

▶ Annex 1: Glossary

Best interest of the child

The “best interest of the child” is a principle highlighted in the United Nations Convention on the Rights of the Child, 1989, which means that every time a decision is made about a child’s situation, the ultimate goal must be to ensure and protect his/her security, well-being and development. This Convention defines a child as anyone below the age of 18 years and recognizes their fundamental rights to grow up in a protecting and caring environment. See Article 3 of the Convention:¹⁷

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The ILO estimates that globally almost 4.3 million children are in forced labour (ILO, Walk Free Foundation, 2017), on their own or alongside their parents, in cases where the whole family is trapped in forced labour. NAPs must take into consideration the special need of children for care and assistance. In practice, this means that partners need to consider the best interests of the child in all aspects of the NAP, for example, by establishing referral mechanisms to child protection services or education systems. Support services provided to children must be tailored to their individual needs and will – not based on what a given organization has to offer or on inappropriate expectations. If, for example, a girl has an interest in, and the ability to go through skills training to become a mechanic, she should not be placed in tailoring class, just because the expectation is that girls do not repair cars.

Child labour

Child labour is work performed by children that is mentally, physically, socially or morally dangerous and harmful to children, affecting their health and personal development, or that interferes with their schooling. It is important to note however that not all child labour is forced labour.

Two of the ILO’s fundamental Conventions lay down clear requirements regarding work that is prohibited for children, but countries keep some flexibility to accommodate their development status:

- ▶ The ILO Minimum Age Convention, 1973 (No. 138) requires member States to set a minimum age for employment or work in the country, that needs to be aligned with the age of completion of compulsory schooling. If a child under this threshold is working, this constitutes a situation of child labour. This minimum age cannot be below 15 years, but the threshold can be 14 years in countries “whose economy and educational facilities are insufficiently developed” (Article 2);

17- For more information, please refer to the General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) of the UN Committee on the Rights of the Child. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en.

- ▶ The minimum age for hazardous work cannot be below 18 years (Article 3): The definition of hazardous work is a national prerogative framed by the Convention No. 182 (see below).
- ▶ The only tolerated exception is “light work”, which may be permitted for children aged 13 to 15 years (Article 7).
- ▶ The ILO Worst Forms of Child Labour Convention, 1999 (No. 182) defines situations of child labour that are prohibited for all children, including those above the minimum working age, namely (Article 3):

“(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

Collective bargaining

The ILO Collective Bargaining Convention, 1981 (No. 154) defines collective bargaining as (Article 2):

“all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for:

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations”.

Collective bargaining is an essential mean for workers to speak with one voice, to protect themselves from exploitation (including forced labour) and to improve their working conditions. It is also an instrument by which employers can ensure a level playing field, where all businesses are bound by the same rules, while not undercutting each other through exploitative practices in order to gain unfair advantages. It also fosters the organization of work, allowing for the security and predictability of a written agreement.¹⁸

18- Based on ILO, IOE, 2014. See also: ITUC, 2009.

Debt bondage or bonded labour

Debt bondage is defined in the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) as (Article 1 (a)):

“the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.

Debt bondage is the most common form of forced labour: half of those held in forced labour in the private sector find themselves in debt bondage.¹⁹ The debt can arise from wage advances or loans to cover recruitment or transport costs or from daily living or emergency expenses, such as medical costs. Unscrupulous employers or recruiters make it difficult for workers to escape from the debt, by undervaluing the work performed or inflating interest rates or by unfairly charging for food and housing.²⁰

Discrimination

The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) defines discrimination as (Article 1):

“any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”.

The definition contains three elements:

- 1.** a factual element – the existence of a distinction, exclusion or preference which constitutes any different treatment;
- 2.** a criterion on which this difference is based – it is a ground of discrimination; the Convention lists seven, but this minimum can be expanded nationally;
- 3.** an objective result of this difference in treatment – negative effect, which nullifies or impairs equality of opportunity and treatment in employment and occupation.

This list is non-exhaustive and some other grounds might be added in other instruments (national or international), such as age, disability or migration status, after consultation with representative workers’ and employers’ organizations, and relevant bodies.

Discrimination can be direct, for instance when a particular group is explicitly excluded from a recruitment process or given less favourable treatment at work; or indirect, when apparently neutral situations, regulations or practices result in unequal treatment of certain persons. Reasonable accommodation seeks to remove or reduce the barriers faced by workers to access, advance or remain in employment.

Discrimination is one of the root causes of forced labour. Individuals and groups that experience discrimination are more vulnerable to forced labour. For example, some

19- ILO, Walk Free Foundation, 2017.

20- Adapted from ILO, 2012d.

traditional forms of slavery are based on a caste system, where one particular ethnic group is considered as belonging to a lower category and thus is more likely to be held in slavery. Addressing discrimination is essential to the eradication of forced labour, and non-discrimination should underpin NAPs on forced labour.

Due diligence

The UN Guiding Principles on Business and Human Rights define due diligence as a process that shall include: (a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Integrating and acting upon the findings; (c) Tracking the effectiveness of measures taken in response; (d) Communicating on how impacts are being addressed.²¹

Forced labour

Forced labour is defined by the ILO Forced Labour Convention, 1930 (No. 29) 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 [or herself] voluntarily”.

Please refer to section 2 of the Guidance Manual and Tool No. 2 for further details.

Freedom of association and right to organize

These rights are established by two ILO fundamental Conventions, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Freedom of association is the right of workers and employers to form and join organizations of their own choosing, in order to represent their interests. These organizations must be independent and should be formed without any previous authorization being required. According to ILO standards on freedom of association, workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers.²²

Freedom of association is the prerequisite for collective bargaining and social dialogue. Ensuring workers can form and join organization is instrumental to prevent forced labour.

21- See UN, 2011.

22- From the ILO webpage on International Labour Standards on Freedom of association, available at: www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm

Fundamental principles and rights at work

The Fundamental Principles and Rights at Work (FPRW) are enshrined in the ILO 1998 Declaration on Fundamental Principles and Rights at Work which refer to:

- “(a) freedom of association and the effective recognition of the right to collective bargaining;**
- (b) the elimination of all forms of forced or compulsory labour;**
- (c) the effective abolition of child labour; and**
- (d) the elimination of discrimination in respect of employment and occupation”.**

They are the foundation on which equitable and just societies are built. All ILO member States have the obligation “to respect, to promote and to realize” them, whether they have or not ratified the related ILO Conventions (ILO 1998 Declaration, paragraph 2).

Fundamental principles and rights at work are inseparable, interrelated and of a mutually reinforcing character, which requires an integrated approach in order to realize them. Therefore, partners should take all FPRW into account when designing a NAP and seek to adopt integrated strategies as relevant.²³

Human trafficking / Trafficking in persons / Trafficking in human beings

The terms “human trafficking”, “trafficking in human beings” and “trafficking in persons” refer to the same concept. This Toolkit uses “human trafficking”, *as per the SDG Target 8.7*, unless reference is made to an official text that uses the term “trafficking in persons”.

Trafficking in persons is defined by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

According to Article 3 (c) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered “trafficking in persons” even if this does not involve coercion, threat, abuse of power, or other types of pressure. The consent of a child victim to the intended exploitation is irrelevant.

Please refer to section 2 of the Guidance Manual and Tool No. 2 for further details.

23- See ILO, 2019.

Labour migration

Labour migration is defined as the movement of persons from one geographical location to another in order to find gainful employment. It can be internal (within the same country) or international (involving the crossing of an international border).²⁴ Migrant workers are more vulnerable to forced labour, especially when they cross an international border irregularly or when they do not speak the language of the place or country of destination, as they can be more easily deceived or coerced. This also means that it will be more difficult for them to seek help in case of abuse.

The ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), in its Paragraph 12, provides further guidance on how to protect migrant workers:

“Taking into account their national circumstances, Members should take the most effective protective measures for migrants subjected to forced or compulsory labour, irrespective of their legal status in the national territory, including:

- (a) provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings, during which the person shall be authorized to remain in the territory of the member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour;**
- (b) provision of temporary or permanent residence permits and access to the labour market; and**
- (c) facilitation of safe and preferably voluntary repatriation”.**

Modern slavery

Modern slavery is not defined as such in international law. It generally refers to a wider range of situations of extreme exploitation where a person is heavily dependent on another and cannot refuse or leave because of mechanisms of control and coercion, violence, deception or abuse of power.

Many countries have adopted the term to refer to different forms of slavery-like conditions and have established respective legislation, policies and funding.

The mandate of the UN Special Rapporteur on contemporary forms of slavery encompasses “forced labour, debt bondage, serfdom, children working in slavery or slavery-like conditions, domestic servitude, sexual slavery, and servile forms of marriage”.

Please refer to section 2 of the Guidance Manual and Tool No. 2 for further details.

Non-criminalization of victims

The principle of “non-criminalization of victims” means that victims should not be prosecuted or imposed penalties for unlawful activities that they have been compelled to commit as a direct consequence of being subjected to forced labour, in accordance with the basic principles of their national legal systems (as provided by Article 4 (2) of the ILO Protocol on Forced Labour). Such unlawful activities could include, for instance,

24- Source: ILO, UNAOC, 2017.

immigration-related, prostitution or drug offences that are linked to the victims' forced labour situation. To avoid penalization of victims some countries have adopted a list of offences committed by trafficked persons that are exempt from prosecution and punishment.

Furthermore, countries should ensure that all victims of forced labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation (Article 4 (1)).

Pathfinder countries

Pathfinder countries are members of the Alliance 8.7. They accelerate efforts, try new approaches and collaborate with others in order to achieve Target 8.7 of the Sustainable Development Goals. Any country can become a pathfinder country, regardless of development level, if they commit to:

- ▶ Adopt, implement or enhance national action plans or policies, including strengthened legal frameworks and enforcement mechanisms on child labour, forced labour, modern slavery and/or human trafficking;
- ▶ Translate public commitments into concrete actions;
- ▶ Promote the ratification or implementation of recognized international human rights standards, including applicable international labour standards.

The Alliance 8.7 Global Coordinating Group, which acts as the Alliance's steering committee, reviews and decides on pathfinder countries' requests on a periodical basis.²⁵

Recruitment

The ILO defines recruitment as a process that "includes the advertising, information dissemination, selection, transport, placement into employment. For migrant workers, it includes return to the country of origin where applicable." This definition applies both to job seekers and to those in an employment relationship.²⁶

The recruitment stage can make a critical difference in a worker's quest for safe and decent work. At best, recruitment opens pathways to safe and decent job opportunities; at worst, it can lead to entrapment in exploitative work or in forced labour.

Please refer to section 3 of the Guidance Note for further details.

Recruitment fees and related costs

The ILO defines "recruitment fees and related costs" as to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition of collection; these should not be collected from workers directly or indirectly.

25- Adapted from Alliance 8.7 website: www.alliance87.org/pathfinder-countries.

26- Based on ILO, 2016a.

Slavery

Slavery is defined by the League of Nations Convention to Suppress the Slave Trade and Slavery, 1926, as:

“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.

Please refer to section 2 of the Guidance Manual and Tool No. 2 for further details.

Social dialogue and tripartism

Social dialogue includes “all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy”.²⁷

When the three parties (governments, workers and employers) are involved, this is considered a tripartite process.

Freedom of association, collective bargaining and social dialogue are essential in order to create an environment in which workers are protected, including from forced labour. The absence of or weak social dialogue is one of the root causes of forced labour. When workers are unable to exert a collective voice, to defend their interests, or to positively influence the conditions of their working lives, they are more vulnerable to abuse, including forced labour. Workers’ and employers’ organizations, along with public authorities, play a critical role in the development and implementation of comprehensive laws and policies to prevent and prosecute forced labour.²⁸

Victim-centred support

The guiding principle of “victim-centred support” means that support services are defined and offered based on the needs of the individual in question, but also on its wishes. There is no one-size-fits-all solution for the rehabilitation of forced labour victims, and, in each case, partners must dialogue with the victim to adapt the support provided to its profile. This is also why support should not be conditional, because no condition can be fair to everyone. Such approach allows for the respect of the victims’ dignity.

27- From ILO’s Social Dialogue Branch webpage: www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm.

28- Based on: ILO, IPU, 2019.