

ETI Forum



ethical
trading
initiative

Prison Labour

ETI Roundtable, 5 February 2004

About ETI

The Ethical Trading Initiative (ETI) exists to identify and promote good practice in the implementation of codes of labour practice, including the monitoring and independent verification of code provisions. We are an alliance of companies, trade union organisations and non-governmental organisations (NGOs) committed to working together to achieve that aim. Our ultimate goal is to ensure that the working conditions of workers in companies that supply goods to consumers in the UK meet or exceed international standards.

The ETI Base Code is founded on International Labour Organisation (ILO) Conventions and has become a model on which other codes are based. A summary of ETI'S Base Code is given below and can be seen in full on our website, www.ethicaltrade.org

We were established in 1998 as an independent, not for profit organisation. We are funded by member contributions and a grant from the UK Department for International Development (DFID).

The ETI Base Code

- Employment is freely chosen
- Freedom of association and the right to collective bargaining are respected
- Working conditions are safe and hygienic
- Child labour shall not be used
- Living wages are paid
- Working hours are not excessive
- No discrimination is practised
- Regular employment is provided
- No harsh or inhumane treatment is allowed

About ETI Forum

ETI Forum reports on the key issues discussed at one of our events. ETI events – members' roundtables, public seminars and conferences – focus on ethical trade issues of topical interest or which have proved particularly challenging to our members. For example, we have held events on homeworkers, HIV/AIDS in the workplace and the role of gangmasters in the food and agriculture industry. These events give members and others an opportunity to learn from guest speakers and from each other, and to debate practical responses to the issues raised.

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1 Background and purpose of this event

One of the issues corporate members are increasingly seeing within their supply chains from current audit processes is the use of prison labour. These corporate members and participants from a previous event at our AGM in 2002 requested a roundtable on prison labour to explore the matter in greater depth.

Concerns include circumstances where prison labour is exploitative and where prisoners are working for private companies. Worldwide, work carried out by prisoners for private companies is on the increase. A key issue is whether prisoners are being exploited as cheap labour with little benefit to the prisoners themselves or whether the work they perform helps to increase their confidence, skills and chances of securing work after leaving prison.

This roundtable shared knowledge and experience on prison labour from our members, as well as that of other stakeholders, and explored in more depth how minimum labour standards can be applied in the context of prison labour.

2 Who participated?

Twenty-one participants attended and among members there were 14 companies, one NGO, one trade union organisation and the International Labour Organisation (ILO).

The roundtable was introduced and chaired by David Ould, Deputy Director, Anti-Slavery International.

3 Key points from presentations

3.1 International Labour Organisation (ILO)

Roger Plant, Head, Special Action Programme to Combat Forced Labour, ILO

3.1.1 Context and key principles of ILO Convention 29 (C.29) 1930

C.29 is what the ILO considers to be one of its core labour standards, the principles of which all ILO Member States are obliged to adhere to as a condition of their membership. It has the highest level of ratifications, over 160 (including the UK) out of 175 current Member States.

The Convention defines forced labour 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 Convention specifically exempts five forms of forced or compulsory labour from its coverage. One of these exemptions (Article 2 (2)) is prison labour under certain conditions, “Any work or service exacted from a person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.”

In recent years there has been lively discussion within the ILO, under Convention 29, of the use of privatised prison labour in the industrialised countries. The ILO sees a distinction between working for Government (State) prisons, which the Convention accepts, and the current new phenomenon of private prisons, ie, privately owned prisons or where a state prison has a contract with an external private company (privatised prison labour). The issue is about prisoners working for the private profit of companies.

A second Abolition of Forced Labour Convention (No.105) was adopted in 1957 to restrict further the use of forced labour by identifying activities (mainly political or ideological offences) that could never be punished by forced labour, even if the person was convicted in a court of law.

3.1.2 ILO recommendations: conditions to be met if prisoners are working for companies

The ILO Committee of Experts has stressed that two general conditions must be met to demonstrate the voluntary nature of the employment relationship:

- The formal consent of the prisoner.
- Payment of wages and social security benefits that reflect conditions similar to those on the free market.

The Committee also deliberated on exactly how closely those conditions must reflect those in the free market. For example, the Committee has rejected arguments that the relatively lower productivity of prisoners can be held to justify below-market wages. In addition the summary conclusions in the 2001 general comments stated:

“Conditions approximating a free labour relationship are the most reliable indicator of the voluntariness of labour.”

3.1.3 Issues of contention/confusion

Concerns have been raised within the ILO regarding privatised prison labour, and the guarantees that need to be given to prisoners placed at the disposal of private entities under different contractual arrangements. The concerns expressed have been over wage rates and the terms and conditions of work. Other issues include:

- the present day relevance of the Convention (in view of some arguments that the privatisation of prisons is a new phenomenon);
- the meaning of the term “hiring or placing at the disposal of” private companies or enterprise;
- the role of private profit or benefit.

There are also current debates regarding the use of prisons as punishment or for rehabilitation which impacts on the use of prison labour.

For full presentation notes please contact adil@eti.org.uk

3.2 Ethical auditing (including prisons)

Sarah Barlow, Code of Practice Auditor, Next (formerly Littlewoods)

The following information has been collated during the past three and a half years of auditing. This presentation was compiled while working for Littlewoods Retail Ltd. and represents experiences encountered by Littlewoods, rather than those experienced by Next.

The use of prison labour had been declared by several suppliers during audits in the UK, Germany and in Italy. Subsequent research also revealed a large amount of undeclared prison labour within the supply chain.

3.2.1 Case studies of prison work in the UK

There are three basic categories of prisons in the UK:

- government funded;

- privately funded;
- open prisons (which can be funded either way).

3.2.2 Government (State) prison

HMP Buckley was visited in July 2002 and is a class C women's prison with low-risk prisoners.

WORK UNDERTAKEN

- Data input of UK national census information.
- Reprocessing of household textiles.
- Small assembly work, eg, nuts and bolts into packages.

TERMS OF PAYMENT

- Full pay is £9 per week (deductions for time off, bad behaviour, etc.).
- Enhanced rate of £12 per week for consistently good performance (discretionary).
- Average wage is £7.20 per week.
- 33.75 hours per week over 5 days.

Other benefits can also be awarded, for example, extra visits or curtains for cells. The supplier paid the prison on a piece-work basis, at a rate which is based on the rate paid in the factory. Any profit made by the prison was spent on recreational facilities within the prison.

3.2.3 Private prison (UK)

Dovegate Prison was visited in August 2002 and is a category B male industries prison owned by Premier Custodial Services (Wakenhut).

WORK UNDERTAKEN

- Assembly of TV aerials.
- Packing of balloons.
- Assembly of lawn aerators.
- Cleaning of aluminium moulded parts for machinery.
- Packing of household textiles.
- Production of pallets (for wide scale use in UK).

TERMS OF PAYMENT

- Paid up to £26.00 per week (Home Office highest recommended salary).
- 35-hour week in 3.5 hours modules.
- Paid piece-work up to the maximum allowance.
- Can receive bonuses if extra work is needed.

As a private prison it is totally self-funding and doesn't receive any government subsidies.

The prison was a relatively new establishment, with the workshops providing a major source of income. The prisoners' pay was dependent on meeting targets. They were paid the maximum rate achievable for prisoners as set out in guidelines issued by the Home Office. A prison warden commented "they are generally paid more in the Private Prison Sector as an incentive to make targets" which will assist the prison in securing future contracts. The working week included time for smoke breaks, checking prisoners in and out of the workshops, and the issuing of tools to the workers.

3.2.4 Prison workers in Italy and Germany

In Italy prisoners are selected to work in nearby factories and are required to undergo an interview process and meet usual factory criteria. They were commonly those in the last years of their custodial sentences with individual prisoners record taken into account. The company audited had selected four prisoners to work within a factory and fellow factory workers were aware of this arrangement. The Italian government has set a national contract wage for prison workers.

In Germany components are sent out to working prisons for assembly by the prisoners and the German Home Office dictates the rate of pay. The majority of products being made were toys.

3.2.5 Benefits and concerns about prison work: company perspective

BENEFITS

- Prisoners gain skills, qualification and work experience.
- Opportunity to increase their weekly allowance or to save for their futures.
- Obtain references which may help with future employment.
- Reduces boredom and frustration.
- Opportunity to gain respect and responsibility.
- Long-term benefits to the community.

CONCERNS

- Is there forced labour and how do we determine this?
- Deductions from wages as a disciplinary measure.
- Legal minimum wages are not paid to the worker
- Lack of freedom of association.
- Does prison work deprive the local area of employment?
- Private prisons rely on the work rate of prisoners for their income and working hours may be an issue.

OTHER ISSUES

- The supplier avoids the overhead costs and has access to cheap labour.
- Does minimum wage apply when the Government pays all living expenses?
- Overseas prison labour – does it break international conventions?
- Suppliers are reluctant, or unable, to give correct information.
- How far down the supply chain do we need to look?
- No National Insurance (NI) payments, pension payments, heating, lighting etc.
- Under EU law it is illegal to import any goods made by prison labour. The legal issues require further investigation.
- The stigma attached to use of prison labour.

For full presentation notes please contact adil@eti.org.uk

3.3 Howard League for Penal Reform

Samantha Sherratt, Project Director

3.3.1 The Howard League for Penal Reform (UK)

This organisation works for humane and rational reform of the penal system. Its activities include research and comment on criminal justice policy and practice, holding conferences and debates, publishing books and reports and operating projects in schools and prisons.

A SNAPSHOT OF WORK IN UK PRISONS

- 73,000+ people are in prison this week.
- Prison industries expects to employ 9,808 prisoners.
- 40 per cent are in contract services workshops.
- Of the remaining 60 per cent:
 - nearly half are employed in clothing and textiles;
 - 17 per cent in laundry;
 - and 16 per cent in woodwork.
- Prisoners work short weeks.
- Prisoners serving short sentences are often excluded.

THEIR INVESTIGATIONS FOUND THAT:

- there is a fundamental disagreement about the objective of work. Is it to give prisoners an opportunity to enhance their employability or just a way of keeping them occupied out of cell?
- work in prisons is menial, usually involving repetitive and low-skilled tasks;
- the work available does little to reinforce the work ethic or provide the broader aspects of gainful employment such as social status, social interaction, career progression, long term financial reward or involvement in workplace development;
- the nature of prison work is usually unlike that on the outside – machinery and processes are outdated, ‘interruptions’ reduce productivity and prisoners are usually ‘passive’ and uninvolved in the development of the products they produce;
- few prisoners are offered the opportunity to undertake integrated qualifications that relate to their work and are important in enhancing their future employability;
- prisoners who work receive a token salary of £7– £12 per week. Those who are unemployed receive an average income of £2.50. Current wage levels provide little incentive to work and help to reinforce a negative picture of legitimate work – crime pays better;
- because remuneration is so low, prisoners do not take part in the full earning experience including paying tax and NI, or learning about savings or budgeting to support their family.

Nine months ago, the Howard League for Penal Reform conducted a survey of prisoners’ attitudes towards work in prison. The survey was conducted at a category B training prison for about 770 adult males. The prison has six production workshops; three of which are private finance initiatives working with local firms.

The survey asked prisoners to rank what was most important to them when working in prison.

- A third ranked earning a good wage (of £40–£50 a week) as the most important factor.
- 24 per cent ranked learning a new skill highest.
- 19 per cent said it was important to earn a work related qualification such as an NVQ or City and Guilds.

If companies look at prisoners simply as cheap labour, then the relationship is unlikely to be a happy one. If incentives are low, prisoners will put in the minimum effort required, just as employees on the outside would. There is also the risk that they could try to jeopardise the operation, adding abusive notes into whatever they are packing, for example. If not articulated properly, the involvement of prisoners could be met with an adverse response from customers.

3.3.2 The Howard League for Penal Reform wants companies to:

- get involved in prison work;
- introduce real world employment practices;
- get involved in training prisoners;
- see prisoners as potential employees.

3.3.3 Why companies should get involved:

- to promote diversity in their own workforce – moral and business case;
- because of a shortage of skilled workers – particularly in construction, transport, catering and hospitality;
- it is companies' social responsibility;
- it will help reduce crime. Seventy-five per cent of prisoners currently leave prison without a job, and 70 per cent are released with no education, training or employment.

3.3.4 Why external involvement from businesses is important for prisons and prisoners

- it increases the diversity of work available inside – something which is desperately needed;
- increased opportunity post-release;
- increased participation in local community;
- 'healthier', less introspective, prisons.

The Howard League will be working on guidelines for suppliers and companies in the near future.

For full presentation notes please contact adil@eti.org.uk

4 Issues raised by participants

ETI corporate members expressed concerns in applying the ETI Base Code in this area, as there is limited access to information, workers and influence (China).

Where and how is it feasible for corporate members to have prison labour?

There are parallels between prison labour and homeworking as both are hidden, but the reality is that both are occurring.

Are there legal problems for trade unions to represent prisoners in the UK?

As far as the ILO is concerned freedom of association can be applied to any work situation.

Are auditing techniques picking up prison labour?

No, numerous audits have taken place in China where prison labour is known to exist, but none identified the issue.

Members requested a short questionnaire to determine how many retailers or their suppliers (know about) work with prisoners. This information will be held in confidence at ETI, allowing members to make contact with others via the secretariat if they so wish. Please find the questionnaire attached.

5 Further information

ICFTU

Report on forced prison labour 2001

Provides background, case studies and an overview of the law and practice of prison labour in the UK.
www.icftu.org/displaydocument.asp?Index=991212919&Langu

ILO

The Committee of Experts 2001 report: general comment on privatisation of prisons and prison labour

All Conventions and Recommendations can be found on in full on the ILO website: www.ilo.org

Prison Governors Association

<http://wavespace.waverider.co.uk/~prisgvuk/>

Prison Reform Trust

The work of the Prison Reform Trust is aimed at creating a just, humane and effective penal system.
www.prisonreformtrust.org.uk/

TUC

There is a separate study by the TUC, *Facing up to forced labour*, to be launched at the TUC Congress 2004.

The Howard League for Penal Reform

See particularly *An introduction to work in prisons*.

www.howardleague.org Also has web links to other contacts.

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