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National legal and institutional frameworks to prevent and address forced labour and trafficking for forced labour

Key messages

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Different legislative approaches to penalizing forced labour



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1. **Stand-alone provisions on forced labour in penal codes** (covering also trafficking for forced labour)
 - E.g. Brazil and China – Trafficking for sexual exploitation is covered in other provisions.
 2. **Penal provisions on human trafficking covering also forced labour**
 - E.g. United States – Broad definition of trafficking, covers also state-imposed forced labour.
 - E.g. Malaysia and Thailand – Explicit reference to forced labour.
 3. **Penal provisions on slavery**
 - E.g. Malaysia and Thailand
- ✓ All above approaches are acceptable under C.29 as long as all forms of forced labour, including state-imposed forced labour, are covered.



Labour law provisions prohibiting forced labour – Why?



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- Many countries have specific labour law provisions prohibiting forced labour – E.g. Viet Nam and China
- Labour law provisions prohibiting forced labour are **not explicitly required under C.29**, but are **useful and important** because:
 1. Labour law is subject to **lower standard of burden of proof**, and the chances for winning a case are higher.
 2. Labour law provides for a variety of outcomes, including **compensation** and **reinstatement of rights** (e.g. payment of back wages) – This is often the most satisfactory remedy for victims.
 3. Labour inspectors **can initiate action by itself** to obtain compensation from employers or impose administrative sanctions.
- ✓ Many countries also prohibit **specific elements / indicators of forced labour**, including retention of identity cards or requiring deposits.



Law and practice report – Introduction



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- In March 2013, the ILO Governing Body selected supplementing Forced Labour Convention No. 29 as a standard-setting item for the International Labour Conference in June 2014.
- **Strengthening action to end forced labour** report was drafted as a preparatory stage of the single-discussion procedure. The report reviews law and practice in **133 ILO member states** in relation to:
 - National policy.
 - Prevention.
 - Victim protection.
 - Compensation and access to justice.
 - Enforcement.
- Deadline for submission of the **questionnaire** attached to the report is **31 December 2013**.



Responses to forced labour – National policy



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Key messages from the **Strengthening action to end forced labour (2013)**:

- A **national policy** and the **action programme** should include, as the minimum:
 - Research and statistics to identify target groups and the main forms of forced labour.
 - Analysis of the legal framework and any gaps.
 - Interventions relating to prevention, protection and prosecution.
 - Coordination among stakeholders and institutions.
 - Monitoring and evaluation framework.
- Implementation gaps and opportunities:
 - Address all forms of forced labour and trafficking through a single policy framework and coordination body to ensure coherence.
 - Involve the social partners.
 - Strengthen data collection.



Responses to forced labour – Prevention



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Key messages from the **Strengthening action to end forced labour (2013)**:

• **Labour market based prevention measures** are needed to address the root causes of forced labour:

- Reduce vulnerability of specific population groups through social and economic empowerment and awareness raising.
- Identification of early warning signs by labour inspectors.
- Expand the coverage of labour law to include vulnerable groups.
- Address causal factors: e.g. regulation of recruitment agencies.
- Effective policies governing international labour migration.
- Consumer-based prevention responses.

• **Implementation gaps and opportunities:**

- Lack of integrated prevention approaches addressing causal factors.
- Potential of labour administration and social partners is underutilized.



Responses to forced labour – Victim protection



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Key messages from the **Strengthening action to end forced labour (2013)**:

• Protection measures include **direct assistance measures, legal protections** and **long-term social and economic support** for victims of forced labour:

- Victim identification: Labour inspection, hotlines etc.
- Direct assistance measures: Shelters, rehabilitation grants etc.
- Security and privacy measures: Witness protection programmes.
- Non-prosecution for offences committed by victims of forced labour.
- Special protection of children and migrant workers.
- Consultation with victims.

• Implementation gaps and opportunities:

- Improve identification process, strengthen role of labour inspectors.
- Strengthen the protection of all victims, also men in forced labour.
- Address long-term recovery needs of victims, e.g. access to jobs.
- Improve protection of migrant workers.





Responses to forced labour – Compensation & Access to justice

Key messages from the **Strengthening action to end forced labour (2013)**:

- Compensation for injury, loss or harm sustained through forced labour:
 - **Compensation by offenders:** As part of the criminal prosecution, through stand-alone civil suit, or through labour courts or tribunals.
 - **Compensation through state-administered funds.**
- **Access to justice** to seek and obtain a remedy:
 - Victims face practical difficulties in access to justice.
 - Trade unions and civil society organizations can assist victims through judicial procedures.
- Implementation gaps and opportunities:
 - Assistance to guarantee that victims receive appropriate remedies is generally not available.
 - Alternative measures such as state-administered compensation funds should be considered.



Responses to forced labour – Enforcement



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Key messages from the **Strengthening action to end forced labour (2013)**:

- **Prosecution and conviction rates remain low worldwide** for forced labour and trafficking into labour exploitation. More effective enforcement requires:
 - Adequate legal framework to prohibit and punish forced labour.
 - **Close collaboration is needed between criminal law enforcement authorities and labour administration and inspectorates.**
 - Regulation and monitoring of private employment agencies.
 - Capacity enhancement of law enforcement and other actors.
- Implementation gaps and opportunities:
 - **Innovative approaches to enforcement are needed** to tackle forced labour, which prevails primarily in informal and rural economies, often in hidden and illicit activities or in private homes.
 - Labour administrations are rarely represented on national anti-trafficking coordination bodies.





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Thank you!

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