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2<sup>nd</sup> session, 5-16 May 2008**

**Compliance with international human rights obligations to prohibit forced and bonded labour**

Anti-Slavery International has evidence that the Government of Pakistan is not in compliance with its international commitments to ensure that no one is held in slavery, servitude or required to perform forced labour. The use of forced labour and bonded labour in Pakistan has been documented by Anti-Slavery International and our partner organisations as well as by the International Labour Organisation.

The Ministry of Labour in collaboration with the ILO recently commissioned rapid assessment studies to establish the extent of bonded labour in nine industries.<sup>1</sup> The research was carried out under the auspices of the Bonded Labour Research Forum between October 2002 and January 2003 and confirmed that bonded and forced labour continues to affect millions of people across Pakistan.

The studies found that advances are used to trap workers and retain a cheap and constant supply of labour that employers can use as they wish. Many workers are unable to repay the debt as it tends to increase due to low wages, high interest payments, inflated charges for other goods or services, delays in payments of wages or the need to take further loans to meet emergency expenditure (illness, funerals, etc.) or daily subsistence needs. However, workers cannot leave their employer until their debt is paid and in this way bonded labourers are forced to work for little or no pay in extremely harsh conditions, often for many years. Those who try to challenge their situation are subjected to intimidation, threats, physical violence and restrictions on their freedom of movement.

The conclusions of the rapid assessment surveys underline the seriousness of the problem. In relation to brick kilns the rapid assessment noted that "...there has been no reduction in legal bondage as defined under the Supreme Court judgement. Despite national legislation forbidding any advance tied to labour, more labour is in debt bondage than ever before."<sup>2</sup>

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<sup>1</sup> The sectors were: brick kilns, agriculture, carpet industry, mining, glass bangle making, tanneries, construction, domestic work and begging

<sup>2</sup> *Labour, Debt and Bondage in Brick Kilns*, Rapid Assessment Studies of Bonded Labour in Different Sectors in Pakistan. Bonded Labour Research Forum, Ministry of Labour, ILO, 2004. p35

The rapid assessment of bonded labour in the carpet industry states that “The advance, or *peshgi* system, is common throughout the country, and all workers take some advance payments as a sign that he is engaged by the contractor and will work for him until the carpet is completed.”

The rapid assessment on mining states that “in the mining sector, bonded labour as an instituted system of recruitment clearly exists, apparently conforming to the ‘classic’ stereotype of debt bondage.” It adds that “forced labour in the mining sector is characterised by physical force, the threat of violence and a relationship between unequals.”

The rapid assessment on domestic work found clear evidence of bondedness in the sector and highlighted that “...caste-based domestic service in the home of a landlord comprises the most oppressive labour arrangements and is most likely to involve bondedness.”

The ILO rapid assessment on agriculture also confirmed the existence of forced and bonded labour in that sector. While none of the rapid assessment studies give estimates for the number of people affected by bonded labour, research by the Pakistan Institute of Labour Education and Research (PILER) estimated the total number of sharecroppers in debt bondage across Pakistan to be over 1.8 million people.<sup>3</sup> A further 6.8 million people were estimated to be forced to provide compulsory labour for the landlord on their farm or house (*begar*<sup>4</sup>).

### **The institutional framework for combating bonded labour and the Government’s response**

In 1989, the Supreme Court ruled that employers should not give large loans to labourers at the beginning of their employment which they have to pay back in full before being released by the employer, a system called *peshgi*.

“*Peshgi* system in future is to be discontinued...the [owner] shall give to the labourer an advance loan which shall not be in any case more than seven days wages...if a loan is not settled no additional loan is to be given...”

The Bonded Labour System (Abolition) Act, 1992 and the Bonded Labour System (Abolition) Rules, 1995, go further and completely outlaw bonded labour, cancel all existing bonded debts, and forbid lawsuits for the recovery of such debts.<sup>5</sup> The Act made forced labour, including debt bondage, punishable with between two to five years imprisonment, and/or with a fine of up to Rs.50,000.

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<sup>3</sup> PILER, *Bonded labour in Pakistan*, October 2000.

<sup>4</sup> *Begar* is the word used to refer to this traditional system of forced labour demanded by landlords.

<sup>5</sup> The Act states: “Every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied...shall stand extinguished...No person shall make any advance under the bonded labour system...”

In September 2001, the government formulated the National Policy and Plan of Action for the Abolition of Bonded Labour and the Rehabilitation of Freed Bonded Labourers (the National Action Plan). It sets out the following tasks: a national survey to identify the extent of bonded labour; implementation of the law and release of bonded labourers; restructuring and monitoring of the District Vigilance Committees (nominally established in the mid-1990s, but actually non-existent); national identity cards for migrants; state assistance for judicial redress; awareness raising; the involvement of social partners; and the preparation of rehabilitation programmes for freed bonded labourers and relief packages for *haris* living in camps, including access to basic education, health, water and sanitation services. A fund of Rs.100 million (US\$1.5 million) was allocated for the implementation of the plan.

While the framework for combating bonded labour is clearly set out in existing legislation and in the National Action Plan, the Government's own rapid assessment studies show that, some 16 years after the passage of the Act, and six years after the approval of the National Action Plan, bonded and forced labour are still commonly used in many industries across Pakistan. The 2001 National Plan of Action needs to be fully implemented as a matter of urgency.

### **Challenges and priorities for the Government**

#### ***Failure to apply national legislation***

PILER has only been able to document the release of some 8,530 people between 1990 and 2005. All of these cases were released under *habeas corpus* legislation and not the 1992 Act. This helps explain why so few prosecutions are pursued against those using bonded labourers. According to statistics provided by the Government to the National Assembly, in the 12 years to 2004, only 23 cases were filed under the 1992 Act and the fines collected during this period totalled Rs.6,100. This clearly demonstrates that the law is not being properly implemented and those who use bonded labour are going unpunished.

Some judicial rulings have also contributed to this problem. On 9 January 2002, the High Court of Sindh dismissed 94 cases, the great majority of which were filed by bonded labourers, on the basis that "living beyond ones means and being in a continuous state of debt has become the main reason for such disputes and the resultant emergence of petitions." The court made no reference to the 1992 Act which prohibits large advances, frees all bonded labourers and cancels their debts. The ruling had the effect of negating the 1992 Act and the appeal has still not been heard.

In general the police do not take action against bonded labour on their own initiative. On occasions, the police have even been reluctant to cooperate in releasing bonded labourers. In June 2003, the Sialkot District Session Judge issued a notice to several police officers for failing to assist the court's bailiff in recovering bonded labourers held at a farm in Sialkot. Such delays allow landlords time to move or sell on bonded labourers. This lack of commitment to tackling bonded labour is also seen in government officials, one of whom told the rapid assessment team on mining that: "whoever gets an advance or loan

has to pledge something in return. What has the mineworker got that he can pledge? He only has himself. So, when he comes to work in the mines he has to pledge himself. What is wrong with that?"

For these reasons it is important that programmes to train and raise awareness of bonded labour and its legal definition are implemented for those involved in legal procedures (e.g. judges, lawyers, police, etc.) as well as for officials at local, provincial and national levels. It is also imperative that the 1992 law should be used to effectively prosecute all those using bonded labour. Data should be published from each of the provinces regarding the number of prosecutions, successful convictions, and sentences passed under the 1992 Act.

***Absence of machinery to identify and release bonded labourers***

The national survey, which was supposed to follow the rapid assessment studies of 2002-03, has still not taken place and should be carried out as a matter of urgency so that the Government knows exactly where it needs to target its resources.

While the 1992 Act made the formation of District Vigilance Committees mandatory, by the end of 2003 they had only been formed in a couple of districts. In 2004, Vigilance Committees were established in 18 districts of Sindh and Punjab, but by the end of July 2004, only one had convened a meeting. In short, the Vigilance Committees have not performed their function of identifying and releasing bonded labourers and have not been restructured as envisaged in the National Action Plan.

The lack of adequate labour inspection machinery is another key reason why bonded labourers are not being identified and released. Under new industrial policy, labour inspectors are not permitted to visit industrial units to check implementation of industrial laws. In 2002, the Punjab provincial government abolished inspections of industrial units, replacing them with annual self-assessment forms, removing a key mechanism for detecting bonded labour. The Punjab provincial government also withdrew the requirement for brick kilns to be registered as factories, thereby denying brick kiln workers the limited protection of labour legislation.

Bonded labour occurs within the general context of the labour market in Pakistan, where violations of labour rights are common. Piece-rates do not provide for paid holidays or sick leave which encourages and compounds indebtedness. The rapid assessment teams found widespread violation of the minimum wage legislation along with a variety of other labour laws. These laws need to be monitored and fully implemented across all provinces in Pakistan.

The Government needs to abolish the current system in which industrial units complete annual self-assessment forms and replace it with independent inspections carried out by a pro-active and properly resourced inspectorate. All brick kilns should be registered with the authorities.

In addition, the 2002 Industrial Relations Ordinance expands the categories of labour that are excluded from the right to form trade unions and engage in collective bargaining. Such legislation should be revoked as it hampers the ability to tackle bonded labour and other forms of exploitation

### *Addressing social exclusion issues*

High unemployment ensures that there is a downward pressure on wages and working conditions and this is compounded by an increase in landlessness in some areas. The lack of employment options, particularly in the countryside, contributes to bonded labour, as does a lack of permanent and secure shelter and access to health facilities. Addressing these issues is key to the effective rehabilitation of released bonded labourers and ensuring that they do not fall back into debt bondage.

Access to free health care would prevent debt bondage situations arising in many cases as illness is often the cause of taking initial or subsequent advances. Measures should also be taken to prevent occupational injury and illness and where this still takes place workers should be properly compensated.

Shelter is perhaps the most urgent need for those who have escaped debt bondage as they usually face homelessness. Those that have taken shelter in rehabilitation camps continuously face the risk of eviction by the local administration and kidnapping by landlords. The Bonded Labour Fund has resources of some Rs.125 million specifically for the initiatives outlined above, but, as of March 2005, this money remained unspent.

In addition to the policies outlined in the National Plan of Action, the Government also needs to address social exclusion and discrimination in Pakistan. Those who suffer from bonded labour are disproportionately from 'low' castes or other minority groups and are inherently disadvantaged in accessing jobs, education and judicial forums for redress.

This point is highlighted in many of the rapid assessments, one of which notes that "the issue of social hierarchy - either in the generalised sense of 'high' and 'low' castes, or in the localised context of the political monopoly of an individual employer - is important in all instances of coercive and abusive labour arrangements." It also stresses that bonded labour is "closely related to social relations and social hierarchy" and that "Some groups are systematically vulnerable and it would be a mistake to continue ignoring this finding in future research or policy".