



Standard setting on forced labour

Towards new ILO instrument(s)
to combat forced labour

International Labour
Conference 2014

Single discussion

Why new standards on forced labour ?

- The ILO estimate that **21 million people are victims of forced labour globally** has drawn increased attention to the extent of the problem (2012 ILO Global Estimate of Forced Labour)
- There has been growing recognition of the need for comprehensive approaches, also taking into account labour market dimensions
- In its 317th Session in March 2013, the ILO Governing Body decided to place a standard-setting 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” on the agenda of the 103rd Session (2014) of the Conference [GB.317/INS/2(Rev.)]

New standard(s) would:

- Promote coherence in international action to combat forced labour, slavery and trafficking in persons
- Better respond to the challenge of contemporary forms of forced labour, which are mostly in the private economy and often linked to migration
- Provide guidance on prevention, protection, compensation and other remedies
- Reaffirm ILO’s political commitment to fighting forced labour

Existing ILO standards

- **1930: Forced Labour Convention** (No. 29)
 - Suppression of all forms of forced labour
 - Penal sanctions applied to those imposing forced labour
 - **1957: Abolition of Forced Labour Convention** (No. 105)
 - Focus on state-imposed forms forced labour
- They are among the ILO's most ratified Conventions
- They address **fundamental human rights**

What is Forced Labour ?

Convention No. 29 defines forced labour as

all work or service

exacted under the menace of a penalty

for which the person has **not offered himself voluntarily**

- Exceptions listed in Convention No. 29
 - Compulsory military service
 - Normal civic obligations
 - Prison labour (under certain conditions)
 - Work in emergency situations (war, calamity...)
 - Minor communal services (within the community)

Link to trafficking in persons

- Trafficking in persons and forced labour are closely related concepts
- Significant increase in trafficking in persons for labour or sexual exploitation in recent years
- Many of the people who are trafficked end up in forced labour

Transitional provisions

Convention No. 29 allowed the use of forced or compulsory labour for public purposes during a **transitional period that has expired**

AND

The transitional provisions set forth in Article 1(2) and (3) and Articles 3 to 24 of Convention No. 29 are no longer applicable.

- The recognition of the non-applicability of the transitional provisions of Convention No. 29 could be formalized through the Preamble of a Protocol or a Recommendation, or through a Resolution of the Conference
- The standard-setting process presents an opportunity to eliminate the transitional provisions from Convention No. 29 if the Conference adopts a Protocol

The standard-setting process

- June 2012 Recurrent Discussion on Fundamental Principles and Rights at Work at ILC : Framework for Action called on the ILO to conduct a detailed analysis and identify gaps to determine if there is a need for standard setting.
- February 2013 Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation acknowledged “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”.
- March 2013 Governing Body of ILO selected Forced Labour as standard setting item for 2014 ILC agenda (single discussion) “to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour”.
- July 2013 Law and Practice Report and questionnaire (“White report”) published by the Office and sent to ILO Members.
- March 2014 Reports containing summaries of replies and the draft instruments (“ Blue report”) published
- May 28 –
June 12, 2014** ILC to hold single discussion with a view to adopting new standards (Protocol and/or Recommendation)

Summary of White Report

- Report identified implementation gaps with regard to:
 - Preventive measures that go beyond awareness raising
 - Long-term protection and victim assistance measures
 - Measures to facilitate victims' access to justice
- Report recognized the need to:
 - Strengthen policy coherence and cooperation within countries and across borders
 - Strengthen law enforcement, especially through cooperation between authorities and improved guidance on forced labour issues
 - Reinforce the involvement of social partners in the coordination, design, implementation and monitoring of national action plans

Replies to the Questionnaire

A high response rate:

- Replies from governments, workers' and employers' organizations of **101 ILO member States** across all regions
- Replies and comments from the **United Nations, European Commission** and several **NGOs**

Blue Report

- **Report IV (2A)**

- **Summary of replies to the questionnaire** contained in the White report
- **Office Commentary:** explanation of how replies have been taken into account to prepare draft instruments

- **Report IV (2B)**

- Texts of **proposed Protocol and/or Recommendation** as a basis for single discussion in May/June 2014

The proposed Protocol

Articles	Subject matter
Preamble	Recognizes the vital role played by C29 and C105; recalls the definition of forced and compulsory labour, and the expiration of C29 transitional period
1	Overall obligation to take effective measures for prevention, protection and effective remedies, including compensation
2	Prevention measures
3 and 4	Protection measures and access to remedies, including compensation
5	International cooperation
6	Application

The proposed Recommendation

Paragraphs	Subject matter
1-2	<p>Establishing or strengthening national policies and plans of action and competent authorities, in consultation with employers' and workers' organizations</p> <p>Collecting of information and statistical data</p>
3	<p>Prevention measures, including:</p> <ul style="list-style-type: none"> ▪ Awareness-raising campaigns ▪ Skills-training programmes ▪ Programmes against discrimination ▪ The promotion of freedom of association and collective bargaining ▪ Steps to ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy and that terms and conditions of work are specified in a language understood by the worker ▪ Basic social security guarantees ▪ Pre-departure orientation for migrants ▪ Coherent employment and labour migration policies ▪ Cooperation with other countries to guarantee migration in acceptable conditions and to prevent trafficking in persons ▪ Efforts to reduce trade in and demand for goods and services produced or delivered using forced labour
4-9	<p>Protection measures:</p> <ul style="list-style-type: none"> ▪ Provided to the victim on the basis of informed consent ▪ Steps to encourage the cooperation of victims in legal proceedings ▪ Victims should not be held liable for offences they have been compelled to commit ▪ Measures to eliminate abuses and fraudulent practices by recruitment and placement services ▪ Immediate assistance and long-term recovery and rehabilitation measure for the protection of the safety of victims as well as of family members and witnesses, adequate and appropriate housing, health care, material assistance, protection of privacy and identity, social and economic assistance ▪ Protective measures for children, including the appointment of a guardian or other representative, presumption of minor status ▪ Protective measures for migrants, including provision of a reflection and recovery period, of temporary or permanent residence permits and access to the labour market as appropriate, facilitation of safe and preferably voluntary repatriation

The proposed Recommendation

Paragraphs	Subject matter
10	<p>Compensation and access to justice: Effective access to appropriate remedies, including by:</p> <ul style="list-style-type: none">▪ Allowing representatives of victims to pursue remedies on the victims' behalf and with their consent▪ Ensuring the victims' right to obtain compensation and damages from perpetrators▪ Ensuring access to existing compensation schemes or establishing victims' funds▪ Providing information and advice regarding victims' legal rights and the services available▪ Ensuring that all victims can pursue administrative, civil and legal remedies
11	<p>Enforcement: Strengthening law enforcement by providing</p> <ul style="list-style-type: none">▪ Training and resources to competent authorities and other entities▪ Imposition of penalties, in addition to penal sanctions, such as the confiscation of profits▪ Ensuring that legal persons can be held liable▪ Strengthening the identification and the release of victims
12	<p>International cooperation: Cooperation among Member States by mobilizing resources for national action programmes, mutual legal assistance and mutual technical assistance</p>