 2.若係酋長於行使其行政上之職務,徵用之強迫勞動,應盡速採用前項之 規定,給付工資。

3.工資應付給勞工個人,而不應付給其部落之酋長或其他機關。

4.為工資之給付,往返工作地點之時日,應照工作日計給工資。

5.本條所定,不禁止以普通糧食充當一部分工資,予以給付,但糧食之價值,至少應與所扣之貨幣工資相等,惟捐稅之繳納,特殊食品、服裝、 住宅設備之提供,用以維持勞工於特定情狀下從事其工作者,以及工具 之供給,均不得在工資內扣除之。

#### 第十五條

- 1.凡關於勞工因工作而致之災害或疾病,予以賠償之法律或條例,及殘廢 或死亡勞工家屬賠償之法律或條例,在該地已施行者,或將施行者,對 於強迫或強制勞動者及自願勞動者,一併適用之。
- 2.凡僱用強迫或強制勞動之機關,在任何情形之下,凡遇勞工因工作而發 生災害或疾病,致完全或部分的不能自給時,應負保障其生活之責,其 實際依賴該勞工為生之任何人,亦應設法維持之。

#### 第十六條

- 1.被強迫或強制勞動者,除特別必要時,不得遷移至飲食氣候與其所習慣 者差異甚大之地區,致碍其健康。
- 2.被強迫或強制勞動者,除非衛生及居住必要之相關措施,使其適應該環境,並確保其健康,否則不得遷移之。
- 3.若此種遷移不能避免時,應由具資格之醫生建議採取措施,以使勞工逐 漸習慣該地之飲食與水土。
- 4.若需被強迫或強制勞動者,從事非其慣常之日常工作時,應採取措施使 之習慣,特別是對該勞工施以漸進的訓練,工作之時間中提供適當間隔 的休息時間,以及為必要之膳食的增加或調整。

#### 第十七條

被強迫或強制勞動者,如為建築或維護工作,須在工作地點作長期之停留 時,主管機關在允許徵用此項勞動之前,須查明:

- (a)採取所有必要的措施,以保障勞工之健康,並保證必需的醫療照顧, 尤須注意:
  - (i)勞工在工作以前及在一定工作期間內,應給予醫療檢驗;
  - (ii)設置足以勝任之醫療人員,並提供藥房、病舍、醫院及其他應付各種需要之必要設備;

(iii)工作地點之衛生條件,提供飲水、食物、燃料、炊具,暨必要時,適當居房,衣服之供給。

- (b)應有切實的安排,確保障勞工家屬之生活,尤應注意用安全方法,經 勞工之請求或同意,匯寄一部份工資至勞工家中。
- (c)勞工往返工作地點之交通費用及其責任,應由管理機關負責。該機關 並應用各種有效之運輸工具,予以行程上之便利。
- (d)勞工如有疾病或意外,以致在一定期間內不能工作時,管理機關應出 資予以遣返。
- (e)任何勞工,如願於強迫或強制勞動期間終止時,留作自願的勞工,應 予同意,且兩年之內,仍不失其享受資遣返之權利。

#### 第十八條

- 1.用於運送人員或貨物之強迫或強制勞動者,如挑夫或船夫,應在最短可 能期間內廢止之;在未廢止之前,主管機關應公布條例,規定下列各 款:
  - (a)此種勞動只在便利行政官員執行職務時之行動,或政府貨物之運輸,至於非官員之運送,非絕對必要時不得適用之;
  - (b)從事此種強迫或強制勞動之勞工,如醫療檢驗為可能時,則當檢據證 明其身體合格,如醫療檢驗不能實行時,則雇主當負責保證其身體合 格,日無任何傳染病;

(c)勞工所能負荷之最高重量;

- (d)勞工從家鄉調往他處之最遠距離;
- (e)勞工於每月或其他一定期間內,其被徵用之最多日數,包括其回家所 需日數在內;
- (f)准許得以徵用此種強迫或強制勞動之人員,及其徵用之範圍。
- 2.當訂定前項第(c)(d)(e)款之最高限度時,主管機關應考量其有關之因素, 包括召募勞工該地人民體力之發展、勞工所必須經過地方之性質及氣候 情形等。

3.主管機關應另規定,此種勞工通常每日之行程,不得超過與平均每日八 小時工作相當之距離,且不僅勞工負荷之重量及行走之距離,亦應顧及 道路之情形,季節之變化以及所有其他相關因素,當所行走之時間,超 過平常每日之行程,則其報酬率,應較正常為高。

#### 第十九條

- 1.為預防饑荒或糧食供給短缺時,主管機關應准許強迫耕種,惟其收穫之 產物,應歸生產之個人或社區。
- 2.凡一社區按其法律或習俗,生產係以社區為基礎而組織,且其產物或其 所獲之利益,歸社區共有者,本條不禁止其按法律或習慣,使人民有工 作之義務。

#### 第二十條

凡因社會中任何分子犯法而定之懲罰,該社會之集體懲罰法不得規定以強 迫或強制勞動為懲罰方法之一。

#### 第二十一條

強迫或強制勞動不得適用於礦場之地下工作。

#### 第二十二條

凡批准本公約之各會員國,按國際勞工組織憲章第二十二條之規定,提報 國際勞工局施行本公約相關規定之各項措施之年度報告,應力求詳盡記 載,就各有關領地,對該地徵用強迫或強制勞動之範圍、使用之用途、勞 工之疾病與死亡率、工作時間、工資給付方法與工資率,及其他任何有關 之資訊,均應詳細敘述。

#### 第二十三條

 主管機關為有效施行本公約的規定,應頒布完備及明確的條例,管理強 迫或強制勞動之使用。

 此項條例之中,並應規定任何被徵用強迫或強制勞動者,得向主管機關 申訴相關的勞動條件,並確保對申訴予以審查及處理。

#### 第二十四條

管轄僱用強迫或強制勞動之條例,應採適當辦法,嚴格實施,或將監督自 願勞動之現有檢查機關職權擴大,同時監督強迫或強迫勞動,或另採其他 適當辦法。又應採取各種方法,確保被徵用之強迫或強制勞動者,知悉此 條例。

#### 第二十五條

對非法徵用強迫或強制勞動者,當以刑法論處,凡批准本公約之會員國有 義務,使其刑事之懲罰,實屬允當並嚴格執行。

#### 第二十六條

 1.凡批准本公約之國際勞工組織會員國,允諾將本公約適用於其擁有主權、管轄權、保護權、宗主權、監護權或權力的所有領土,只要其有接受影響內部管轄權事項義務的權利;若該會員國欲利用國際勞工組織憲 章第三十五條之規定,則應於批准書中附加一項聲明,陳明:

(a)擬適用不經修改本公約規定之領土。

(b)擬適用經修改本公約規定之領土及其所作之修改。

(c)保留其決定的領土。

2.上述聲明應視為批准書不可或缺的一部分,具有批准書之效力。但任何 會員國得藉由後續之聲明,全部或部分取消根據本條前項第二款與第三 款規定於原始聲明中所作之保留。

#### 第二十七條

依據國際勞工組織憲章之規定,本公約之正式批准書應送請國際勞工局局 長登記之。

#### 第二十八條

1.本公約僅對已將批准書送交國際勞工局登記之會員國發生效力。

 2.本公約應自二個會員國將其批准書送交國際勞工局局長登記之日起十二 個月後生效。

3. 嗣後本公約對任何會員國應自其批准書登記之日起十二個月後生效。

#### 第二十九條

本公約經國際勞工組織二個會員國將其批准書送交國際勞工局登記後,國 際勞工局局長應即通知其他國際勞工組織所有會員國。嗣後其他會員國續 有批准登記時,該局長應依例一律通知。

#### 第三十條

- 1.凡業已批准本公約之會員國,自本公約開始生效之日起滿十年後得通知 國際勞工局局長登記廢止之;是項廢止應於登記之日起滿一年後始行生 效。
- 2.凡業已批准本公約之會員國如未於前項十年期滿後之一年內行使本條規 定之廢止權,則本公約對該會員國應繼續有效五年;嗣後每五年期限屆 滿時,該會員國仍得依據本條之規定廢止本公約。

#### 第三十一條

國際勞工局理事會如認為必要時應將本公約實施狀況向大會提出報告,並 應考慮是否宜將本公約作局部或全部修正之問題列入大會議程。

#### 第三十二條

-1.嗣後國際勞工大會通過新公約修正本公約之全部或部分,若當新修正公約生效,凡批准新修正公約的會員國法律上即構成對本公約的立即廢止,不受本公約第三十條規定之限制。

2.自新修正公約生效之日起,本公約應即停止開放會員國批准。

 3.雖然如此,對已批准本公約但尚未批准新修正公約之會員國,本公約的 實質形式及內容應仍然有效。

#### 第三十三條

本公約之英文文本及法文文本俱為正本。

附錄三、第105號公約:廢止強迫勞工、1957年

第一〇五號公約:廢止強迫勞工、一九五七年 (C105 - Abolition of Forced Labour Convention, 1957)

國際勞工組織大會,經國際勞工局理事會召集,於一九五七年六月五日在 日內瓦舉行其第四十屆會議,經審酌本屆會議議程第四項強迫勞動的問 題,並注意到一九三〇年強迫勞動公約的規定,並注意到一九二六年奴隸 公約,規定應採取一切必要措施以防止強迫或強制勞動發展成類似奴隸的 狀況,以及一九五六年廢除奴隸制、奴隸販賣及類似奴隸的制度與實務補 充公約,規定完全廢除債務奴役及農奴制,並注意到一九四九年工資保護 公約,規定工資應定期給付,並禁止採用實際上剝奪勞工離開其工作之可 能性的給付方法,並經決定採納關於廢除某些形式的強迫或強制勞動的其 他提議,其構成對聯合國憲章所述和世界人權宣言所闡明之人權的侵犯, 並經確定這些提議應採用國際公約的形式,於一九五七年六月二十五日通 過以下公約,引用時得稱之為一九五七年廢止強迫勞動公約。 民國四十八年一月二十三日總統批准

#### 第一條

凡批准本公約之國際勞工組織會員國允諾遏止且不使用任何形式的強迫或 強制勞動。

(a)作為政治壓迫或政治教育之工具或作為對持有或發表與現存政治、社

會、或經濟制度相異之政見或思想者之懲罰。

(b)作為一種旨在經濟發展而動員並使用勞動之方法。

(c)作為勞動紀律之工具。

(d)作為對參加罷工之懲罰。

(e)作為對種族、社會、國籍或宗教歧視之工具。

#### 第二條

凡批准本公約之國際勞工組織會員國允諾採取有效措施,以確保立即且完 全廢止本公約第一條所規定之強迫或強制勞動。

#### 第三條

本公約之正式批准書應送請國際勞工局局長登記之。

#### 第四條

- 本公約僅對已將批准書送交國際勞工局局長登記之國際勞工組織會員國 發生效力。
- 2.本公約應於二個會員國將其批准書送交國際勞工局局長登記之日起十二 個月後生效。

3. 嗣後對任何會員國應於其批准書登記之日起十二個月後生效。

#### 第五條

- 1.凡業已批准本公約之會員國,自本公約開始生效之日起滿十年後得通知 國際勞工局局長登記廢止之;是項廢止應於登記之日滿一年後始行生 效。
- 2.凡業已批准本公約之會員國如未於前項十年期滿後之一年內行使本條規 定之廢止權,則本公約對該會員國應繼續有效十年;嗣後每十年期限屆 滿時,該會員國仍得依據本條之規定廢止本公約。

#### 第六條

- 1.國際勞工局局長應將國際勞工組織會員國送請其登記之一切批准及廢止 通知本組織全體會員國。
- 2.國際勞工局局長於本組織會員國送請其登記之第二份批准書通知時,應 提請本組織其他會員國注意本公約的生效日期。

#### 第七條

國際勞工局局長應依據聯合國憲章第一百零二條之規定將經其依照前述各 條規定登記之一切批准及廢止送請聯合國秘書長登記之。

#### 第八條

國際勞工局理事會如認為必要時應將本公約實施狀況向大會提出報告,並 應考慮是否宜將本公約作局部或全部修正之問題列入大會議程。

#### 第九條

- 1.若大會通過新公約修正本公約之全部或部分時,除新公約另有規定外, 則:
  - (a)一會員國對新修正公約之批准,若當該新公約開始生效時,法律上即 構成對本公約的立即廢止,不受前述第五條規定之限制。
  - (b)自新修正公約生效之日起,本公約應即停止開放會員國批准。
- 2.在任何情形下,本公約之實質形式及內容對業已批准本公約但未批准新 修正公約之各會員國應仍然有效。

#### 第十條

本公約之英文文本及法文文本具相同權威性。



#### 附錄四、第203號建議書:強迫勞動(補充措施)建議書

#### 第203號建議書 強迫勞動(補充措施)建議書 R203-Forced Labour (Supplementary Measures) Recommendation, 2014

國際勞工組織大會,經國際勞工局理事會召集,於二零一四年五月二十八 日舉行其第一零三屆會議,並通過一九三零年強迫勞動公約二零一四年議 定書(以下簡稱"本議定書"),並決定採納解決一九三零年強迫勞動公約 (第二十九號,以下簡稱"本公約")實施落差的若干提議,並重申預防、 保護和救濟(如賠償和康復)措施對達成有效和持續的遏止強迫或強制性勞 動是必要的,根據本屆會議議程第四項,並決定這些提議應採用建議書的 形式,以為本公約和本議定書的補充,於二零一四年六月十一日通過以下 建議書,引用時得稱之為二零一四年強迫勞動(補充措施)建議書。

- 1.會員國,如有必要,與雇主和勞工組織及其他相關團體諮詢,應建立或 強化:
  - (a)具有時限措施的國家政策及行動方案,採用對性別及兒童敏感的方法,藉由預防、保護和獲得諸如對受害者賠償和對肇事者制裁的救濟,以達成有效且持續的遏止各種形式的強迫或強制性勞動;及
  - (b)諸如勞動檢查、司法和國家機構等主管機關或其他與強迫或強制性勞動有關的制度性機制,要確保國家政策和行動方案的制定、協調、實施、監督和評估。
- 2.
  - (a)會員國應定期收集、分析並提供可靠、正確及詳細的強迫或強制勞動 之性質及程度的資料和統計數據,按性別、年齡和國籍等有關特徵分 類,據此可對取得的進展進行評估。

(b)關於個人資料的隱私權應予尊重。

#### 預防

3. 會員國應採取預防措施,包括:

- (a)尊重、促進和實現工作中的基本原則和權利;
- (b)推廣結社自由和團體協商,使面臨風險的勞工得以加入勞工組織;
- (c)打擊加劇易遭受強迫或強制性勞動之歧視的計畫;
- (d)解決童工的舉措並提升兒童(男童和女童)的教育機會,以防止兒童淪 為強迫或強制性勞動的受害者;
- (e)採取實現本議定書和本公約目標的步驟。
- 4.考慮其國情,會員國應採取最有效的預防措施,諸如:

(a)解決導致勞工易遭受強迫或強制勞動的根本原因;

- (b)針對性的意識提升運動,特別是對最具風險成為強迫或強制勞動的受害者,除其他外,告知他們如何保護自己免於遭受欺詐或濫用招募和 僱用實務、他們工作中的權利和職責以及若有需要時如何獲得援助;
- (c)針對有關對違反禁止強迫或強制勞動之制裁的意識提升運動;
- (d)對面臨風險群體的技能訓練計畫,提高其就業能力、賺取收入的機會 和量能;
- (e)確保有關就業關係的國家法律和規定覆蓋所有經濟部門並有效實施的 步驟,就業的條款和條件應以適當的、可驗證的和容易理解的方式予 以敘明,並最好有根據國家法令、規定或團體協約的書面契約;
- (f)基本的社會保障構成國家社會保護之部分的底線,如同二零一二年社 會保障底線建議書的規定,以降低易受到強迫或強制勞動;
- (g)為移民在出發前和抵達時予以指導和諮詢,以便使他們對海外的工作 和生活有更充分的準備,並對強迫勞動的人口販運有所意識且更佳理 解;
- (h)一貫的政策,諸如就業和勞動移民政策,考慮特定移民群體所面對的 風險,包括非正規移民,並解決導致強迫勞動的狀況;
- (i)推動政府相關機構與其他國家相關機構的協調努力,以促進正常與安全的移民並預防人口販運,包括協調努力管制、許可及監督勞動招募者和職業介紹所並取消勞工的招募費用,以防止債務奴役和其他形式的經濟脅迫;

(j)在履行公約規定的禁止強迫或強制勞動之義務時,提供雇主和企業指 導和支持,採取有效措施以辨識、預防、減緩並說明在他們經營或在 與他們可能直接相關的產品、服務或經營中要如何處理強迫或強制勞 動的風險。

#### 保護

5.

(a)對查明和釋放強迫或強制勞動的受害者應有針對性的努力。

- (b)應對強迫或強制勞動受害者提供保護措施,這些措施不應以受害者願 意在刑事和其他訴訟中的合作為條件。
- (c)得採取措施鼓勵受害者在指認和懲處肇事者的合作。
- 6.會員國應承認勞工組織和其他相關組織在支援和協助強迫或強制勞動受 害者的角色和能力。
- 7.會員國應依據其法律制度的基本原則,採取必要措施確保主管機關有權 不起訴或懲罰強迫或強制勞動受害者參與其所從事的非法活動,由於是 遭受強迫或強制勞動的直接後果而被迫承諾。
- 8.會員國應採取措施消除勞工招募者和職業介紹所的濫權和欺詐行為,例 如:
  - (a)取消收取勞工的招募費用;
  - (b)要求清楚解釋就業條款和工作條件的透明契約;
  - (c)建立適當且可利用的申訴機制;
  - (d)施加適度的懲罰;及
  - (e)管制或許可這些服務。
- 9.會員國考慮其國情應採取最有效的保護措施,滿足所有受害者對立即援助及長期康復與身心重建的需求,例如:
  - (a)合理地努力保護強迫或強制勞動受害者及其家庭成員和證人的安全, 若適當,包括保護他們根據相關的國家法律行使其權利或配合法律程 序免於恐嚇和報復;

(b)充足且適當的住宿;

(c)健康照顧,包括醫療和心理援助,以及為強迫或強制勞動受害者提供 特別的復健措施,包括遭受性暴力者;

(d)物質的援助;

(e)保護隱私和身份;及

(f)社會和經濟援助,包括獲得教育和訓練機會以及尊嚴勞動。

10.對遭受強迫或強制勞動的兒童的保護措施應考慮其特殊需求和最大利

益,除1999年最惡劣形式童工公約(第182號)規定的保護外,應包括:

(a)女童和男童獲得教育;

(b)如果適當<sup>,</sup>指定監護人或其他代表;

- (c)當該人的年齡不確定但有理由相信他或她未滿18歲時,推定其未成 年人身分,等待年齡核實;及
- (d)努力使兒童與其家庭團聚,或在符合兒童最大利益的情況下,提供 以家庭為基礎的照顧。
- 11.會員國考慮其國情,對遭受強迫或強制勞動的移民應採取最有效的保護 措施,無論其在本國境內的法律地位,包括:
  - (a)提供一個反思和恢復期,以便有關人員能夠就保護措施和參與法律 程序作出知情的決定,在此期間,應授權該人停留在有關會員國的 領土,若有合理理由相信該人是強迫或強制勞動的受害者;
  - (b)提供臨時或永久居住許可及進入勞動力市場;及

(c)促進安全和最好是自願遣返。

#### 救濟,諸如賠償和司法援助

- 12.會員國應採取措施確保所有強迫或強制勞動受害者能獲得司法援助以及 其他適當和有效的救濟,諸如對人身和物質損害的賠償,包括藉由:
  - (a)根據國家法律、規定和慣例,確保所有受害者親自或由其代表能夠 有效地訴諸法院、裁決所和其他解決機制,請求賠償和損害等救 濟;
  - (b)提供受害者可以向肇事者請求賠償和損害,包括未給付的工資和社 會保障福利的法定保費;
  - (c)確保能夠獲得適當的既有賠償計畫;

- (d)以受害者能夠理解的語言,提供其有關法律權利及可利用服務的資 訊和建議,以及獲得的法律援助,最好是免費;
- (e)提供在該會員國發生的所有強迫或強制勞動受害者,無論是國民還 是非國民,都能在該國尋求適當的行政、民事和刑事救濟,無論其 是否身在該國或其法律地位,如果適當,根據簡化的程序要件。

#### 執行

- 13.會員國應採取行動加強國家法律及規定和其他措施的執行,包括藉由:
  - (a)給予諸如勞動檢查機構等有關主管機關必要的授權、資源和訓練, 使其能有效執行法律,並能與其他有關組織合作,預防和保護強迫 或強制勞動的受害者;
  - (b)除刑事制裁外,規定施加懲罰,諸如根據國家法律和規定沒收強迫 或強制勞動的利潤和其他財產;
  - (c)確保法人在適用本公約第25條和上述(b)條款時違反禁止使用強迫或 強制勞動的規定承擔責任;及
  - (d)加強查明受害者的努力,包括制定強迫或強制勞動指標,供勞動檢 查員、執法部門、社會工作者、移民官員、檢察官、雇主、雇主組 織和勞工組織、非政府組織和其他相關行動者使用。

#### 國際合作

- 14.會員國雙方及之間以及與其他相關國際和區域組織之間應加強國際合作,彼此應相互協助,以實現有效且持續遏止強迫或強制勞動,包括 藉由:
  - (a)除刑法執法外,加強勞動法執法機構之間的國際合作;
  - (b)為國家行動方案和國際技術合作及援助動員資源;
  - (c)司法協助;
  - (d)合作處理和防止外交人員使用強迫或強制勞動;及
  - (e)相互技術援助,包括資訊交流和分享打擊強迫或強制勞動的良好做 法和經驗教訓。

附錄五、ILO強迫勞動指標原文 International Labou Office L Special Action Programme to Combat Forced Labour

#### Introducing the indicators

This booklet presents an introduction to the ILO Indicators of Forced Labour. These indicators are intended to help "front-line" criminal law enforcement officials, labour inspectors, trade union officers, NGO workers and others to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance. The indicators represent the most common signs or "clues" that point to the possible existence of a forced labour case.

The indicators are derived from theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). They are based upon the definition of forced labour specified in the ILO Forced Labour Convention, 1930 (No. 29) as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

The booklet presents the eleven indicators in turn, providing real-life examples to illustrate each one, accompanied by a brief explanation of what the indicator means in practice. The indicators will help you to understand how forced labour arises and how it affects its victims. The indicators are:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case. Overall, the set of eleven indicators covers the main possible elements of a forced labour situation, and hence provides the basis to assess whether or not an individual worker is a victim of this crime.

Further guidance on how to use the indicators in practice is provided in the ILO e-learning tool on identifying and investigating cases of forced labour.



# Abuse of vulnerability

"A Chinese maid who worked 365 days a year did not speak a word of French except "good morning" and "good evening". She was kept in a situation of dependence because of the language, continuous work and isolation. That maid was a veritable slave. "

A labour inspector in France

Anyone can be a victim of forced labour. However, people who lack knowledge of the local language or laws, have few livelihood options, belong to a minority religious or ethnic group, have a disabilitity or have other characteristics that set them apart from the majority population are especially vulnerable to abuse and more often found in forced labour.

The mere fact of being in a vulnerable position, for example, lacking alternative livelihood options, does not necessarily lead a person into forced labour. It is when an employer takes advantage of a worker's vulnerable position, for example, to impose excessive working hours or to withhold wages, that a forced labour situation may arise. Forced labour is also more likely in cases of multiple dependency on the employer, such as when the worker depends on the employer not only for his or her job but also for housing, food and for work for his or her relatives.



## Deception

" My mum told me her sister was planning to come and get me so that I could start living with her. It was my auntie who promised to pay for my school expenses but did not fulfil her promises. Instead she turned me into a maid. "

A young Zambian woman

Deception relates to the failure to deliver what has been promised to the worker, either verbally or in writing. Victims of forced labour are often recruited with promises of decent, wellpaid jobs. But once they begin working, the promised conditions of work do not materialize, and workers find themselves trapped in abusive conditions without the ability to escape. In these cases, workers have not given free and informed consent. Had they known the reality, they would never have accepted the job offer.

Deceptive recruitment practices can include false promises regarding working conditions and wages, but also regarding the type of work, housing and living conditions, acquisition of regular migration status, job location or the identity of the employer. Children may also be recruited through false promises, made to them or their parents, concerning school attendance or the frequency of visits by or to their parents.



# Restriction of movement

"There were bars on the windows and an iron door, like a prison. It was impossible to escape, not even worth contemplating. It lasted two months, they took me to clients and brought me back. Always under guard."

> A 16-year-old girl from Kazakhstan trafficked for prostitution in Russia

Forced labourers may be locked up and guarded to prevent them from escaping, at work or while being transported.

If workers are not free to enter and exit the work premises, subject to certain restrictions which are considered reasonable, this represents a strong indicator of forced labour. Legitimate restrictions might include those relating to protection of the safety and security of workers in hazardous work sites, or the need to request prior permission of the supervisor to attend a medical appointment.

Forced labourers may have their movements controlled inside the workplace, through the use of surveillance cameras or guards, and outside the workplace by agents of their employer who accompany them when they leave the site.



## Isolation

"The camp was in an area that was very difficult to reach. To travel to an urban centre, you had to plan the journey several days in advance. Transport was only possible by small plane or by riverboat, which could take up to 22 days."

An escaped indigenous worker in Peru

Victims of forced labour are often isolated in remote locations, denied contact with the outside world.

Workers may not know where they are, the worksite may be far from habitation and there may be no means of transportation available. But equally, workers may be isolated even within populated areas, by being kept behind closed doors or having their mobile phones or other means of communication confiscated, to prevent them from having contact with their families and seeking help.

Isolation can also be linked to the fact that the business premises are informal and not registered, making it very difficult for law enforcement or other agencies to locate the business and monitor what is happening to the workers.



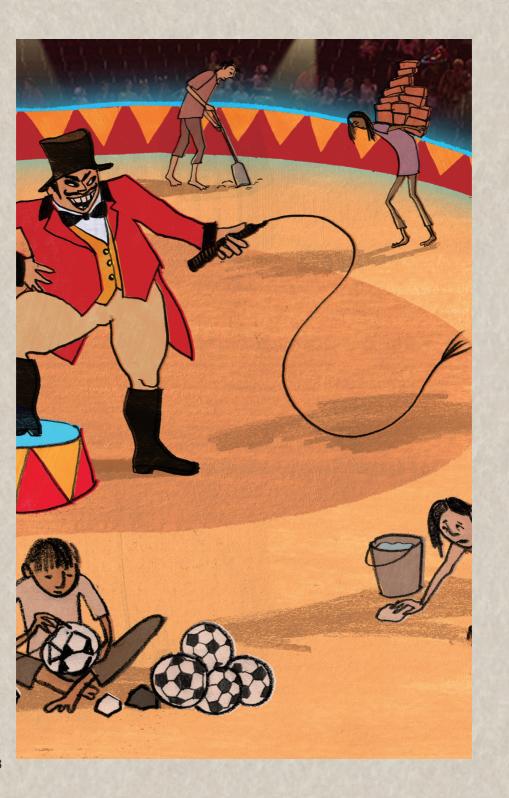
## Physical and sexual violence

"The abuse started almost immediately after I arrived and became more frequent and violent. I was regularly slapped, whipped and punched."

A 22-year-old Cambodian domestic worker in Malaysia

Forced labourers, their family members and close associates may be subjected to actual physical or sexual violence. Violence can include forcing workers to take drugs or alcohol so as to have greater control over them. Violence can also be used to force a worker to undertake tasks that were not part of the initial agreement, such as to have sex with the employer or a family member or, less extreme, to undertake obligatory domestic work in addition to their "normal" tasks. Physical abduction or kidnapping is an extreme form of violence which can be used to take a person captive and then force them to work.

As violence is not acceptable as a disciplinary measure under any circumstances, it is a very strong indicator of forced labour.



## Intimidation and threats

"When I told the woman I was working for that I wanted to leave, she threatened me and said that unless I paid \$600, she would go to the police and tell them I had no papers. There was nothing I could do because I don't have papers, and I know the police will not help me."

A 31-year-old Ethiopian migrant worker in Lebanon

Victims of forced labour may suffer intimidation and threats when they complain about their conditions or wish to quit their jobs.

In addition to threats of physical violence, other common threats used against workers include denunciation to the immigration authorities, loss of wages or access to housing or land, sacking of family members, further worsening of working conditions or withdrawal of "privileges" such as the right to leave the workplace. Constantly insulting and undermining workers also constitutes a form of psychological coercion, designed to increase their sense of vulnerability.

The credibility and impact of the threats must be evaluated from the worker's perspective, taking into account his or her individual beliefs, age, cultural background and social and economic status.



## Retention of identity documents

"As I passed through immigration, the driver grabbed my passport. I cannot leave because my passport is with the employer, and I cannot move around without it."

> A Nepali man working as a cleaner in the United Arab Emirates

The retention by the employer of identity documents or other valuable personal possessions is an element of forced labour if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss. In many cases, without identity documents, the worker will not be able to obtain other jobs or access essential services, and may be afraid to ask for help from authorities or NGOs.

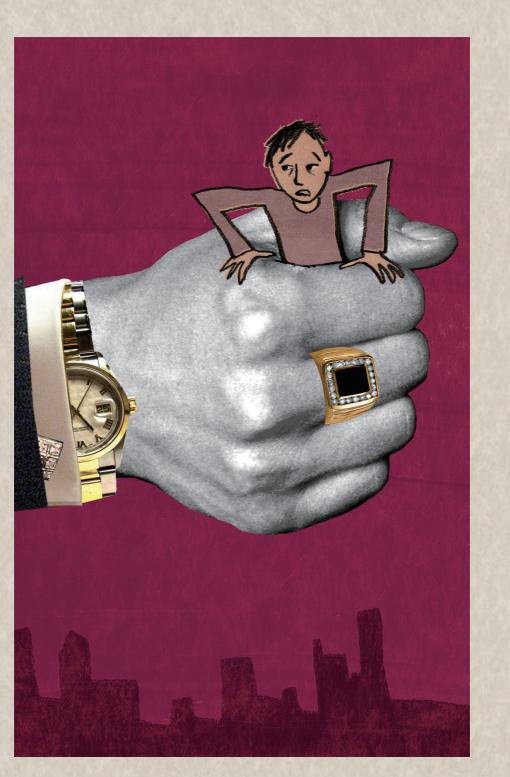


# Withholding of wages

"At the beginning, he promised me a salary and I started to work. He gave me food and sometimes bought me some clothes. But I was still waiting for my salary. When I asked him about my salary, he would say: 'After selling these products'. I would continue working with him nevertheless. One night, I told him I wanted what he owed me because I wanted to leave. He jumped at me and started beating me and shouting at me 'You can leave if you want but I won't give you anything.' I left crying. I had stayed 16 months at his place, but got nothing."

A 16-year-old boy in Niger

Workers may be obliged to remain with an abusive employer while waiting for the wages that are owed to them. The fact of irregular or delayed payment of wages does not automatically imply a forced labour situation. But when wages are systematically and deliberately withheld as a means to compel the worker to remain, and deny him or her of the opportunity to change employer, this points to forced labour.



## **Debt bondage**

"A worker borrowed Rs. 20,000 from a middleman. When he had paid back all but Rs. 4000, the middleman falsely claimed that the worker owed him Rs. 40,000. He was made to work in the mine, while the middleman's son kept watch outside."

A labour leader in a mine in Pakistan

Forced labourers are often working in an attempt to pay off an incurred or sometimes even inherited debt. The debt can arise from wage advances or loans to cover recruitment or transport costs or from daily living or emergency expenses, such as medical costs. Debts can be compounded as a result of manipulation of accounts, especially when workers are illiterate. Debt bondage may also arise when children are recruited in exchange for a loan given to their parents or relatives. Employers or recruiters make it difficult for workers to escape from the debt, by undervaluing the work performed or inflating interest rates or charges for food and housing.

Debt bondage – or bonded labour – reflects an imbalance in power between the worker-debtor and the employer-creditor. It has the effect of binding the worker to the employer for an unspecified period of time, anything from a single season, to years, or even successive generations. It bears no resemblance to taking a "normal" loan from a bank or other independent lender, for repayment on mutually agreed and acceptable terms.



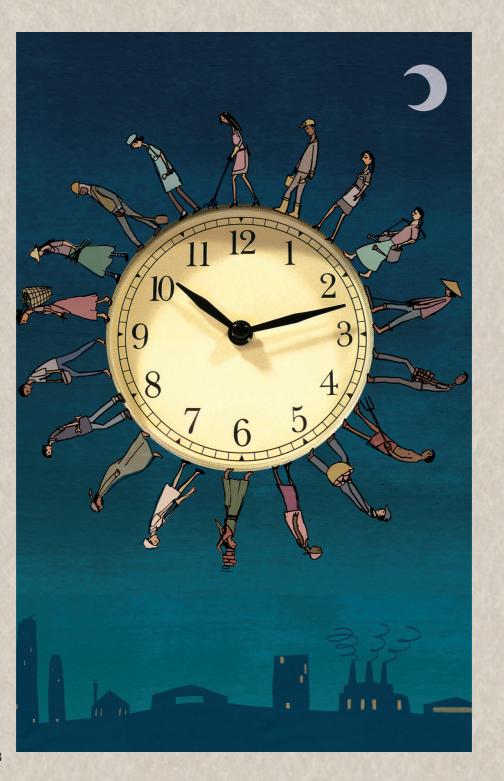
### Abusive working and living conditions

"The workers were housed in plastic shacks, drinking contaminated water, and they were kept in holes behind bushes in order to hide them until we left."

A labour inspector describing the conditions in a Brazilian fazenda

Forced labour victims are likely to endure living and working conditions that workers would never freely accept. Work may be performed under conditions that are degrading (humiliating or dirty) or hazardous (difficult or dangerous without adequate protective gear), and in severe breach of labour law. Forced labourers may also be subjected to substandard living conditions, made to live in overcrowded and unhealthy conditions without any privacy.

Extremely bad working and living conditions alone do not prove the existence of forced labour; unfortunately, people may sometimes "voluntarily" accept bad conditions because of the lack of any alternative jobs. However, abusive conditions should represent an "alert" to the possible existence of coercion that is preventing the exploited workers from leaving the job.



## Excessive overtime

" I had to work 19 hours a day without any rest and overtime payment or holiday. They treated me like an animal."

A Nepali migrant worker

Forced labourers may be obliged to work excessive hours or days beyond the limits prescribed by national law or collective agreement. They can be denied breaks and days off, having to take over the shifts and working hours of colleagues who are absent, or by being on call 24 hours a day, 7 days a week.

The determination of whether or not overtime constitutes a forced labour offence can be quite complex. As a rule of thumb, if employees have to work more overtime than is allowed under national law, under some form of threat (e.g. of dismissal) or in order to earn at least the minimum wage, this amounts to forced labour.



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