

Standard setting on forced labour at the 103rd Session of the International Labour Conference

Geneva, 28 May – 12 June 2014



International
Labour
Office

The International Labour Organization (ILO) is the United Nations systems' specialized agency responsible for setting international labour standards. In June 2014, the ILO's International Labour Conference (ILC) will discuss an agenda item entitled *Supplementing the Forced Labour Convention, 1930 (No. 29)*, to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour with a view to the adoption of new international labour standards on forced labour.

Frequently Asked Questions

1 What are international labour standards?

International labour standards are legal instruments drawn up by the ILO's tripartite constituents (governments, employers and workers) setting out basic principles and rights at work.

The International Labour Conference of the International Labour Organization has adopted 189 Conventions, which are legally binding international treaties that may be ratified by member states, as well as 202 Recommendations, which are not legally binding, but set out standards to guide action by member States.

The nature of the proposed instruments to supplement the existing standards to effectively achieve the elimination of forced labour is described hereunder:

- A Protocol, just like a Convention, is an international treaty subject to ratification. In the context of the ILO, however, a Protocol does not exist independently and is always linked to a Convention. It creates legal obligations applicable to the ratifying State and can be ratified only by those Members that have ratified the Convention. The associated Convention remains open for ratification. A Protocol is used for the purpose of partially revising or supplementing a Convention, to allow adaptation to changing conditions, thus making the Convention more relevant and up to date.
- A Recommendation, just like a Convention, has to be brought before the competent authorities, but is not subject to ratification and, therefore, does not have binding force. It provides guidance as to national policy, legislation and practice. It can supplement a Convention (or Protocol) or it can be a stand-alone instrument.

ILO international labour standards are backed by a supervisory system that is unique at the international level and that helps to ensure that countries implement the conventions they ratify.

2 What are the ILO existing standards on forced labour?

The Forced Labour Convention, 1930 (No. 29), ratified by 177 member States, defines forced labour as "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".¹ Five exceptions to this definition are explicitly mentioned in the Convention. As a consequence, work imposed under certain circumstances that would have otherwise fallen under the definition of forced labour does not constitute forced labour: work imposed under compulsory military service, normal civic obligations, prison labour (if conviction by a court + public authority supervision), work in emergency situations (war, calamity...), and minor communal services (within the community)).

States ratifying Convention No. 29 are under the obligation "to suppress the use of forced or compulsory labour in all its forms" (Article 1(1)) and to ensure that penal sanctions are strictly applied on those who imposed forced labour (Article 25).

In fact, according to the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, all Members, even if they have not ratified one of the ILO fundamental Conventions, have an obligation arising from the very fact of membership in the Organization, to respect, promote and realize the principles concerning fundamental rights which are the subject of these Conventions, including the elimination of all forms of forced or compulsory labour.²

Convention No. 29 is supplemented by another fundamental Convention:

- *The Abolition of Forced Labour Convention, 1957 (No. 105), which is specifically aimed at the abolition of forced or compulsory labour in five circumstances, including: compulsory mobilization and use of labour by the State for economic development purposes, and compulsory labour as a means of political coercion or punishment for the infringement of labour discipline or for having participated in strikes (ratified by 174 member States).*

Besides other international and regional instruments, the entry into force in 2003 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol)³ sets out an explicit link between human trafficking and forced labour. Indeed, in examining the two ILO fundamental Conventions on forced labour, the ILO Committee of Experts has acknowledged the close linkage between the ILO instruments and the Palermo Protocol.⁴

Why are supplementary international standards on forced labour being considered by the ILC?

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According to the most recent ILO estimates, at least 21 million people are victims of forced labour globally. Alongside a decline in certain traditional forms of forced labour, new practices have emerged, occurring mainly in the “private economy”. It is therefore important to protect individuals from becoming victims of forced labour by addressing the significant implementation gaps that exist in practice in relation to Convention No. 29.

In this context, supplementary international standard(s) could promote coherence in international action to combat forced labour, including trafficking in persons and slavery, and could provide additional guidance in preventing and combating these practices. New standards could also help respond to the challenge of contemporary forms of forced labour, which occur predominantly in the private economy and are often linked to migration and unfair competition among employers, and which generate billions in illegal profits.

In 2012, against this backdrop, the International Labour Conference, in the context of its first recurrent discussion on fundamental principles and rights at work, called upon the ILO to “conduct a detailed analysis, including through the possible convening of meetings of experts to identify gaps in existing coverage of ILO standards with a view to determining whether there is a need for standard setting to: (i) complement the ILO’s forced labour Conventions to address prevention and victim protection, including compensation; and (ii) address human trafficking for labour exploitation”.

In response to these conclusions, the ILO Governing Body convened a Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation (11–15 February 2013) whose conclusions considered that “despite the broad reach of Convention No. 29 and the measures taken to date by member States, [there was] an added value in the adoption of supplementary measures to address the significant implementation gaps remaining in order to effectively eradicate forced labour in all its forms” (paragraphs 4 and 26).

In March 2013, the ILO Governing Body decided to place a standard-setting item on the agenda of the 103rd Session (2014) to “address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour” as a standard-setting, single-discussion item.

What will be discussed in June 2014?

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In preparation to the 103rd Session of the International Labour Conference and as provided for in its Standing Orders, the Office presented a summary report on the law and practice in member States, in order to illustrate key points and current issues regarding forced labour (concerning, inter alia: legislation, policies and action plans; institutional structures; law enforcement; and prevention, protection and compensation measures). This report also included a questionnaire to ascertain the views of member States on the scope and content of a possible instrument(s), and to serve as guidance in the preparation of the proposed text(s). This questionnaire requested governments to consult the most representative organizations of employers and workers before finalizing their replies.

A second report was prepared on the basis of the replies received to the questionnaire, and contains the substance of their observations, as well as those from other international organizations, and the texts of draft instruments (a Protocol and a Recommendation), together with the Office's commentary on the replies and on the texts of the instrument(s).⁶

This report and the draft instruments prepared by the Office⁷ will serve as a basis for discussions at the Conference, if it so agrees, in May-June 2014. Normally, the Conference refers to a committee for the consideration of the documents with a view to reaching an agreement on the text(s) to propose to the Conference Plenary for adoption. Conference committees are composed of Government, Employers' and Workers' members.

Representatives of international governmental and non-governmental organizations, as well as national liberation movements and observers from States that are not members of the ILO may also receive accreditation to attend the Conference with certain limited rights.⁸

What are the issues addressed in the proposed instruments?

The draft instruments set out minimum standards to strengthen prevention, protection and remedies, including compensation for forced labour victims. As such, the instruments address implementation gaps and supplement the Forced Labour Convention, No. 29.

The provisions of the proposed instruments seek to:

- Strengthen the prevention of forced labour through measures including targeted awareness-raising campaigns, skills-training programmes, and the promotion of freedom of association and collective bargaining;
- Strengthen the protection of victims of forced labour through assistance, recovery and rehabilitation measures, through the development and implementation of national policies and plans of action, and by involving employer's and workers' organizations;
- Ensure access to justice and compensation;
- Strengthen the enforcement of national laws and regulations and other measures;
- Encourage international cooperation between member States.

The draft Protocol is a concise instrument containing general obligations to adopt policies and programmes for the prevention of forced labour, protection of victims, compensation and law enforcement. All points included in the draft Protocol are covered in greater detail in the proposed Recommendation, which provides guidance on the concrete measures to be taken.

How would these supplementary standards relate to existing international instruments?

In addition to ILO Conventions Nos. 29, 105, and 182, a number of international and regional instruments address forced labour, slavery, trafficking in persons, as well as institutions and practices similar to slavery. In spite of the broad range of instruments available, however, measures taken in practice have focused mostly on increasing the detection of offenses, while preventive action and victim protection have been accorded lower priority.

There is therefore an opportunity for the new instrument(s) to provide member States with standards and specific guidance on measures that can be included in a comprehensive prevention strategy against forced labour. An integrated approach will tackle the range of factors that may contribute to the occurrence of forced labour and address the existing implementation gaps, which have resulted, for example, in a low number of prosecutions, especially of cases of trafficking for labour exploitation.

The proposed instruments would supplement and strengthen existing ILO standards on forced labour, as well as complement international law on trafficking in persons and slavery by addressing issues of particular relevance to the world of work. The new instrument(s) would not review, duplicate or put in question existing standards.

7 What are the Transitional Provisions?

While Convention No. 29, adopted in 1930, calls for the suppression of forced labour within the shortest possible period, Article 1(2) and (3) and Articles 3 to 24 of the Convention set forth a series of provisions that allowed the use of forced or compulsory labour for public purposes, as an exceptional measure, and during a transitional period.

The non-applicability of the transitional provisions was recognized by the Conference when, in 2004, it withdrew the Forced Labour (Regulation) Recommendation, 1930 (No. 36), an instrument that laid down rules to be observed when recourse was had to forced labour during the transitional period. It was also recognized by the Governing Body in 2010 when adopting the revised report form for Convention No. 29 under article 22 of the ILO Constitution.

This has also long been observed by the ILO Committee of Experts, for example when stating in its 1998 report, "to invoke at the current time (...) that certain forms of forced or compulsory labour comply with one of the requirements of this set of provisions, is to disregard the transitional function of these provisions and contradict the spirit of the Convention."⁹ This position was reiterated by the ILO Committee of Experts on numerous occasions, including in its 2007 General Survey.¹⁰

Against this background, this standard-setting exercise may serve to formalize further the recognition of the non-applicability of the transitional provisions of Convention No. 29.

The Office proposes that an acknowledgement of the expiry of the transitional period be included in the Preamble to the Protocol, which would have the same legal nature as, and be inextricably linked to, Convention No. 29. The same statement could be included in the Recommendation, should a Protocol not be accepted by the Conference. If such an acknowledgement were included in the Preamble of either instrument, it would consist of a declaratory recognition that the transitional provisions no longer apply.

Should the Conference wish to remove the transitional provisions from the text of Convention No. 29 formally, it could also include an article to that effect in the final provisions of the proposed Protocol, if the Protocol is adopted.

1. Forced Labour Convention, 1930 (No. 29): http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174:NO

2. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998: <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>

3. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2003: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

4. ILO, General Survey on the Eradication of Forced Labour, 2007, paras. 77-84.

5. GB.317/INS/2(Rev.) and GB.317/PV, para. 25(a)(i).

6. International Labour Conference, 103rd Session, 2014, Strengthening Action to end Forced Labour, Report IV (2A), I

7. International Labour Conference, 103rd Session, 2014, Strengthening Action to end Forced Labour, Report IV (2B), I

8. For further information on the Conference procedures and participation rights, please see the Standing Orders of the International Labour Conference <http://www.ilo.org/public/english/bureau/leg/so.htm>

9. See Report of the Committee of Experts on the Application of Conventions and Recommendations, 1998, p.100. Available at [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1998-86\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1998-86).pdf) Consulted on 03 March 2014.

10. ILO, Eradication of Forced Labour, General Survey of 2007, para. 10.