

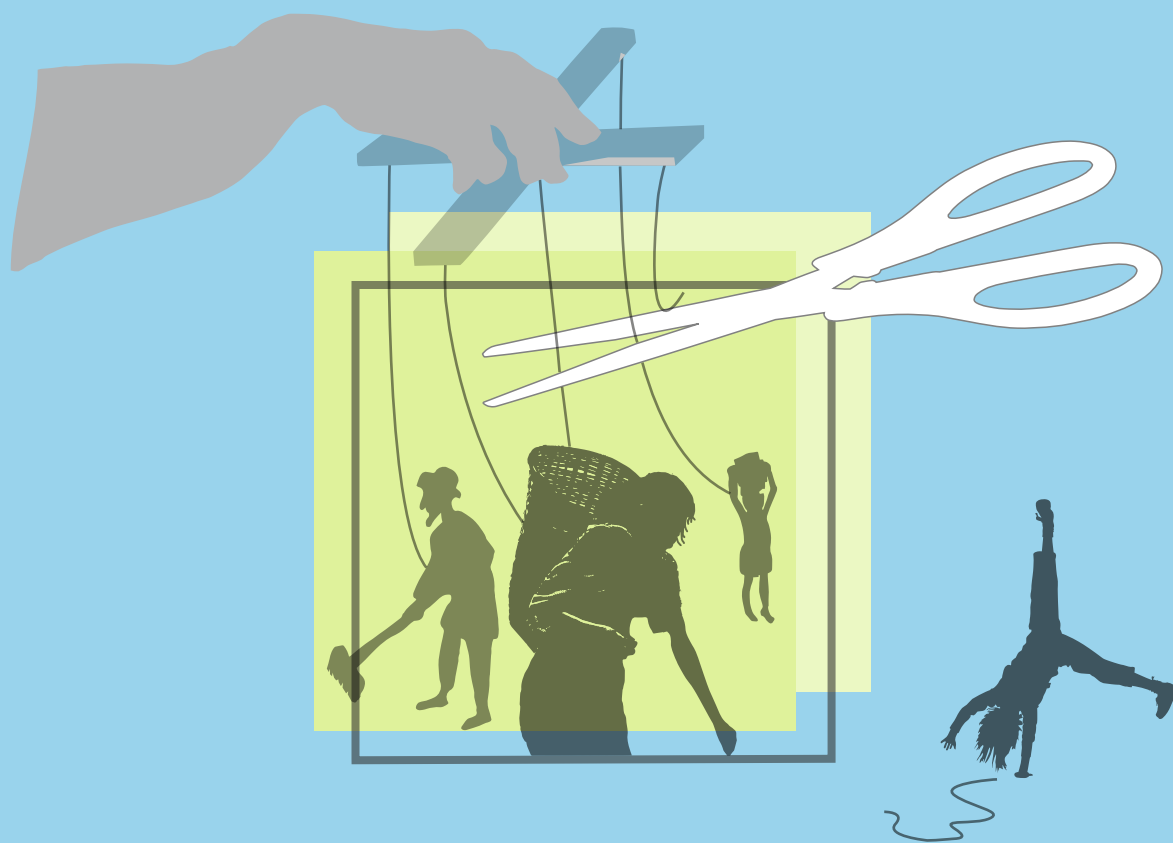


International
Labour
Office

Geneva

Report IV (2A)

Strengthening action to end forced labour



**International
Labour
Conference**

103rd Session, 2014

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Report IV(2A)

Strengthening action to end forced labour

Fourth item on the agenda

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LIST OF ABBREVIATIONS

Employers' and workers' organizations

	IOE	International Organisation of Employers
	ITUC	International Trade Union Confederation
Argentina	CGTRA	General Labour Confederation of the Argentine Republic
	CTA	Congress of Argentine Workers
Australia	ACCI	Australian Chamber of Commerce and Industry
	ACTU	Australian Council of Trade Unions
	AMMA	Australian Mines and Metals Association
Austria	BAK	Federal Chamber of Labour
	ÖGB	Austrian Trade Union Federation
	WKÖ	Austrian Economic Chambers
Bangladesh	WSM	World Solidarity (South Asia Regional Office)
Benin	CSA	Confederation of Autonomous Trade Unions
	MTCB	Movement of Christian Workers of Benin
Brazil	CNA	Brazilian Confederation of Agriculture and Livestock
	CNI	National Confederation of Industry
Bulgaria	Podkrepa	Confederation of Labour
Burkina Faso	CNTB	National Confederation of Workers of Burkina Faso
Canada	CLC	Canadian Labour Congress
	CSN	Confederation of National Trade Unions
Colombia	ANDI	National Business Association of Colombia
	CGT	General Confederation of Labour
Cyprus	OEB	Cyprus Employers and Industrialists Federation
Dominican Republic	CASC	Autonomous Confederation of Class Unions
	CNTD	National Confederation of Dominican Workers
	CNUS	National Confederation of Trade Union Unity
Egypt	FETU	Federation of Egyptian Trade Unions

Finland	EK	Confederation of Finnish Industries
	SAK	Central Organization of Finnish Trade Unions
France	CGT-FO	General Confederation of Labour – Workers’ Force
	MEDEF	Movement of French Enterprises
Germany	DGB	German Trade Union Confederation
Greece	GSEE	Greek General Confederation of Labour
	SEV	Hellenic Federation of Enterprises
Guatemala	CGTG	General Confederation of Workers of Guatemala
Hong Kong, China	HKCTU	Hong Kong Confederation of Trade Unions
India	NDWTUF	National Domestic Workers Trade Union Federation
Indonesia	KSBSI	Indonesian Prosperity Trade Union Confederation
	SBMI	Indonesian Migrant Workers Union
Italy	CGIL	Italian General Confederation of Labour
	CISL	Italian Confederation of Workers’ Trade Unions
	UIL	Italian Labour Union
Japan	JTUC-RENGO	Japanese Trade Union Confederation
	Keidanren	Japan Business Federation
Republic of Korea	FKTU	Federation of Korean Trade Unions
	KEF	Korea Employers Federation
Latvia	LBAS	Free Trade Union Confederation of Latvia
	LDDK	Employers’ Confederation of Latvia
Madagascar	SEKRIMA	Christian Confederation of Malagasy Trade Unions
Mauritania	CGTM	General Confederation of Workers of Mauritania
Mexico	CONCAMIN	Mexican Confederation of Chambers of Industry
	CTM	Confederation of Mexican Workers
Republic of Moldova	CNSM	National Trade Union Confederation of Moldova
Nepal	GEFONT	General Federation of Nepalese Trade Unions
	NTUC	Nepal Trade Union Congress
Netherlands	FNV	Netherlands Trade Union Confederation
New Zealand	BusinessNZ	Business New Zealand
	NZCTU	New Zealand Council of Trade Unions

Norway	LO	Norwegian Confederation of Trade Unions
	NHO	Confederation of Norwegian Enterprise
	Unio	Confederation of Unions for Professionals
	YS	Confederation of Vocational Unions
Pakistan	PWF	Pakistan Workers' Confederation
Panama	CS	Convergencia Sindical
Peru	CATP	Autonomous Confederation of Peruvian Workers
	CUT	Single Central Organization of Workers of Peru
	JOC	Young Christian Workers
Poland	NSZZ	Independent and Self-Governing Trade Union – Solidarność
Portugal	CCP	Confederation of Trade and Services of Portugal
	CGTP	General Confederation of Portuguese Workers
	UGT	General Union of Workers
Romania	CNIPMMR	National Council of Small and Medium-Sized Private Enterprises in Romania
	CSDR	Democratic Trade Union Confederation of Romania
Russian Federation	FNPR	Federation of Independent Trade Unions of Russia
Rwanda	COTRAF	Congress of Labour and Brotherhood of Workers
Serbia	CATUS	Confederation of Autonomous Trade Unions of Serbia
	Nezavisnost	Trade Union Confederation Independence
Senegal	CNES	National Confederation of Employers of Senegal
	CNP	National Council of Employers
	CNTS	National Confederation of Workers of Senegal
	CNTS/FC	National Confederation of Workers of Senegal/Forces of Change
	CSA	Confederation of Autonomous Trade Unions of Senegal
	FGTS/B	General Federation of Workers of Senegal/B Trend
	MEDS	Senegal Movement of Enterprises
	UNSAS	National Union of Autonomous Trade Unions of Senegal
Slovenia	PERGAM	Confederation of Trade Unions
	ZSSS	Association of Free Trade Unions of Slovenia
Somalia	FESTU	Federation of Somali Trade Unions
Spain	CCOO	Trade Union Confederation of Workers' Committees
	UGT	General Union of Workers

Sweden	LO	Swedish Trade Union Confederation
	SACO	Swedish Confederation of Professional Associations
	SN	Confederation of Swedish Enterprise
	TCO	Swedish Confederation for Professional Employees
Switzerland	UPS	Confederation of Swiss Employers
Trinidad and Tobago	ECA	Employers' Consultative Association of Trinidad and Tobago
	NATUC	National Trade Union Centre of Trinidad and Tobago
Turkey	KESK	Confederation of Public Employees' Unions
	MEMUR-SEN	Confederation of Public Servants Trade Unions
	TİSK	Turkish Confederation of Employers' Associations
United Kingdom	TUC	Trades Union Congress
United States	AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
Bolivarian Republic of Venezuela	FEDECAMARAS	Venezuelan Federation of Chambers of Commerce and Production
Zambia	ZFE	Zambia Federation of Employers
Zimbabwe	ZCTU	Zimbabwe Congress of Trade Unions

Other abbreviations

CESCR	International Covenant on Economic, Social and Cultural Rights
EU	European Union
ILO	International Labour Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
WTO	World Trade Organization

INTRODUCTION

At its 317th Session in March 2013, the 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 of the International Labour Conference in 2014. The Governing Body further decided that this item would be governed by a single-discussion procedure in accordance with article 38 of the Standing Orders of the Conference, and adopted the programme of reduced intervals proposed.¹ This decision followed the first recurrent discussion on fundamental principles and rights at work in June 2012, and a Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation in February 2013. The conclusions of the 2012 Conference discussion called for “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”.² The Meeting of Experts concluded that:

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. There was consensus among the experts that the implementation gaps should be addressed through standard setting to advance prevention, protection and compensation measures to effectively achieve the elimination of forced labour globally. The experts considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach a consensus. The experts did not retain the option of a new Convention.³

To this end, the Office prepared a summary report on the law and practice in member States.⁴ The report included a questionnaire to ascertain the views of member States on the scope and content of a possible instrument or instruments, and to prepare the proposed text(s). The questionnaire was drawn up taking into account the conclusions of the 2012 Conference and of the Meeting of Experts.

According to the programme of reduced intervals decided by the Governing Body, the Office invited governments to send their replies by 31 December 2013. At the time of drawing up the present report, the Office had received replies from constituents from 101 member States. This included the governments of the 90 member States that are listed in the appendix.

In accordance with article 38, paragraph 1, of the Standing Orders of the Conference, governments were invited to give their views after consultation with the most representative

¹ GB.317/INS/2(Rev.).

² ILO: *Provisional Record* No. 15, International Labour Conference, 101st Session, Geneva, 2012, conclusions, para. 22(c).

³ See paras 26 and 27 of the conclusions of the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation (TMELE/2013/6).

⁴ ILO: *Strengthening action to end forced labour*, Report IV(1), International Labour Conference, 103rd Session, Geneva, 2014.

organizations of employers and workers. This consultation is obligatory for Members which have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The governments of 28 member States indicated that the most representative employers' and workers' organizations had been consulted. The governments of several member States sent the replies of employers' and workers' organizations separately; in some cases, these replies were received directly by the Office. In addition, replies were received from employers and workers of another 11 member States. Replies were also directly received from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC).

Governments were also reminded of the importance of ensuring consultations among all relevant departments when formulating their replies. A number of countries indicated that they had done so; and some submitted the views of two or more ministries or other governmental bodies separately.

This report was prepared on the basis of the replies received from governments and organizations of employers and workers to the questionnaire and contains the substance of their observations, as well as those from other international organizations, together with the Office's commentary on the replies and on the proposed texts of the possible Protocol and/or Recommendation. Volume 2B of this Report IV contains the French and English versions of the proposed texts which, if the Conference so decides, will be the basis for discussion at its 103rd Session (2014) of the standard-setting item on the elaboration of a Protocol to the Forced Labour Convention, 1930 (No. 29), supplemented by a Recommendation, or of an autonomous Recommendation, on action to end forced labour.

REPLIES RECEIVED AND COMMENTS

This section contains the substance of the replies of governments, employers' and workers' organizations to the questionnaire which accompanied Report IV(1). The text of each question is reproduced, followed by the number of respondents grouped according to the nature of the reply (affirmative, negative or other).

In cases where a reply was qualified or clarified by comments, the substance of these is indicated in a summarized form in alphabetical order of countries. Due to limitations of space, similar responses have been grouped together, where possible. Some replies provided interesting and useful information on national law and practice with regard to forced labour. That information has not, however, been reproduced in this report. Comments which reaffirmed or responded negatively to the proposition contained in the question without adding additional points have not been reproduced either, in the interest of conciseness. However, the full text of all comments provided has been taken into account in the formulation of the proposed texts.

The Office's commentary on the replies to the questions and on the proposed texts may be found in each section.

Format. In view of the restrictions on the length of Conference reports, some modifications have been made compared to the presentation of previous reports of this kind. The Office considers that these changes will make the report easier to read, without reducing the information available. There are two major changes.

First, instead of reproducing the list after each question of which constituents replied Yes, No or Other, this information is presented in tabular form in the appendix to the present report.

Second, it had been the practice to list each workers' or employers' organization which had replied to each question. However, a number of workers' organizations, including the ITUC, have collaborated to furnish the same or similar replies to many of the questions. Instead of reproducing the name of each organization for each question, the summary of replies will indicate "Consolidated reply". In cases in which other replies were received from some organizations, or when an organization furnished a reply that differs from or adds to the consolidated reply, these are listed separately. This shortens the report considerably, while providing exactly the same information as in the earlier format. The workers' organizations that have collaborated in this way are the following: CGTRA (Argentina), ACTU (Australia), CNTB (Burkina Faso), CLC (Canada), CGT (Colombia), CNUS/CNTD/CASC (Dominican Republic), DGB (Germany), KCTU (Hong Kong), Sekrima (Madagascar), CGTM (Mauritania), FNV (Netherlands), CS (Panama), CATP (Peru), CUT (Peru), Solidarność (Poland), FNPR (Russian Federation), CNTS (Senegal), UNSAS (Senegal), ZSSS (Slovenia), FESTU (Somalia), CCOO (Spain), LO (Sweden), SACO (Sweden), TCO (Sweden), TUC (United Kingdom) and ITUC (International Trade Union Confederation).

1. GENERAL OBSERVATIONS

The Office has received a rich set of detailed comments in response to the questions raised in the questionnaire. Some of these comments are emphasized by many respondents in relation to a number of different questions. The Office presents these comments in this general part. Other comments, made in respect of specific questions, are addressed in more detail below.

Form of the instrument(s). The first question that must be considered is whether there should be a Protocol and a Recommendation, or a stand-alone Recommendation without a Protocol.

The nature of these instruments is briefly described hereunder:

- ❑ A Protocol is an international treaty, subject to ratification and linked to a Convention. It creates legal obligations applicable to the ratifying State and can be ratified only by those Members which 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 has no binding force and is not subject to ratification. 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.

The majority of the respondents chose the option of a Protocol and Recommendation, though there is still a significant division in the replies received – see under question 8 below. The draft put before the Conference is therefore based on considering two draft instruments. Many, perhaps most, of the reservations expressed concerning the proposed Protocol have been addressed in one way or another, and some of the positions expressed in the replies may thus have evolved by the time of the Conference session in accordance with the draft put before the Conference. The proposed Protocol is short, and is structured in such a way that it would, for the most part, include obligations to adopt policies and programmes, without going into detail on their specific content or methods of implementation. Should the Conference prefer to adopt a Recommendation only, whose legal effects would be substantially different, its text as proposed could be adjusted to cover all issues. The draft Recommendation already covers all the same points that are in the draft Protocol – though in greater detail and in language adapted to a Recommendation – and there would be few modifications to make to the draft Recommendation, most notably in the Preamble.

Transitional provisions. A second question that has been considered is the need for the Conference to confirm that the transitional period provided for in the Forced Labour Convention, 1930 (No. 29), has expired and that the transitional provisions no longer apply. The responses and comments received were virtually unanimous in supporting such a confirmation by the Conference. While the expiry of this period has long been noted by the ILO's supervisory bodies and reflected in the practice of member States, as well as having been acknowledged by the Governing Body and the Conference, the current standard-setting action in relation to Convention No. 29, and in particular the possible adoption of a Protocol, brings an opportunity to provide further legal certainty. As reflected in the replies received to the questionnaire (see under question 18 below), more than 84 years after the entry into force of the Convention, it is not possible, in good faith, to consider applicable transitional provisions whose primary object and purpose was to regulate recourse to forced labour for a limited period in a colonial context. This 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.

The Office proposes that an acknowledgement of the expiry of the transitional period be included in the Preamble to the Protocol, since a Protocol 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.

Taking account of national circumstances. One recurring comment from governments and employers' and workers' organizations, expressed in respect to almost all questions, is the importance and the need for the strategy for the elimination of forced labour – as well as its implementation and monitoring – to be tailored to and consistent with national circumstances and priorities, and to take into account national capacities and available resources. This point is addressed in the proposed Protocol and Recommendation, which set out a flexible framework and formulate guidance for Members for the development of their own programmes and policies for the elimination of forced labour. In addition, this approach is inherent in a Recommendation, which under the ILO Constitution imposes no obligations on member States except that of submission to the competent authorities.

Continuing validity of existing instruments. A significant number of respondents explicitly reaffirmed their commitment to the standards laid down in Convention No. 29 and other relevant ILO instruments, which are considered as key references for the elimination of forced labour. Some have also referred to other international instruments, and to guidance provided by the ILO and other international organizations.

This is reflected in particular in the Preamble and in Article 6 of the proposed Protocol, and in the Preamble and Paragraphs 1 and 8 of the proposed Recommendation.

Nevertheless, some respondents stated that the standards in these instruments should conform to other international instruments, particularly those adopted in the European context. Attention is drawn to the fact that the European standards contain obligations and objectives which, for many of the countries where both the forms of forced labour and its prevalence are different, may be difficult to attain. The standards proposed in the present context are therefore aimed at a level that should be accessible to all countries, while remaining consistent with the requirements of the other international standards concerned.

Definitions. In accordance with the comments made by a number of respondents, the proposed texts attempt to make it clear that they are intended to refer to all instances of forced labour, whether or not they arose as a result of trafficking. They also attempt to clarify that the treatment of those who have been trafficked for the purpose of forced labour, in particular by trafficking across international borders, may require measures aimed in particular at migrants, but that many of the measures aimed at preventing and eliminating forced labour are applicable whatever the source or form of forced labour.

As indicated above, the present proposed instruments aim at covering forced and compulsory labour in all its forms, but various questions arise on this. The first point of reference for the ILO is the definition contained in Article 2(1) of Convention No. 29:

For the purposes of this Convention the term ***forced or compulsory labour*** shall mean 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 voluntarily.

Various exceptions are included in paragraph 2 of the same Article, which do not affect the basic definition.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of 2000 (the Palermo Protocol or the Trafficking in Persons Protocol) adds an element in the form of a definition of trafficking in persons, in its Article 3:

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

All the elements of trafficking in Article 3 of the Palermo Protocol are consistent with the definition of forced labour in Convention No. 29, with the exception of the removal of organs, and indeed the ILO took an active part in the drafting of the Protocol to help ensure that the two instruments would be compatible. The proposals made in the present context are intended to maintain this consistency and not to cast any doubt on it.

2. REPLIES TO AND COMMENTS ON THE QUESTIONNAIRE

I. Preamble

Qu. 1 *Should a proposed Preamble recognize the scale of forced labour in the world, which deprives millions of women and men, girls and boys, of their human rights and human dignity, contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all?*

Governments

Total number of replies: 90

Yes: 85

No: 3

Other: 2

Comments

Botswana, Ethiopia, Mauritius: Recognize the scale of forced labour because it violates fundamental human rights and leads to poverty and has drastic consequences.

Italy: Forced labour – in close connection with international migration – is often the result of trafficking in persons.

Russian Federation, Sweden: Replace “depriving people of their human rights” by “violates the rights of”.

Senegal: The Preamble may also recognize the fact that forced labour is linked to socio-cultural realities and highlight the need for more action on prevention and protection of victims.

Employers

Total number of replies: 26

Yes: 15

No: 2

Other: 9

Comments

CNI (Brazil): It is not necessarily forced labour that perpetuates poverty, but the absence of public policies.

SEV (Greece), UPS (Switzerland): As long as information is evidence-based.

Workers

Total number of replies: 72

Yes: 70

No: 0

Other: 2

Comments

Consolidated reply: Revise to read: “forced labour ... violates the rights of millions of women and men, girls and boys ...”. Modern forms of coercion should be recognized, including debt bondage and other types of coercion.

CGIL, UIL (Italy): The dividing lines between illegal labour, trafficking and servitude have become very thin.

AFL-CIO (United States): Should recognize growing forced labour in the private sector, especially in supply chains. Modern forms of coercion include the use of immigration status, blacklisting, threats of eviction and coercion and retaliation by labour recruiters connected to families in workers’ home communities.

United Nations

Office of the United Nations High Commissioner for Human Rights (OHCHR): It is recommended that the Preamble capture the scale of forced labour and the root causes as well as contributing factors, and enumerate the different forms of prohibited practices associated with forced labour.

United Nations Office on Drugs and Crime (UNODC): There is value in recognizing the scope of forced labour in the world, in order to mobilize resources. Statistics, however, are difficult to come by and might often be rough approximations. Therefore, the ILO may also wish to recognize issues relating to the *nature* of forced labour.

Qu. 2 *Should a proposed Preamble recognize the vital role played by the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), in combating all forms of forced labour?*

Governments

Total number of replies: 90

Yes: 87

No: 2

Other: 1

Comments

Democratic Republic of the Congo, Eritrea, Mexico: It is important to establish the relationship between the new instruments and the existing ILO standards, mentioning the gaps in the latter. It would also be desirable to name the activities where forced labour is most prevalent.

Guatemala: ILO Conventions Nos 29 and 105 do not specify aspects such as migrant child labour, trafficking in persons and exploitation.

Netherlands: It should also reaffirm the prohibition of forced or compulsory labour in all its forms and give expression to the determination of the international community to eradicate this evil.

Employers

Total number of replies: 26

Yes: 17

No: 1

Other: 8

Workers

Total number of replies: 72

Yes: 70

No: 0

Other: 2

Comments

Consolidated reply: The Preamble should recognize that the prohibition of the use of forced or compulsory labour in all its forms is considered a peremptory norm of international human rights law.

Qu. 3

Should a proposed Preamble recall that the definition of forced or compulsory labour under Article 2 of Convention No. 29 covers all human beings, irrespective of their sex or nationality, and covers forced or compulsory labour in all its forms and manifestations?

Governments

Total number of replies: 90

Yes: 85

No: 4

Other: 1

Comments

Canada: Do not broaden the definition of forced labour.

Djibouti: Although the definition is explicit, a broader definition is highly desirable.

Finland: Trafficking in persons for labour applies both to women and men, and prohibitions that apply to it should apply to everyone, irrespective of gender, nationality, or age.

Germany: Stress the universality of Convention No. 29 and its intention to eliminate forced labour instead of focusing on the definition.

Latvia: Describe groups more consistently.

Panama, Spain, Turkey: Add references to other grounds.

Russian Federation: In view of the discussions held during the meeting of experts, and to avoid any further doubt, the Preamble should mention that this definition covers all the forms and manifestations of forced labour, including trafficking in persons.

United States: The definition of forced labour in Convention No. 29 applies to types of work, not to persons compelled to perform it.

Employers

Total number of replies: 26

Yes: 14

No: 3

Other: 9

Comments

CNP, CNES, MEDS (Senegal): Add “or of their social status or their colour” (with reference to different forms of slavery in certain countries).

Workers

Total number of replies: 72

Yes: 69

No: 1

Other: 2

Comments

Consolidated reply: The Preamble should mention that this definition covers all the forms and manifestations of forced labour, including trafficking in persons. All grounds of discrimination should be mentioned. This provision should be included in the body of the Protocol.

GEFONT (Nepal): Should define modern forms of slavery, such as seizing passports, employing workers at lower wages and benefits than prescribed by law, and the Kefala sponsorship system.

United Nations

OHCHR: It should include “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation and gender identity, discrimination based on immigration status or other status”.

OFFICE COMMENTARY

On questions 1 to 3. The comment by the United States on the coverage of the concept of forced labour is correct, and the order of the concepts in this part of the Preamble has been rearranged. Account has been taken of the comment by Latvia and others on consistency of references. There is a risk that an enumeration of the groups covered would be incomplete or exclusionary; as elsewhere in the proposed texts, it has therefore been avoided, except where the proposed texts focus on given groups.

Qu. 4 *Should a proposed Preamble recognize that trafficking in persons for labour or sexual exploitation is the subject of growing international concern and requires urgent action for its effective elimination?*

Governments

Total number of replies: 90

Yes: 86

No: 3

Other: 1

Comments

Eritrea: With the effect of globalization, illegal migration is an issue of increasing importance, and an integrated approach is needed.

Finland: Measures are needed to intensify the implementation of international agreements and national legislation on banning and preventing such activities.

Germany: Mention explicitly all forms of exploitation referred to in the Palermo Protocol, including slavery-like practices.

Indonesia, Netherlands: Trafficking in persons is an international problem that leads to or constitutes forced labour, so awareness and action from all parties are needed.

Italy: It is necessary to protect the victims of severe forms of labour exploitation, which, even when not related to trafficking in persons, are a violation of fundamental human rights. This requires a comprehensive approach to implementing national policies to reduce the gaps in law and in practice.

Russian Federation: The Preamble should state that human trafficking is a growing concern, without naming “labour and sexual exploitation”, as this will lead to interpretation and legal insecurity.

Saudi Arabia: It is important to distinguish between the concept of trafficking in persons and the concept of forced labour.

Canada, Spain, Sweden: Trafficking in persons for sexual exploitation cannot be considered a form of forced labour. Refer only to trafficking in persons for forced labour.

Spain: Although it is very relevant in any international instrument to recognize the concerns relating to trafficking, the opportunity should also be taken to differentiate clearly between forced labour and trafficking. Although forced labour may be one of the purposes of trafficking (labour exploitation), in no event can trafficking in persons for sexual exploitation be considered a form of forced labour.

United States: This should be in the Preamble to the Recommendation, not the Protocol.

Employers

Total number of replies: 26

Yes: 17

No: 0

Other: 9

Comments

SEV (Greece): Not all trafficking results in forced labour and not all forced labour results from trafficking.

Workers

Total number of replies: 72

Yes: 65

No: 4

Other: 3

Comments

Consolidated reply: Trafficking for forced labour remains a neglected area in most state responses to human trafficking. The Preamble should state that human trafficking is a growing concern, without naming “labour and sexual exploitation”.

CGIL, UIL (Italy): Victims of trafficking and their families must sometimes pay high fees, and migrants must accept very exploitative working conditions. This problem has intensified with increased migratory flows, and because of severe restrictions on migration by rich countries.

United Nations

UNODC: Effective action to address forced labour and trafficking in persons requires States to apply relevant instruments complementarily, notably the Trafficking in Persons Protocol, in order to ensure a comprehensive and holistic approach.

- Qu. 5** *Should a proposed Preamble recall that certain groups of workers have a higher risk of becoming victims of forced labour, including workers in the informal economy, migrant workers, children, indigenous peoples and domestic workers?*

Governments

Total number of replies: 90

Yes: 84

No: 5

Other: 1

Comments

Canada, Chile, Myanmar, United States: The provision should end after “forced labour”.

Finland: Factors affecting the risk include the level of education, language skills, the field or workplace, the status of residence permit, the awareness of rights and the behaviour of foreign agencies and agents. Work done at home also entails risks.

Germany: Refer to “people subjected to forced labour”. Forced labourers are not workers in a legal sense and their protection is ensured under criminal law and not under labour law.

China, Guatemala, India, Indonesia, Italy, Lebanon, Russian Federation, Spain and others: Refer to groups particularly at risk.

Poland: Those at a high risk of becoming victims of forced labour are not limited to “workers”.

Employers

Total number of replies: 26

Yes: 14

No: 4

Other: 8

Comments

ANDI (Colombia), OEB (Cyprus), MEDEF (France): Do not list affected groups. Work in the informal economy is not necessarily exploitative.

Workers

Total number of replies: 72

Yes: 67

No: 3

Other: 2

Comments

Consolidated reply: Specific sectors should be highlighted, including construction, wood and forestry work, domestic work, seafarers and fisheries, agriculture, food, health care, manufacturing, tourism and entertainment, mining and quarrying and brick kilns, the sex industry and prostitution, workers with disabilities and mental health problems and those who are destitute.

CGT-FO (France): Traditional forms of forced labour (vestiges of slavery and slavery-like practices) still exist, along with modern forms.

CATUS (Serbia): Poverty, absence of employment, poor education and other factors increase the risk.

United Nations

OHCHR: Add a reference to unaccompanied and separated children, as well as women, in addition to increased vulnerability of certain groups in conflict and post-conflict situations, as well as migrant workers in irregular situations.

UNODC: The ILO may wish to consider including a specific reference to women and children, as included in question 21(c).

OFFICE COMMENTARY

As indicated earlier, enumerations of affected groups have been deleted.

Qu. 6 *Should a proposed Preamble note that the effective elimination of forced labour contributes to ensuring fair competition for employers as well as protection for workers?*

Governments

Total number of replies: 90

Yes: 83

No: 5

Other: 2

Comments

Benin: To demonstrate that all actors in the production chain are affected.

Eritrea: Helpful to provide corrective measures for the wrong done by employers who violate the law and to prevent similar crimes.

Indonesia: This could lead to greater security, and increased productivity and development.

Mexico: A wide definition of the concept of fair competition could support the transition from the informal to the formal economy.

Morocco: Many employers in the formal economy continue to press for this, to fight against unfair competition.

Poland: This is especially important for ensuring compliance with the basic principle of access of citizens from third countries to the labour market.

Russian Federation: The scales are tipped against employers that are not breaking the law. Employers have the power and an obligation to eradicate forced labour in their businesses and supply chains.

United States: In the Preamble of the Recommendation.

Employers

Total number of replies: 26

Yes: 16

No: 2

Other: 8

Comments

CNI (Brazil): There is no need to include this; what contributes to competition is a favourable business environment supported by respect for legal obligations.

Workers

Total number of replies: 72

Yes: 70

No: 0

Other: 2

Comments

Consolidated reply: The Preamble should note that the effective elimination of forced labour contributes to ensuring that responsible employers who abjure such practices themselves and in their supply chains are not subject to unfair competition.

CTM (Mexico): The effective elimination of forced labour is the key to the growth of enterprises and the economy.

Qu. 7 *Should a proposed Preamble recall the most relevant international labour standards and United Nations instruments?*

Governments

Total number of replies: 90

Yes: 81

No: 8

Other: 1

Comments

Malaysia: Should recall only ILO standards. The United Nations instruments should be highlighted through their own platforms.

United States: Refer only to those listed under question 2.

Employers

Total number of replies: 26

Yes: 17

No: 2

Other: 7

Comments

ANDI (Colombia), MEDEF (France), SEV (Greece): To avoid duplication and improve policy coherence.

ZFE (Zambia): Not necessary.

Workers

Total number of replies: 72

Yes: 69

No: 0

Other: 3

Comments

Consolidated reply: A list of ILO and UN instruments is provided.

United Nations

OHCHR: A list is communicated.

UNODC: In addition to the Trafficking in Persons Protocol and other relevant international instruments, the ILO may also wish to add a reference to the UN Organized Crime Convention, concerning, for example, cases where forced labour amounts to a serious crime in line with the Organized Crime Convention.

OFFICE COMMENTARY

Most respondents said that both ILO and UN instruments should be mentioned, but there is a reluctance to include a very long list. The draft therefore includes a list of essential instruments.

II. Form of a possible instrument or instruments

- Qu. 8** *Should a possible instrument or instruments to be adopted by the International Labour Conference to supplement Convention No. 29 take the form of:*
- (a) a Protocol, supplemented by a Recommendation?*
 - (b) a Recommendation?*

Governments

Total number of replies: 90

(a): 44

(b): 41

Other: 5

Comments

Canada: A Recommendation can provide appropriate guidelines while at the same time providing the flexibility member States might need in order to implement such measures efficiently and effectively. Canada does not oppose the adoption of a Protocol, provided it is concise and focused and addresses only the gaps identified by the experts with respect to prevention, protection and compensation of victims, as well as revocation of the outdated transitional provisions in Convention No. 29. The Protocol should not include prescriptive requirements that would prevent its wide ratification and implementation. An

accompanying Recommendation should provide a menu of measures and options for implementation of the Protocol.

Ethiopia, South Africa, Uruguay: The standard should involve legal obligations.

Finland: Alternative (a). Forced labour and one of its manifestations, trafficking in persons, have changed significantly since Convention No. 29 was adopted. In Finland, a large proportion of those in the victim assistance system are specifically victims of trafficking and related serious exploitation.

Germany: The outdated provisions of Convention No. 29 can only be revoked through a Protocol. However, neither the form of a Protocol nor a Recommendation would be acceptable if the goal was to extend labour law protection to forced labour, which would result in a de facto legalization. The protection of forced labour victims has to be ensured through criminal law (see also questions 5 and 11(b)).

Japan: The proposed text should be a Recommendation. The text of the provisions for the proposed Protocol are acceptable for a Recommendation, which should be flexible enough to allow member States to take measures according to the forms of forced labour in their countries. Japan recommends the insertion of the phrase “in accordance with national circumstances” in a number of the proposed provisions.

Latvia: The proposed text should be a Recommendation. However, if a decision is made that it should be a Protocol, Latvia considers that it should not be supplemented by a Recommendation.

Netherlands: We would favour a stand-alone Recommendation with a Preamble. A Recommendation has universal validity and implementation can start straight away after adoption, without having to wait for lengthy ratification procedures. In order to be able to reach consensus, a less detailed Recommendation than envisaged in this questionnaire would be preferable. Some of the elements mentioned as part of a Protocol could also be useful for a Recommendation.

New Zealand: No objection to a Protocol, but it may be difficult to adopt. Need to address the underlying issues and causes of forced labour.

Norway: Norway is not in favour of a Protocol to supplement Convention No. 29. The definition of forced labour in Convention No. 29 remains entirely relevant today and the Convention provides a solid foundation and point of departure. The current problem seems to be serious implementation gaps. What is needed is more comprehensive and effective action in the form of strategies to eliminate forced labour practices – especially by addressing issues of particular relevance to the world of work. A Recommendation is thus a far more suitable instrument, since the problems do not seem to be of a legal nature. In addition, a Protocol could also fail its purpose by ultimately not receiving sufficient ratifications.

United Kingdom: Most of the provisions proposed for the Protocol should be retained in a Recommendation.

United States: The US Government would support a focused, concise Protocol, supplemented by a more detailed Recommendation. The Protocol should be strictly limited to calling for measures of prevention, protection and compensation, removing the no longer applicable transitional provisions from Convention No. 29, and providing that each Member should give due consideration to implementing the provisions of the Protocol in the manner set out in the Recommendation. Any elaboration on these provisions, as well as any other issues, should be included in the Recommendation.

The US Government suggests the following operative provisions for a Protocol:

Each Member which ratifies this Protocol shall undertake effective measures to:

- (1) prevent forced labour;
- (2) provide protections for victims of forced labour; and
- (3) ensure access to compensation to victims of forced labour.

Upon entry into force of this Protocol, the transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3–24 of Convention No. 29 are revoked.

Employers

Total number of replies: 26

(a): 6

(b): 15

Other: 5

Comments

OEB (Cyprus): A Protocol is not suitable. The issues in questions regarding a Protocol should only be addressed in a Recommendation. A non-binding Recommendation provides the flexibility required to address the multiple implementation gaps of Convention No. 29 and encourage its application in all member States, whether they ratify it or not. The questionnaire contains questions open to deviation and interpretation, such as question 5 which identifies vulnerable groups, such as migrant workers and domestic workers, as being at higher risk of becoming victims. This creates the potential of diverting the discussion to taking specific measures for certain vulnerable groups rather than focusing on the fundamental character of forced or compulsory labour. Such assertions should be supported by evidence.

EK (Finland): A Recommendation is sufficient, and flexible and versatile. It is also faster, as it does not require ratification by States. Questions concerning the Protocol can also be included in the Recommendation.

Keidanren (Japan): A future-oriented Recommendation which will promote measures to eliminate existing forced labour and to prevent it throughout the world is preferable. Situations and conditions of forced labour vary from country to country, and there is no one-size-fits-all solution on this issue.

NHO (Norway): The questionnaire has been structured proposing a Protocol complemented by a Recommendation. This does not fully reflect the options identified in the conclusions of the meeting of experts. NHO does not consider a Protocol a suitable instrument in this case. Therefore, the issues raised in questions regarding a Protocol should be taken up, where appropriate, in a Recommendation only. A Recommendation should provide specific guidance tailored to the needs of Members, to strengthen their action against forced labour by adopting a comprehensive and integrated approach to prevention, victim protection, compensation and law enforcement, including through international cooperation and engagement with employers' and workers' organizations. A non-binding Recommendation could be a dynamic instrument, flexible enough to address the multiple implementation gaps of Convention No. 29 and capable of being implemented by all Members, respecting their different national circumstances. Discussions should not be diverted towards the conditions or work in the informal economy, or the protection of vulnerable groups, as not all work in the informal economy is precarious or necessarily involves labour exploitation or discrimination. Careful attention needs also to be given to the definitions of forced labour and human trafficking, as not all human trafficking activities involve forced labour and not all forced labour is the result of human trafficking.

FEDECAMARAS (Bolivarian Republic of Venezuela): A Protocol and a Recommendation seems to be the best option.

IOE: The structure of the questionnaire does not fully reflect the options adopted in the conclusions of the meeting of experts, i.e. "a Protocol and/or a Recommendation". The suggested structure of the questionnaire should in no way be considered an indicator for the final decision regarding form and number of instruments. Such decision shall only be taken at the International Labour Conference in June 2014.

Workers

Total number of replies: 72

(a): 67

(b): 2

Other: 3

Comments

Consolidated reply: Changes in the global economy, particularly in the role of multinational corporations and international labour migration, highlight the need for the new standard to address the implementation gaps of Convention No. 29 and for the ILO to provide guidance. The Protocol should also ensure that victims of forced labour who are not trafficked are entitled to similar protections as those who are trafficked and it should also fill in gaps in the Trafficking in Persons Protocol.

LO, YS and Unio (Norway): A Protocol is stronger than a non-binding instrument when dealing with issues like forced labour, human trafficking and prostitution.

NDWU (India): The situation of forced labour both at the country and the global level is such that only a binding force can eliminate the evil and let humans live in freedom.

ITUC: A Protocol will provide binding obligations for those States parties who ratify it and hence be stronger than a Recommendation. The experience of implementation of existing international standards on trafficking shows the clear need for such a binding instrument. There has been extremely poor, perhaps negligible, implementation of the UN Palermo Protocol's non-binding measures on victim protection. This is in contrast to the binding Council of Europe Convention on Trafficking, as a result of which protection and assistance to trafficked persons, as guaranteed by the Convention, has significantly improved.

United Nations

OHCHR: The proposed instruments should respect the framework of international human rights law and experience. A legally binding Protocol will provide more protection and enhance prevention, while a Recommendation is essential in providing guidance to States on how to implement the Protocol, through enacting legislation and drawing up policies.

UNODC: Given the similar nature and scope of the existing Trafficking in Persons Protocol, a new instrument would need to take account of and, where applicable, be based on that Protocol and the Organized Crime Convention (which have achieved almost universal ratification), in order to avoid uncertainties among States as to the implementation and application of these instruments in practice. Possible conflicts and overlaps with existing instruments may not only affect the readiness of States to ratify the new instrument, but also the adoption and effectiveness of measures aiming to implement/enforce it. This will, however, depend on the breadth of the new instrument and the level of divergence from the forced labour Convention.

OFFICE COMMENTARY

The majority of replies favour a Protocol supplemented by a Recommendation, though opinions are divided. All the points in the draft Protocol are also expressed – in more detail – in the draft Recommendation. The Office's comments on this point may be found under "General observations" above.

III. Content of a proposed Protocol

Qu. 9 *Should the proposed Protocol provide for measures to address prevention of forced labour and protection and compensation of victims?*

Governments

Total number of replies: 90

Yes: 66

No: 3

Other: 21

Comments

Chile: Provided that compensation is not automatic or compulsory for the State in which the act occurs.

Colombia: Sanctions alone are not effective so prevention is necessary. Broad requirements for compensation are problematical.

Eritrea, Ethiopia, Mauritius: It should include and/or elaborate on what is missing in the Convention.

Guatemala, Italy, Nepal: Trafficking is a systematic violation of human rights, as well as a labour issue. Forced labour involves a series of crimes, causing damage that needs to be compensated, and requiring rehabilitation, protection and social reintegration of victims.

Japan: Should be flexible enough to allow States to take measures according to the forms of forced labour in their countries.

Mali: Instead of compensation, provide for the obligation to rehabilitate.

Morocco: All the economic and social partners and the civil society actors must be involved.

Russian Federation: It should include state responsibility to undertake methodologically sound research into the laws, policies and practices that render people at risk, and to put an end to them. Compensation should be replaced with “provision of effective remedies including rehabilitation, adequate compensation and guarantees of non-repetition”.

Senegal: The responsibility for compensation should lie with the offenders.

Slovenia: It should be harmonized with the EU Directive establishing minimum standards on the rights, support and protection of the victims of crime.

Sri Lanka: Defined according to the national context.

Oman, Trinidad and Tobago: It should be clarified who compensates the victims.

United States: Amend to read “shall take effective measures”, and spell out those measures in the Recommendation.

Employers

Total number of replies: 26

Yes: 12

No: 3

Other: 11

Comments

Keidanren (Japan): There should not be a uniform measure on compensation even in a Recommendation.

Workers

Total number of replies: 72

Yes: 68

No: 1

Other: 3

Comments

Consolidated reply: Should include state responsibility to undertake research into the laws, policies and practices that may render people at risk of being in forced labour. Compensation should be replaced with “provision of effective remedies, including rehabilitation, adequate compensation and guarantees of non-repetition”.

CGIL, UIL (Italy): Concentrating on investigation and prosecution reduces the importance of prevention and protection, but measures such as information and training for migrants can have a real effect.

LBAS (Latvia), CNTS (Senegal): It should provide for effective investigation.

GEFONT (Nepal): Unless compensation and remedies are covered, such instruments do not help to promote a decent work environment for workers in forced labour.

PWF (Pakistan): It should provide for penalties.

AFL-CIO (United States): Should focus on government responsibility to address root causes of forced labour, including structural flaws in immigration laws that increase the vulnerability of migrant workers.

United Nations

OHCHR: The Protocol should also emphasize the criminalization of forced labour in addition to the right to effective remedies, including compensation. The Protocol could be explicit on the need to overcome procedural hurdles to allow investigation, prosecution and reparations.

Qu. 10 *Should the proposed Protocol provide that each Member should have in place and implement a national policy and plan of action to eliminate all forms of forced labour, involving relevant government institutions, employers' and workers' organizations, and taking into consideration the views of other concerned groups?*

Governments

Total number of replies: 90

Yes: 57

No: 10

Other: 23

Comments

Canada, Japan, Norway, United Kingdom, United States: This provision should be in the Recommendation.

Chile, Ethiopia: Provided that they respect the independence and sovereignty of States.

Germany: Political coherence and coordination through national action plans is desirable. Reference to workers' and employers' organizations should be deleted. (See question 5.)

Lebanon: States in which forced labour occurs need to develop a plan to eliminate all its forms, including all institutions working in this area and both public and private institutions.

New Zealand: It will have to be flexible rather than laying down specific requirements.

Russian Federation: The Protocol should call for immediate and effective measures as a matter of urgency and time-bound national action plans for the eradication of forced labour analogous to Convention No. 182.

Switzerland: National programmes should cover both forced labour and trafficking. The social partners should be involved.

Employers

Total number of replies: 26

Yes: 12

No: 3

Other: 11

Workers

Total number of replies: 72

Yes: 68

No: 1

Other: 3

Comments

Consolidated reply: Should call for immediate, effective and time-bound measures analogous to Convention No. 182. “Other concerned groups” should include civil society and community-based organizations, including those representing victims or those actively involved in prevention of forced labour.

CSN (Canada): The role of employers’ and workers’ organizations should be reaffirmed.

CGIL (Italy): Very important to take account of ethnicity. Foreigners in particular do not report exploitation for fear of expulsion. The Ministry of Labour works with social partners but not with other civil society actors, which would be a better approach.

OFFICE COMMENTARY

The points covered in questions 9 and 10 have been combined in one provision that includes a basic statement of objectives and action measures, with the details of implementation left to national discretion. Persons in forced labour are nevertheless workers, even if labour laws are not effectively applied to them, and these are not the only laws applying to their situation. More detailed concerns are treated under the draft Recommendation. The comments by a number of workers’ organizations suggest that it would be advisable to extend the involvement of “other concerned groups” beyond taking their views into account.

- Qu. 11** *Should the proposed Protocol provide that each Member should take effective and comprehensive measures to prevent all forms of forced labour, including by:*
- (a) *educating and informing people, of both sexes and all ages, in order to reduce their risk of becoming victims of forced labour?*

Governments

Total number of replies: 90

Yes: 66

No: 4

Other: 20

Comments

Canada, United States: In the introductory paragraph, stop at “forced labour” and move the rest to the Recommendation.

Finland: The Protocol should be taken into consideration in the national core curricula, for example.

Italy, Morocco: The measures to prevent forced labour must target all categories of vulnerable workers and be based on education, information and awareness raising.

Poland: A lack of knowledge of what constitutes forced labour and of identification of practices indicating forced labour is one of the causes of low detection.

Senegal: Delete “comprehensive”.

Employers

Total number of replies: 26

Yes: 16

No: 2

Other: 8

Comments

MEDEF (France): Employers’ organizations can have a role in offering educational programmes to their members.

Workers

Total number of replies: 72

Yes: 69

No: 1

Other: 2

Comments

Consolidated reply: Prevention is one of the main gaps unaddressed by Convention No. 29. The provisions on prevention are, in their current form, weak and will be ineffective. Awareness raising will not in itself prevent forced labour. Prevention should be understood to include labour-market measures, not limited to those outlined in the questions, and also to include gathering of reliable knowledge and targeted

responses to promoting equal opportunities and participation for all men and women workers, the organization and empowerment of vulnerable groups, including in the informal economy and at-risk communities, and child protection. It should also link to safe migration for workers through fixing structural flaws in temporary migration programmes, and address the role of the private sector in better monitoring supply chains by allowing freedom of association and being held accountable for the actions of their suppliers.

CGIL, UIL (Italy): The standards should be brought up to date to allow easier entry into legal employment for migrants, and to combat illegal employment.

AFL-CIO (United States): Add that States should “take measures to require companies to take steps to prevent and respond to forced labour by conducting human rights due diligence to identify risks, avoiding complicity in abuses, and adequately remedying them if they occur”.

United Nations

OHCHR: In addition, improving access to formal education, especially for children, developing information campaigns to promote awareness of the dangers associated with trafficking, ensuring that regular channels for migration are put in place that respond to labour market needs in countries of destination, in order to reduce the demand for informal, and often abusive, facilitated movement.

Qu. 11 (b) *broadening the coverage and strengthening the application of labour laws, including in the informal economy?*

Governments

Total number of replies: 90

Yes: 50

No: 17

Other: 23

Comments

Austria: Where an employment relationship cannot be established, other measures are necessary to prevent forced labour. Employers have a responsibility to ensure that those in the informal economy are not at risk and do not pose a risk to others.

Bahrain: There are other competent authorities to pursue the protection of employees in the informal economy and it is difficult for ministries of labour to do so. Adding this reference will prevent some countries from ratifying the Protocol.

Djibouti: Labour law should apply to the informal sector and adequate social coverage should be provided to the workers concerned.

France: Strengthening the rights of workers in the informal economy should not mean equating forced labour and the informal economy.

Germany: The laws that apply to the “formal economy” already apply to the “informal economy”, but are not enforced. If labour laws are applied to cases of forced labour, there is a risk that forced labour will be recognized as normal employment. The purpose of forced labour regulations must be to prevent forced labour by threat of penalties under criminal law and to compensate the victims through civil law.

Latvia: The informal economy should not be covered by the labour law, because of the risk that the informal economy could expand.

Mali: The expansion of the scope of the legislation should be progressive, while placing special emphasis on strengthening labour inspection.

Poland: There is a particular risk of forced labour in domestic work.

Portugal: The instrument should provide that national labour law should be applicable to all workers and economic sectors, without referring to the formal or informal economy. It should provide for legal mechanisms to promote the identification and penalization of forced labour outside the formal economy.

Russian Federation: The Protocol must reinforce that all workers, whether national or migrant, documented or undocumented, in the formal or informal economy, must be covered by labour laws.

Myanmar, Sri Lanka: Coverage should be expanded gradually.

Switzerland: Often labour legislation sets conditions for decent work so that there is no recourse to forced labour. Should consider expanding the powers of the police to cover all the instruments of the public authorities.

United Kingdom: Not necessarily. Retain in the Recommendation.

United States: If retained, move to the Recommendation and add “as appropriate”. This discussion should be left to the Conference Committee on the informal economy.

Uruguay: The informal economy is the most seriously affected and must be covered.

Uzbekistan: The application of the labour legislation in the informal economy is not possible, so refer to the combined application of the labour laws and the civil legislation.

Employers

Total number of replies: 26

Yes: 11

No: 5

Other: 10

Comments

ANDI (Colombia): Keep the focus on forced labour, and do not divert attention to the informal economy.

EK (Finland): Expanding the application of legislation is not the only option; other options could include, for instance, social dialogue or promoting good practices.

UPS (Switzerland): Reformulate as: “The application of labour legislation adapted to different national realities, especially in the informal economy.”

ZFE (Zambia): It will be very difficult to apply labour laws to the informal economy as there are no systems that can be used for compliance.

Workers

Total number of replies: 72

Yes: 68

No: 1

Other: 3

Comments

Consolidated reply: The coverage of labour laws should be broadened “to apply to all workers and sectors without discrimination to ensure adequate levels of protection for all”.

CSN (Canada): Labour legislation must be widely implemented, include all types of employment relationships – including work in the informal economy – and be adapted to take into account the tripartite labour relationship and disguised labour relationships.

CGT (Colombia): Effective protection of sex workers should be included.

CGIL, UIL (Italy): It is difficult to identify forced labour in the informal economy, which is fragmented and very difficult to reach.

CTM (Mexico): In some countries the economy and education system are insufficiently developed, which gives rise to informal work.

GEFONT (Nepal), PWF (Pakistan): Especially as in developing countries the majority of the working population is in the growing informal economy, including women in agriculture and small businesses.

Nezavisnost (Serbia): Emphasis should be placed on the judicial authorities and judiciary, including labour courts.

PERGAM (Slovenia): Stimulation to transfer to the formal economy can be introduced as parallel measures.

United Nations

OHCHR: Ensure that migrants, including women, are properly informed about the existence of regular channels for migration and the potential for exploitation, including debt bondage, in particular migration situations. It should also provide for ensuring that labour laws apply to all workers in the economy, regardless of sector and of the immigration status of the worker.

Qu. 11 (c) *protecting workers, particularly migrant workers, who use recruitment and placement services from abuses and fraudulent practices?*

Governments

Total number of replies: 90

Yes: 66

No: 6

Other: 18

Comments

Canada, Norway, United States: This should be in the Recommendation.

Chile, Latvia: Should apply to the population in general.

Côte d'Ivoire, Morocco: Migrant workers are vulnerable. Enforcement should not depend on the status of the worker.

Mexico: Most migrant workers lack information, making them victims of abuses.

Russian Federation: States should be required to adopt and enforce strong measures to regulate labour recruiters and placement agencies, to protect migrant workers from vulnerability to forced labour, and to provide mechanisms by which workers can identify criminal recruiters and report recruitment abuses.

Spain: Emphasis should be placed on migrant workers in a regular situation. Immigrants in an irregular situation do not have the right to work, and therefore cannot use recruitment and placement services.

Employers

Total number of replies: 26

Yes: 13

No: 3

Other: 10

Comments

ZFE (Zambia): These service providers must be made to submit annual returns on the people they help recruit or place and to provide contact details of the employers concerned.

Workers

Total number of replies: 72

Yes: 67

No: 1

Other: 4

Comments

Consolidated reply: States should be required to adopt and enforce strong measures to regulate labour recruiters and placement agencies, to protect migrant workers from vulnerability to forced labour, and to provide mechanisms by which workers can identify criminal recruiters and report recruitment abuses.

CSN (Canada): A framework consistent with Convention No. 181 must be imposed for all private employment agencies. Migrant workers should benefit from open work permits which are not associated to a single employer.

CGIL, UIL (Italy): Workers come to unions only in extreme cases, and inspection is rare and ineffective. When trade unions are not free it is worse.

CTM (Mexico): Free trade agreements contain no provisions on the mobility of the labour force, so migrant workers are left to their fate when attempting to cross borders in search of economic opportunities.

GEFONT (Nepal): Migrant workers are more vulnerable to forced labour and those who come through recruitment agencies face a higher risk.

United Nations

OHCHR: Clear and transparent procedures for accrediting recruitment agencies, and strengthening the role and functions of labour inspectors will enhance protection. Ensure that recruitment and placement services carried out by governments are similarly monitored and held accountable.

OFFICE COMMENTARY

The different points concerning protection under question 11 are covered in one Article of the proposed Protocol, and are developed further in the proposed Recommendation. The substance of question 14 has been combined with question 11(b) in order to have a comprehensive Article on both legislation and enforcement. No specific reference is made to the formal and informal economies, and it is provided in the draft instruments that both legislation and enforcement should apply to all workers and all sectors of the economy – the means for moving parts of the informal economy into the formal economy are being dealt with elsewhere in the Conference.

Qu. 12

Should the proposed Protocol provide that each Member should take effective and comprehensive measures for the identification, release, protection and full recovery of all victims of forced labour, paying special attention to children, migrant workers and other persons at risk?

Governments

Total number of replies: 90

Yes: 65

No: 5

Other: 20

Comments

Canada, Senegal, Sweden: Stop after “victims of forced labour”. “Full recovery” could be problematic, as its meaning is unclear. Include the details in the Recommendation.

Côte d’Ivoire: Each Member should also take preventive and protective measures, including social, medical and psychological care for the victims.

Ethiopia: Rehabilitation is the most important part of the task, though neglected.

Qatar: Delete “all”.

Russian Federation: Rapid identification of victims is a prerequisite to allow them to receive services and assistance, and other rights contained in the Protocol. “Rehabilitation” should be added to “recovery”.

Slovenia: See question 9.

Norway, United Kingdom, United States: Should be in the Recommendation.

Employers

Total number of replies: 26

Yes: 12

No: 3

Other: 11

Comments

CNP, CNES, MEDS (Senegal): Delete “and comprehensive”.

UPS (Switzerland): The national authorities should decide on the scope of application together with the social partners.

ZFE (Zambia): This may be very costly.

Workers

Total number of replies: 72

Yes: 69

No: 1

Other: 2

Comments

Consolidated reply: Should require rapid identification, release, protection and full recovery. “Rehabilitation” should be added to “recovery”.

CSN (Canada): The ability to identify victims depends on their immunity from prosecution – not only under the laws of immigration but also for offences committed as a direct result of their status.

NDWTUF (India): The State should ensure that workers enjoy their basic human rights and working conditions, both within the country and across borders.

CGIL, UIL (Italy): The measures to be taken should be specified. The national and international standards, and their enforcement, have been inadequate.

UGT (Spain): Add a reference to the role that can be played by unions.

United Nations

OHCHR: Measures adopted to combat trafficking should not have an adverse impact on the rights and dignity of victims of trafficking. Add “and do not impact the human rights of all migrants, regardless of their immigration status”. The proposed Protocol should provide for states’ responsibility to act with due diligence to prevent trafficking, to investigate trafficking and prosecute traffickers and to assist and protect victims.

OFFICE COMMENTARY

The term “protection” has not been included in draft Article 3, as protection is covered comprehensively in Article 2. A reference to rehabilitation has been added. As with other provisions, reference to particular groups to be covered has been removed, leaving this up to national discretion, depending on the particular situation in each country.

Qu. 13 *Should the proposed Protocol provide that each Member should ensure that all victims of forced labour have access to effective and appropriate legal remedies, including compensation, irrespective of their nationality?*

Governments

Total number of replies: 90

Yes: 64

No: 5

Other: 21

Comments

Chile: Provided that they are not entitled to automatic compensation from the State.

Cuba: Consider other forms of remedy.

Democratic Republic of the Congo: Most victims do not know their rights or how to lodge a complaint, and do not have the means to claim their rights, and some prefer to remain silent.

Ethiopia: This would protect the rights of the victims and might help decrease the incidence of forced labour.

Djibouti, Eritrea, Germany, Morocco, Poland: Should not depend on nationality.

Canada, Norway, United States: In a Recommendation.

Mali: Most victims are in disguised employment relationships and are afraid to report their situation. Refer to “reintegration”.

Panama: States should seek to collaborate on compensation.

United States: The reference to “legal remedies” is very broad. The Governing Body placed the item on the agenda to address “compensation measures”.

Employers

Total number of replies: 26

Yes: 12

No: 4

Other: 10

Comments

ZFE (Zambia): Calling for compensation may not be possible unless those found guilty of the offence become liable.

Workers

Total number of replies: 72

Yes: 69

No: 1

Other: 2

Comments

CGIL (Italy): Should specify that victims can be helped by both trade unions and civil society.

GEFONT (Nepal): Victims or their families and organizations concerned also need to have the right to go to court directly for compensation and other kinds of remedy, irrespective of their nationality and their documentation status.

United Nations

OHCHR: Enabling victims of forced labour – irrespective of their nationality or immigration status – to remain in the country for the duration of the criminal, civil or administrative proceedings is also important.

OFFICE COMMENTARY

The reaction to this was positive, subject to some comments on the concept of compensation, which is dealt with in more detail in the proposed Recommendation. As the two questions dealt with related issues, the points covered in question 15 were covered in the same proposed Article.

Qu. 14 *Should the proposed Protocol provide that each Member should strengthen the role of labour inspection, with respect to prevention of forced labour and enforcement of relevant laws and regulations, in collaboration with other authorities?*

Governments

Total number of replies: 90

Yes: 62

No: 7

Other: 21

Comments

Austria: The labour inspectorate is responsible exclusively for the supervision of worker protection legislation. Forced labour does not fall within their scope of responsibility. When there is a reasonable suspicion that forced labour exists, labour inspectors can inform the responsible authorities.

Canada, Norway, United Kingdom, United States: For the Recommendation.

Côte d'Ivoire, Djibouti, Morocco, Senegal: The capacity of labour inspectorates to ensure the prevention of forced labour is underutilized. They need human and material resources and training. National legal frameworks should provide them with the necessary power.

France: Should strengthen the role of labour inspection, as well as all other institutions that may be involved in the investigation of forced labour cases. Labour inspection should be extended to the informal economy.

Cuba, Germany: States should decide which authorities are empowered to combat forced labour.

Italy: Necessary to promote a cultural change regarding the methods used for labour inspection. Particular attention should be paid to workers in the informal economy and irregular workers in formal employment.

Mali: The security services and judicial authorities should also be involved.

Latvia: More attention should be paid to increasing the practical experience and training of labour inspectorates, as well as collaborating with other authorities, institutions and non-governmental organizations.

Russian Federation: The focus should be on strengthening the role and capacity of labour inspectorates, including in particular monitoring the informal economy. They require an explicit mandate, adequate resources and training.

Spain: The 2006 General Survey indicates that under the labour inspection instruments labour inspectors may be assigned other tasks, as long as these do not interfere with their primary duties.

Sweden: Add “where relevant”.

Switzerland: See question 11(b).

Nepal, Uruguay, Bolivarian Republic of Venezuela: Interaction and joint operation with other state institutions, civil society and workers’ and employers’ organizations significantly strengthen the action taken and its scope.

Employers

Total number of replies: 26

Yes: 14

No: 2

Other: 10

Comments

ANDI (Colombia), ZFE (Zambia): For a Recommendation. Labour inspection must be strengthened. Any action on forced labour by labour inspectors should be carried out in coordination with the Office of the Public Prosecutor and penal legislation should be strengthened in this area.

EK (Finland): Should be evaluated in each country. Should not forget the role of other officials, such as the police and border guards.

MEDEF (France): Strengthen all institutions working on forced labour.

CNP, CNES, MEDS (Senegal): Add “and resources”.

Workers

Total number of replies: 72

Yes: 69

No: 1

Other: 2

Comments

Consolidated reply: Focus on strengthening the role and capacity of labour inspectorates, including in the informal economy. Should call for the development of specific inspection approaches for vulnerable groups, including domestic workers. Add that labour inspectors should not have any migration enforcement function or role, in line with ILO Convention No. 81.

AFL-CIO (United States): Should call for the development of specific inspection approaches for vulnerable groups and recognize the need for other relevant government agencies, including criminal law enforcement, immigration, and child protection and welfare officers and the judiciary to improve capacity to engage with labour inspectorates.

NDWTUF (India): Labour inspection must not be merely a formality.

CTM (Mexico): The laws have to be made to work adequately, as there is much corruption and many gaps in the laws.

UGT (Spain): Add: “with the collaboration of trade union organizations”.

United Nations

OHCHR: Law enforcement officials, including labour inspection authorities, should be provided with the authority and tools to enable them to identify victims properly. Proactive inspection procedures that avoid reliance on complaints should be established. The functions of labour inspectors should be kept strictly separate from those of immigration enforcement officials.

OFFICE COMMENTARY

Integrated with question 11(b) in proposed Article 2(b).

Qu. 15 *Should the proposed Protocol address the protection of victims from possible punishment for crimes they have been compelled to commit as a result of their forced labour situation?*

Governments

Total number of replies: 90

Yes: 54

No: 14

Other: 22

Comments

Benin: Will encourage complaints and help assign responsibility.

Canada: In the Recommendation. The language should take into consideration already agreed language in other international instruments, for instance, Article 26 of the Council of Europe's Convention on Action against Trafficking in Human Beings.

Colombia: Significant difficulties arise in relation to evidence.

Germany: Should be left to each State. It could state that victims of human trafficking could be exempted from criminal prosecution if the crime was committed in connection with their exploitation, as far as this is in accordance with the principles of the legal system of the State in question.

Japan: Not without exception, nor under a uniform procedure, because of the differences in the criminal justice systems in different countries.

Latvia, Trinidad and Tobago: Should be treated on a case-by-case basis.

Malaysia: All foreign workers must obey the laws and regulations pertaining to work.

Mauritius: Exemption from prosecution and punishment will encourage victims to come forward and cooperate with law enforcement authorities to take action against perpetrators.

Myanmar: Criminal codes have specific provisions for the protection of the innocent in many ways and therefore it is not advisable to interfere with these laws.

Norway: In a Recommendation. Under Norwegian law, the court may reduce the penalty when the act is committed under compulsion or imminent danger. In some situations, a person cannot be held liable for acts committed under compulsion.

Oman, Saudi Arabia: Taking into consideration the national legislation in each country.

Poland: This should be in the form of "soft" guidelines. Detailed provisions are in the Palermo Protocol.

Senegal: Only in cases where their actions are directly related to the situation of forced labour.

United Kingdom, United States: For the Recommendation. Should be clear that status as a forced labour victim does not protect persons from responsibility for actions they were not compelled to take.

Employers

Total number of replies: 26

Yes: 9

No: 6

Other: 11

Comments

ANDI (Colombia): The reasons for exoneration from criminal liability should not be included.

CNP, CNES, MEDS (Senegal): These situations should be dealt with by authorities other than those in charge of applying the labour law.

Workers

Total number of replies: 72

Yes: 63

No: 3

Other: 6

Comments

Consolidated reply: Trafficked persons act without real autonomy, under coercion. They are not responsible for the commission of the offence and should therefore not be accountable for the unlawful act committed. The non-punishment principle applies to all actions directly linked to the forced labour situation – not only “as a result of” but also prior to or during a forced labour situation.

CGIL, UIL (Italy): If the offence is illegal immigration and related matters, there are laws that protect against serious exploitation. For others, protection will depend on the offences and the judge.

NDWTUF (India): People are forced to commit crimes under threat and pressure.

GEFONT (Nepal): There should be a presumption that the person acted under duress. However, it must be analysed carefully and should not be a blanket solution.

AFL-CIO (United States): Refer to the protection of victims from possible punishment for crimes they have been compelled to commit as a result of their forced labour and crimes related to or committed as a direct consequence of forced labour, such as immigration offences, possession or use of fraudulent travel or identity documents and offences related to their involvement in other unlawful activities.

United Nations

OHCHR: Protection should be enhanced by proposing no detention, no prosecution and no punishment for status-related offences, as provided for by several United Nations resolutions and several treaty bodies.

OFFICE COMMENTARY

While there is wide recognition of the basic justice of such a provision, it is also recognized that it must be applied carefully and with discretion. The proposed Article 4(b) is developed in more detail in the Recommendation.

Qu. 16 *Should the proposed Protocol provide that Members should cooperate with each other with a view to the elimination of all forms of forced labour?*

Governments

Total number of replies: 90

Yes: 67

No: 4

Other: 19

Comments

Colombia, Côte d'Ivoire, Eritrea, Ethiopia, Finland, Ghana, Latvia, Mali, Mexico, Togo, Turkey, Uruguay: Modern forced labour is a global issue, and this requires international collaboration to eliminate it. This will allow joint solutions without compromising the obligations of each State.

Japan, Norway, United Kingdom, United States: In a Recommendation.

Nepal: Also to facilitate questions of compensation between countries.

Russian Federation: Cooperation between States should take place through multilateral or regional agreements to address forced labour and provide special protections for migrant workers. Bilateral agreements are often weak.

Employers

Total number of replies: 26

Yes: 15

No: 1

Other: 10

Comments

LBAS (Latvia): The cross-border nature of forced labour cases should be stressed.

Workers

Total number of replies: 72

Yes: 69

No: 1

Other: 2

Comments

Consolidated reply: The Palermo Protocol calls for States parties to develop and promote cooperation among judicial, law enforcement and financial regulatory authorities. The ILO Protocol should complement this by expressly calling for cooperation in practice between labour inspectorates and labour administrations through multilateral or regional agreements to address forced labour, and should provide special protections for migrant workers who have a particular vulnerability to forced labour. Bilateral agreements are often weak.

NDWTUF (India), CGIL, UIL (Italy): Especially for trafficking, and should include countries of transit and of origin.

PWF (Pakistan): Supplemented by ILO assistance.

United Nations

OHCHR: Forced labour can be a transnational crime, therefore international and regional cooperation can be effective in combating forced labour. Bilateral agreements, including extradition agreements, judicial cooperation and mechanisms to facilitate the exchange of information concerning trafficking are essential for combating trafficking.

Qu. 17 *Should the proposed Protocol provide that each Member should give due consideration to implementing the provisions of the Protocol in the manner set out in the Recommendation?*

Governments

Total number of replies: 90

Yes: 52

No: 17

Other: 21

Comments

Bahrain, Eritrea, Qatar: Unnecessary.

Ethiopia: There should be a guiding instrument in place; otherwise the Protocol might not be implemented as it should.

Cuba, Germany, Japan, Malaysia, Mali, New Zealand, Uzbekistan, United Arab Emirates: The Recommendation should not create obligations for States.

Nepal: Some of the major provisions on implementation should be addressed in the Protocol itself. The Recommendation should identify conditions and the ways in which the States should deal with prevention and protection.

Employers

Total number of replies: 26

Yes: 8

No: 9

Other: 9

Comments

EK (Finland), MEDEF (France), SEV (Greece): This is an attempt to make the Recommendation more binding than it normally is.

Workers

Total number of replies: 72

Yes: 66

No: 2

Other: 4

Comments

CGIL, UIL (Italy): The purpose of a Recommendation is to provide guidance for national policy, law and practice.

AFL-CIO (United States): Rephrase as “should implement the provisions of the Protocol and, when feasible, implement them in the manner set out in the Recommendation”.

OFFICE COMMENTARY

While the general reaction to this question was positive, some respondents felt it was an attempt to be more directive than a Recommendation should be. As has been noted in the replies, a Recommendation is intended to provide guidance on how Conventions (including Protocols) could be applied, but carries no substantive obligations. Article 6 of the proposed Protocol provides that it should be applied in accordance with the laws and regulations adopted at the national level. The reference to the Recommendation is modelled on Article 4(1) of the Worst Forms of Child Labour Convention, 1999 (No. 182).

OTHER QUESTION

Qu. 18 *Should the proposed Protocol contain a provision acknowledging that the transitional period provided for in Convention No. 29 has long expired and revoking the transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3–24?*

Governments

Total number of replies: 90

Yes: 63

No: 6

Other: 21

Comments

Democratic Republic of the Congo, Ethiopia, Morocco: It should reflect the existing reality.

Japan: A Recommendation would have no legal effect on amending Convention No. 29.

Mexico: One of the gaps in Convention No. 29 is the transitional provisions.

Myanmar: The transitional provisions should be updated rather than revoked.

Nepal: Articles 3–24 are still relevant.

Norway, United Kingdom: This provision should be retained in the Recommendation.

United States: Must be clear that no other provisions of Convention No. 29 would be changed.

Employers

Total number of replies: 26

Yes: 15

No: 2

Other: 9

Comments

MEDEF (France): Revoking obsolete provisions is a more transparent means of adopting an appropriate instrument than the intervention of the supervisory bodies.

Workers

Total number of replies: 72

Yes: 64

No: 4

Other: 4

Comments

Consolidated reply: To keep the body of international standards up to date and illustrate that the ILO is able to adapt its standards to address new trends and face contemporary challenges.

CGIL, UIL (Italy): It is better to specify this, to give no grounds for excuses or evasion of the law.

GEFONT (Nepal): Articles 3–24 are still relevant and need to be enforced.

OFFICE COMMENTARY

See under “General observations”.

IV. Content of a proposed Recommendation

NATIONAL POLICIES AND PLANS OF ACTION

Qu. 19

Should the proposed Recommendation provide that Members should establish or strengthen national coordination bodies or other institutional mechanisms involving relevant government agencies, employers’ and workers’ organizations as well as other concerned groups, to ensure the implementation, monitoring and evaluation of national policies and plans of action to eliminate all forms of forced labour?

Governments

Total number of replies: 90

Yes: 82

No: 3

Other: 5

Comments

Democratic Republic of the Congo: Create regional structures to exchange information.

Estonia, Japan, Netherlands: Each State should decide.

Ethiopia, Italy: Requires the involvement of different actors to promote collaboration and information exchange.

Germany, Kyrgyzstan, Morocco: Coherence and coordination at the national level are important.

Germany: Reference to workers' and employers' organizations should be deleted. (See questions 5 and 11(b).)

New Zealand: Use existing mechanisms.

Russian Federation: The bodies or institutions should be adequately resourced. Civil society and community-based organizations could be involved in the design and operations.

Switzerland: See question 10.

Nepal, Togo, Turkey: Social dialogue is important.

United States: Add "development" before "implementation" and "as appropriate" at the end.

Zimbabwe: Emphasize improving the capacities of existing institutions.

Employers

Total number of replies: 26

Yes: 15

No: 2

Other: 9

Comments

CNI (Brazil): Should involve all the social actors, but leave the decision up to each country.

Workers

Total number of replies: 72

Yes: 69

No: 0

Other: 3

Comments

Consolidated reply: Mechanisms should be adequately resourced. Civil society and community-based organizations that monitor labour standards could be involved in the design and operation of mechanisms.

NDWTUF (India), CGIL, UIL (Italy), UGT (Spain): Involvement of social partners and civil society is important because of the difficulty in identifying forced labour in the informal economy.

United Nations

OHCHR: NGOs should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures, and provide the authorities with information on trafficking. Strengthening cooperation among judicial and legislative bodies, national human rights institutions and civil society in the development, adoption and implementation of anti-trafficking legislation and policy is also important.

UNODC: As mentioned earlier, the ILO may wish to deliberate on how to take account of and avoid duplication of existing national policies and plans of action.

OFFICE COMMENTARY

Paragraph 1 of the proposed Recommendation develops in more detail the provisions of Article 1 of the proposed Protocol.

Qu. 20 *Should the proposed Recommendation provide that Members should regularly collect, analyse and make available detailed information and statistical data, disaggregated by sex and age, on the nature and extent of forced labour?*

Governments

Total number of replies: 90

Yes: 80

No: 5

Other: 5

Comments

Austria, Germany: Data collection is difficult.

Côte d'Ivoire, Estonia, Islamic Republic of Iran, Mauritius, Poland, Switzerland: Appropriate methodology has to be developed. The ILO should provide guidance so that the data will be comparable across countries.

Finland, Kyrgyzstan: To make it possible to target resources towards prevention.

Indonesia: The characteristics and level of forced labour should be determined in line with the system and infrastructure of each country.

Netherlands: Also data on country of origin. Requests for data by the ILO should be harmonized with requests for data by Eurostat and UNODC on human trafficking.

Russian Federation: Should also be disaggregated by sector of economic activity and geographic area, ethnicity, nationality and migration status. Data collection should be conducted in a manner that respects the right to privacy.

Employers

Total number of replies: 26

Yes: 16

No: 2

Other: 8

Comments

CNI (Brazil): Statistics help orient public policy.

MEDEF (France): These are essential to prevention. The ILO should play a leading role in disseminating the data.

FEDECAMARAS (Bolivarian Republic of Venezuela): With consultation involving social partners.

Workers

Total number of replies: 72

Yes: 69

No: 0

Other: 3

Comments

Consolidated reply: Should also be disaggregated by sector of economic activity and geographic area, ethnicity, nationality and migration status. Should be conducted in a manner that respects the individual's right to privacy and data should be kept in a form that does not identify individual victims.

PWF (Pakistan): To be disseminated among all stakeholders, including civil society and media.

United Nations

OHCHR: Collecting information and disaggregating data by age, gender, ethnicity, sector of work and immigration status, and other relevant characteristics, is crucial to any action to combat trafficking. Undertaking high-quality research on the topic which does not re-traumatize trafficked persons can help identify patterns of trafficking. Ensure that international rules on data protection and the right to privacy are strictly complied with, and that robust firewalls are in place between data collection for the purposes of combating forced labour and immigration enforcement operations.

OFFICE COMMENTARY

Paragraph 2 of the proposed Recommendation adds a reference to characteristics other than sex and age, and a provision on the protection of personal data.

PREVENTION

Qu. 21 *Should the proposed Recommendation provide that Members should undertake preventive measures that include:*

- (a) *targeted awareness-raising campaigns for those groups who are most at risk, to inform them, inter alia, about their rights and responsibilities as workers, how to protect themselves against fraudulent or abusive recruitment and employment practices and how to access assistance in case of need?*

Governments

Total number of replies: 90

Yes: 87

No: 1

Other: 2

Comments

Estonia, Eritrea: Target those most at risk.

France: The importance of these campaigns should be seen in a wider context, stressing the importance of fundamental human rights and the eight ILO Conventions that embody them.

Germany: See questions 5 and 11(b).

India: The strategies need to address the root causes, and require an integrated long-term approach. Preventive efforts must recognize the social dimensions of bondage, and address it through public sensitization and rights awareness, adult literacy, organizing workers, income generation and vocational skills developments.

Indonesia: For migrant workers' issues, the participation of each country in enhancing coordination through bilateral, regional or multilateral arrangement is expected.

Mali: In particular with regard to workers in the informal economy, migrant workers and domestic workers, who are the most affected by forced labour.

Montenegro: Organizing vulnerable groups into organizations other than trade unions, which have this as their primary function and goal, should be supported.

New Zealand: Add “be encouraged to” before “undertake preventive measures”, since this is a Recommendation.

Poland: Both for nationals and in countries of origin of economic migrants.

Russian Federation: Awareness raising should cover how workers can organize and empower themselves to tackle forced labour.

Sweden: Cross-border cases require that the design of campaigns includes a strong focus on cooperation between the countries of origin and destination in order to have an impact.

United States: Add “determined within the country context”. The Government offers a detailed proposal on the structure of the “Prevention” section that begins with a chapeau covering broad issues, followed by a more specific menu of options that Members might take to prevent forced labour.

Employers

Total number of replies: 26

Yes: 19

No: 0

Other: 7

Comments

CNI (Brazil): Very important, but each State should decide.

MEDEF (France): Include in school curricula.

Workers

Total number of replies: 72

Yes: 69

No: 0

Other: 3

Comments

Consolidated reply: Awareness raising should extend to how workers can organize and empower themselves, targeted at the most at-risk groups.

CSN (Canada), GEFONT (Nepal), UGT (Spain): Information campaigns should also be extended to enterprises and other users of forced labour and to the public.

CGIL, UIL (Italy): Should also ensure that laws on immigration are not too severe, or they will end up indirectly helping traffickers.

CTM (Mexico): This is necessary to fill the vacuum, which is sometimes the result of deregulation, allowing certain employers and labour market intermediaries to obtain considerable undue wealth at the expense of the poor.

PWF (Pakistan): Workers’ organizations should be assisted in organizing these groups.

AFL-CIO (United States): Address root causes through safe migration processes and supply-chain monitoring.

United Nations

OHCHR: Empowering vulnerable people through guaranteeing their human rights will reduce their risks of being trafficked. Poverty and inequality can be tackled through improved education opportunities, especially for women and children, improved access to credit and finance, and legal and social measures that ensure rights in employment and decent work. Discrimination and violence against women can be addressed, particularly in countries of origin. Vulnerabilities of children can be reduced by a variety of measures. In the case of migrants and migrant workers, access to consular assistance should be assured. Shelters for victims of violence should be accessible to all migrants, regardless of their immigration status.

UNODC: For questions 21 and 22, the ILO may also wish to discuss sponsorship systems and their possible misuse, by which a worker might be bound to and dependent on an employer.

- Qu. 21** (b) *skills-training programmes for at-risk population groups to increase their employability and income-earning capacity, and pre-departure orientation for migrant workers to prepare them for work abroad?*

Governments

Total number of replies: 90

Yes: 75

No: 13

Other: 2

Comments

Chile: Should not discriminate against the rest of the population.

Benin, Côte d'Ivoire: This can give migrant workers the tools to negotiate their conditions of work and facilitate their integration into receiving countries.

Eritrea: Unskilled workers are the most exposed to forced labour.

Estonia: May not be cost-effective, and programmes might not reach people who belong to the at-risk groups.

Indonesia: Mapping of vulnerable groups will enhance collaboration between sending and receiving countries, and the capacities of labour inspection in both should also be enhanced.

Netherlands: This can reduce the push factor for labour migration for at-risk groups.

Oman: Split this provision into two paragraphs: one indicating the responsibilities towards migrant workers, the other indicating the responsibilities towards the countries of origin and destination.

Poland: An obligation for pre-departure courses is not necessary; it is enough to implement properly designed information campaigns, provide access to organizations or institutions that give this kind of advice, and promote advisory services.

Russian Federation: Education and training programmes should focus on areas in which the demand for labour is unmet or growing, in consultation with social partners.

United States: Such broad measures should be included in the Preamble.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Comments

CNI (Brazil): Skills training should be made available to everyone. Pre-departure orientation is difficult.

ANDI (Colombia): While this is important, it is not clear how “at-risk population groups” are to be determined.

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: Should focus on areas in which the demand for labour is unmet or growing, as identified in consultation with social partners, and provide tailored skills-training programmes.

CSN (Canada): Should also refer to acceptance in receiving countries of credentials earned abroad.

CGIL, UIL (Italy): Also need to train those combating forced labour.

KSBSI (Indonesia): Increasing awareness of workers’ rights should be part of skills training, and trade unions should be involved.

AFL-CIO (United States): Rephrase as “in order to train at-risk population groups to find work in areas in which the demand for labour is unmet or growing, as identified in consultation with social partners, provide relevant and tailored skills-training programmes ...”.

United Nations

OHCHR: Ensure that pre-departure orientation programmes respect the human rights and dignity of all migrant workers, and do not interfere with the right to liberty and security and freedom of movement.

Qu. 21

(c) programmes to combat the discrimination that heightens the vulnerability of certain categories of workers to forced labour, including women, children, migrants, indigenous peoples, ethnic minorities and persons with disabilities?

Governments

Total number of replies: 90

Yes: 84

No: 2

Other: 4

Comments

Chile: Without ignoring the rest of the population.

Cuba, Latvia: For children the most effective method is the eradication of child labour.

Finland: Taking gender into consideration is important. A risk analysis should be made for each country.

Germany: Delete “of workers”.

Indonesia: Mapping of vulnerable groups is important.

Lebanon: Add religious minorities.

Netherlands: The general obligation to combat discrimination should be moved to the Preamble.

Russian Federation, Senegal: Include domestic workers.

Canada, United States: Should be included in a chapeau at the beginning of the “Prevention” section.

Employers

Total number of replies: 26

Yes: 19

No: 0

Other: 7

Comments

CNI (Brazil): Important, but the form of such programmes should not be imposed.

Workers

Total number of replies: 72

Yes: 68

No: 0

Other: 4

Comments

Consolidated reply: Domestic workers should be included.

CSN (Canada), CGT (Colombia): The demand for sexual services should be decreased by criminalization of offenders and protection of victims of prostitution.

GEFONT (Nepal): Should not exclude outsourced and dispatched workers.

AFL-CIO (United States): Important to recognize that men and boys are also affected by forced labour and human trafficking.

United Nations

OHCHR: Addressing public sector involvement or complicity in trafficking is crucial.

- Qu. 21** (d) *programmes to promote freedom of association and collective bargaining and to support the organization of at-risk groups in trade unions and other relevant organizations?*

Governments

Total number of replies: 90

Yes: 72

No: 9

Other: 9

Comments

Canada: These are examples of measures to eliminate forced labour.

Cuba, Switzerland: May not be relevant to Convention No. 29.

Eritrea: Workers' and employers' organizations can play a great role in the elimination of forced labour.

Italy, United Kingdom: Cooperation between civil society organizations and workers' organizations is important.

Russian Federation: This should be in the Protocol, given the fundamental nature of freedom of association and collective bargaining. Suggested addition: these "... are effectively enforced without discrimination".

Slovenia: Follow the wording of Convention No. 98, in particular Article 4.

United States: Agree, but in a chapeau at the beginning of the "Prevention" section.

Uruguay: This has been one of the most effective measures for the elimination of forced labour.

Employers

Total number of replies: 26

Yes: 10

No: 10

Other: 6

Comments

Keidanren (Japan): It is not clear that this would result in the elimination of forced labour. Should be cautious about supporting only particular groups in trade unions, without treating others equally.

ANDI (Colombia), EK (Finland), SEV (Greece), NHO (Norway), UPS (Switzerland): Not relevant to the elimination of forced labour.

Workers

Total number of replies: 72

Yes: 66

No: 1

Other: 5

Comments

Consolidated reply: Should be included in the Protocol. Suggested addition: freedom of association and collective bargaining "... are effectively enforced without discrimination".

CSA, MTCB (Benin): Strengthening capacity of union leaders would help.

GEFONT (Nepal): The State may need to provide help.

PERGAM (Slovenia): As at-risk groups often work in the worst possible conditions, are highly dependent on their employer and are afraid to contact the authorities, it is difficult to organize them or even get in contact with them.

AFL-CIO (United States): Restrictions on freedom of association are a key indicator of forced labour.

United Nations

OHCHR: This right is available to everyone. All migrants, regardless of their immigration status, should be enabled, in law and practice, to form and join trade unions, and other forms of association as relevant.

- Qu. 21** (e) *measures to ensure that national laws and regulations concerning the employment relationship are effectively enforced and that terms and conditions are specified in a contract of employment written in a language that is understood by the worker?*

Governments

Total number of replies: 90

Yes: 73

No: 10

Other: 7

Comments

Bahrain: There is shared responsibility between the countries of origin and destination to raise the awareness of their citizens before they travel on the laws and regulations relating to the employment relationship.

Botswana: National laws or policies should already contain provisions to this effect.

Canada, Colombia, United States: Delete "written".

Chile: Workers who decide to go to another country to work should, out of deference, know the local language, except in more complex situations, such as refugees.

Finland, Sweden: Employment contracts should be drawn up in such a way that the employee understands the content. Both employer and employee should know their rights and obligations, especially for immigrants. The requirement should not be applied to collective agreements.

Germany: See questions 5 and 11(b).

Latvia: The obligation of ensuring that workers understand the terms and conditions of employment is incumbent on the employer.

Lebanon: It is important to provide every migrant with a guiding manual to access materials on the law and regulations in the country of employment, even if they come from that country.

Nepal: The State must design legislation for the informal economy and ensure its effective implementation.

Netherlands: Governments can only be held responsible for the enforcement of these measures whereas employers are responsible for the terms and conditions of employment.

Russian Federation: These measures are particularly relevant to migrant workers, who should have a legally recognized employment relationship with an identifiable and legitimate employer in the country where the work is performed.

Senegal: It would be easier to provide assistance to workers so that they understand the contracts.

Zimbabwe: Contracts should be in a language spoken in the country.

Employers

Total number of replies: 26

Yes: 11

No: 9

Other: 6

Comments

WKO (Austria): Costs might be passed on to the employer.

CNP, CNES, MEDS (Senegal): Contracts are not always written.

ANDI (Colombia): The Recommendation should not meddle in the formal requirements for the validity of contracts.

ZFE (Zambia): This is already a practice in most countries.

Workers

Total number of replies: 72

Yes: 65

No: 1

Other: 6

Comments

Consolidated reply: Particularly relevant to migrant workers, especially where the recruitment of workers is outsourced to third parties not legally recognized as employers in the country where the work is performed. The application of labour or employment law is based on the recognition of an employment relationship. The employer must be identifiable and legally recognized as such within the country where the work is performed.

CSN (Canada): This presupposes stronger labour inspection.

SAK (Finland): Employment contracts should always be drafted in the employee's mother tongue. If a translation is made available, the content of the version in the employee's mother tongue would take precedence.

CGIL, UIL (Italy): This should be in both the Protocol and the Recommendation.

AFL-CIO (United States): The Protocol should note the duty of States to protect against corporate human rights violations.

- Qu. 21** (f) *coherent employment and labour migration policies, which address the risks faced by specific groups of migrant workers, including those in an irregular situation?*

Governments

Total number of replies: 90

Yes: 75

No: 10

Other: 5

Comments

Botswana: Sometimes national policies or laws do not make this link.

Canada, United States: Not clear how this constitutes a prevention measure.

Eritrea: It is not fair to put pressure on host countries to formulate labour migration policies that address the risks faced by migrant workers in an irregular situation.

Estonia: An illegally employed person should not be deprived of a right to entry, to remain and access to the labour market, or to payment of remuneration, social security contributions or taxes by the employer.

Germany: Yes, if the question was aimed at measures against illegal and exploitative employment as provided for in EU directives, but labour migration policy is based on the regular labour market policy interests of a country.

Lebanon: Return illegal migrants to their country of origin to discourage irregular migration. If such migration was stemmed, this point should be acceptable.

Morocco: These policies must take into account all dimensions of the problem and be able to improve the management of migration at all levels: access to basic needs (employment, health, education ...), protection of migrants against abuse and, if necessary, assistance to return.

Netherlands: Labour migration policies should contribute to the rights of all migrant workers to the same degree.

Poland: Employment policy should support social dialogue allowing early identification and resolution of issues connected to failure to respect workers' rights, which may lead to forced labour.

Russian Federation: The reference to labour and migration policies should link to the human rights framework. Suggest "coherent employment and labour migration policies which respect, protect and fulfil the human rights of all workers regardless of status, without discrimination, and address the risks faced by specific groups of migrant workers, including those in an irregular migration situation".

Slovenia, Spain: This is not the appropriate place to examine employment and migration policies, especially for migrants in an irregular situation.

Uruguay: There can be no difference in treatment as concerns fundamental human rights.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Comments

CNI (Brazil): Policies should be for migrant workers in a regular situation and should be consistent with each State's penal laws.

CONCAMIN (Mexico): The ideal would be joint action between sending and receiving countries.

UPS (Switzerland): Replace "labour" by "in accordance with the needs and possibilities of the labour market".

Workers

Total number of replies: 72

Yes: 65

No: 0

Other: 7

Comments

Consolidated reply: Suggested formulation: "coherent employment and labour migration policies which respect, protect and fulfil the human rights of all workers regardless of status, without discrimination, and address the risks faced by specific groups of migrant workers, including those in an irregular migration situation". These policies should expand avenues for regular labour migration, taking into account labour market needs and demographic trends, and address the risks faced by specific groups. Migration policies should ensure systems for safe migration, including through the banning of recruitment fees, and by guaranteeing the ability to change employers.

CGIL, UIL (Italy): Irregular migrants are particularly vulnerable, and immigration laws should not be so strict.

CISL (Italy): Migration policies must be justified within the broader framework of national employment policies in order to ensure that the process of job placement and social integration is targeted to the real needs of countries and migrant workers.

GEFONT (Nepal): There should be no discrimination between workers in regular and irregular situations.

AFL-CIO (United States): Giving employers authority to verify workers' immigration status can result in coercion. Integrating labour and migration policies will address vulnerabilities to forced labour.

United Nations

OHCHR: Ensure that migrant workers are not tied to one specific employer (inter alia, through "sponsorship" systems) in order to avoid situations of exploitation and abuse, as migrants are compelled to enter into irregular situations in order to escape abusive employers.

Qu. 21 (g) *basic social security guarantees constituting national social protection floors?*

Governments

Total number of replies: 90

Yes: 78

No: 4

Other: 8

Comments

Eritrea: Provides a guarantee to avoid poverty, which is a cause of forced labour.

France, Portugal: Access by all to social security benefits is a guarantee against the risks of the most vulnerable.

India, Netherlands: Should be decided at the national level.

Indonesia: States should implement basic social protection floors.

Israel: Temporary migrant workers should have only basic social protection.

Latvia: As the social security and social insurance scheme is based on social insurance contributions, it is impossible to provide social guarantees to victims of forced labour through this system.

Malaysia: Only documented foreign workers are covered.

Mali: Particularly with regard to migrant workers and members of their families, as well as domestic workers.

Panama: The question needs to be specific and include basic social security guarantees.

Russian Federation: Social security and social protection should be aligned with the human rights framework as well as the relevant ILO standards, i.e., universal coverage at adequate levels that ensure that all workers and their families can lead a dignified life.

Spain: Take Recommendation No. 202 as a reference.

Nepal, Togo, Turkey, Uruguay: Social protection is mandatory for all, without exception, as a fundamental right.

United States: Agrees with noting the importance of various broad policy measures, such as basic social security guarantees, but should be included in a heading at the beginning of the “Prevention” section.

Employers

Total number of replies: 26

Yes: 13

No: 2

Other: 11

Comments

ANDI (Colombia): This would obscure the central objective of the instrument.

CNI (Brazil), CONCAMIN (Mexico): Each country has to take measures depending on its capacities.

EK (Finland): This must not lead to the payment of social benefits outside the country.
 Keidanren (Japan), UPS (Switzerland): This could go beyond the mandate of the ILO and is not related to forced labour.
 BusinessNZ (New Zealand): Rather temporary benefits than full social security.
 ZFE (Zambia): This should open a window to the informal economy.

Workers

Total number of replies: 72

Yes: 65

No: 0

Other: 7

Comments

Consolidated reply: Should be aligned with a human rights framework such as Article 9 of the International Covenant on Economic, Social and Cultural Rights (CESCR), i.e., universal coverage at adequate levels that ensure that all workers and their families can lead a dignified life, as well as the relevant ILO standards.

CGT-FO (France): Access by all to social security benefits is a guarantee against the risks of the most vulnerable.

CATUS (Serbia): The social protection floor is a necessary (but insufficient) element for any development policy, preservation of personal dignity, fair working conditions and democratic social development.

Qu. 21 *(h) measures to reduce the trade in and demand for goods and services that have been produced or delivered using forced labour?*

Governments

Total number of replies: 90

Yes: 75

No: 9

Other: 6

Comments

Bahrain, Slovenia, Sri Lanka: Reference to trade and sanctions should not be included here.

Benin: Yes, if there are reliable means for identifying these goods and services.

Colombia: Economic and social sanctions are required.

Cuba: Demand should be eliminated, not simply reduced.

Eritrea: Strengthen labour inspection, rather than these measures.

France: The products of forced labour should be confiscated and destroyed.

Germany: Generalized Systems of Preference can be used when human rights and labour law are systematically violated. Measures to inform consumers can be helpful.

Japan: Technical examination is needed of the effectiveness of such measures, taking into account discussions at the World Trade Organization.

Morocco: Such measures contribute effectively to the eradication of forced labour, subject to a sustained commitment and to adequate resources.

Nepal: Governments should develop a label indicating that goods and services are free from forced labour.

Netherlands, Norway: Raising awareness about fair products is a task for civil society organizations and other stakeholders as well as for governments, in addition to provisions in free trade agreements.

Russian Federation: Fighting forced labour must include measures targeting employer and consumer demand, embracing actions such as public registers of companies and individuals convicted of exploiting workers in conditions amounting to forced labour, as well as requiring companies to disclose their efforts to address human trafficking in their supply chains.

United States: Such measures could include requiring firms to prevent and respond to forced labour in their operations and supply chains through human rights due diligence to identify risks, avoid complicity in abuses, and provide adequate remedy for abuses that occur.

Employers

Total number of replies: 26

Yes: 11

No: 8

Other: 7

Comments

ANDI (Colombia), EK (Finland), SEV (Greece), Keidanren (Japan), NHO (Norway), UPS (Switzerland): Beyond the ILO's mandate, which should focus on prevention.

CONCAMIN (Mexico): Should not take measures affecting a country's commercial relations based only on forced labour.

CNP, CNES, MEDS (Senegal): Yes, especially in a context of globalization where multinationals tend to install factories in countries where labour rights are not always guaranteed.

Workers

Total number of replies: 72

Yes: 65

No: 1

Other: 6

Comments

Consolidated reply: Must include measures targeting employer and consumer demand, embracing also actions such as public registers of companies and individuals convicted of exploiting workers in conditions amounting to forced labour as well as requiring companies to disclose their efforts to address human trafficking in their supply chains.

CSA (Benin): If there are reliable ways of identifying the products.

CSN (Canada): States must take measures to punish such actions by their own citizens and companies abroad.

LBAS (Latvia): This kind of trade should be prohibited.

GEFONT (Nepal): Governments must create systems to certify that goods and services have not been produced using forced labour, and the sale of any such goods should be prohibited.

UGT (Spain): It is essential to penalize demand for the services of victims of forced labour. This should be in the Protocol.

OFFICE COMMENTARY

Paragraph 3 of the draft Recommendation follows closely the structure of question 21. The order of some elements of the question has been slightly altered. A reference to written contracts has been removed from Paragraph 3(e) in order to refer to all forms of contracts, and a new subparagraph (i) added in response to replies.

Qu. 22 *Should the proposed Recommendation provide that measures to eliminate abuses and fraudulent practices by recruitment and placement services should include the establishment of procedures for the investigation of complaints, and the imposition of adequate penalties?*

Governments

Total number of replies: 90

Yes: 82

No: 6

Other: 2

Comments

Mali: Accessible procedures should be established for victims to complain, and higher penalties must be provided.

Mauritius: The regulation of such services will have a deterrent effect.

Mexico: There should be a register of investigations and penalties, and investigations of such companies in order to exchange information on them.

Netherlands: It should also include monitoring.

Russian Federation: Should include a system of licensing and monitoring that ensures transparency, full disclosure of the terms and conditions of work, a guarantee of no fees, and access to justice and remedies. This should not be a substitute for criminal investigation and prosecutions. Should be in the Protocol.

United States: Should be included in a menu of options for addressing prevention.

Uruguay: Without this there can be no effective enforcement.

Employers

Total number of replies: 26

Yes: 16

No: 4

Other: 6

Comments

MEDEF (France): Access to justice should be facilitated and procedures simplified.

Workers

Total number of replies: 72

Yes: 68

No: 0

Other: 4

Comments

Consolidated reply: This should be in the Protocol. Should include a system of licensing and monitoring that ensures transparency, full disclosure of the terms and conditions of work, a guarantee of no fees, and access to justice and remedies. Should include the requirement for criminal investigation and prosecutions, where the acts or omissions of recruitment and placement agencies would incur individual criminal responsibility.

CSN (Canada): Should have a ratification campaign for Convention No. 181.

GEFONT (Nepal): All activities and actions that promote forced labour should be punishable and defined as a crime.

United Nations

OHCHR: States are required to effectively investigate and prosecute traffickers. It is essential to train officials involved in the identification, investigation, prosecution and adjudication on the human rights approach to trafficking.

OFFICE COMMENTARY

This point has been moved to the “Protection” section as Paragraph 6 of the proposed Recommendation, since measures concerning employment agencies appear to cover protection to a greater degree than prevention, though both are concerned.

PROTECTION

Qu. 23

Should the proposed Recommendation provide that:

(a) protection measures should be provided to victims on a consensual and informed basis?

Governments

Total number of replies: 90

Yes: 80

No: 7

Other: 3

Comments

Colombia: If the victim does not wish to cooperate, protection measures cannot be an obligation.

Côte d’Ivoire: Victims have a right to be informed about protective measures, and their agreement is needed to implement them.

Guatemala: Protection measures should be proportional to the damage suffered.

Indonesia: Protection mechanisms for migrant workers should be more transparent.

Netherlands: In the option of a stand-alone Recommendation, this chapter on “Protection” should start with a more general recommendation, built on question 12. The term “protection measures” is best used to refer to measures relating to the safety of victims such as witness protection, whereas the terms “assistance and support” would suggest activities like the provision of shelter facilities and medical assistance.

Uruguay: The people concerned are not in a position to take decisions freely.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Comments

ANDI (Colombia): If the victim does not wish to collaborate, protection measures cannot become an obligation.

MEDEF (France): The scope of victim protection is not explicit in Convention No. 29. The instrument should therefore clarify this point. The concept of “informed consent” should be clarified.

NHO (Norway): For all points under question 23. The identification of forced labour victims needs to be improved and appropriate measures have to be put in place to protect all victims and suspected victims of forced labour. There is a need for an instrument to provide guidance on the extent of victims’ protection as this is not implicitly covered in Convention No. 29.

CNP, CNES, MEDS (Senegal): Delete “on a consensual and informed basis”.

Workers

Total number of replies: 72

Yes: 66

No: 2

Other: 4

Comments

CSA (Benin): This is needed to reassure victims so that they will give evidence.

CSN (Canada): And for their families.

CGIL, UIL (Italy): Especially because European and national laws do not sufficiently protect victims, who often are expelled.

GEFONT (Nepal): Member States are responsible for protecting victims.

CATP (Peru): In the case of an offence, the State is obligated to offer protective measures, even without victims’ consent or knowledge, since their consent can be invalidated if obtained under pressure or fear of reprisals.

AFL-CIO (United States): Revise to read “protection measures should be provided to victims on the basis of their informed consent”.

United Nations

UNODC: Questions 23–26: The ILO may wish to take into consideration the report of the Special Rapporteur on Trafficking in Persons, especially women and children, as concerns the right to an effective remedy for trafficked persons (in addition to existing obligations such as under the Trafficking in Persons

Protocol and the Organized Crime Convention). The ILO may also wish to consider the similarity and complementarity of obligations States would have under the Trafficking in Persons Protocol in order to prevent confusion among States as to their obligations.

Qu. 23 (b) *protection measures should not be made conditional on the victim's willingness to cooperate in criminal proceedings?*

Governments

Total number of replies: 90

Yes: 71

No: 13

Other: 6

Comments

Bahrain, United Arab Emirates: As a general principle, yes, but sometimes it is not possible to characterize the offence as forced labour without their cooperation.

Benin: Protection of the victim is necessary, whatever the forms of redress and regardless of the victim's cooperation.

Côte d'Ivoire, Turkey: Criminal proceedings are general and impersonal procedures. They apply to all victims without exception.

Cuba: Should not refer to criminal proceedings, only to the labour aspect.

Estonia, Guatemala: The cooperation of victims is crucial in criminal proceedings. It is necessary to create adequate methods for the protection of victims of human rights violations and forced labour.

Myanmar: Protection measures should be made conditional in order to prevent abuses.

Netherlands: Assistance and support should be provided unconditionally for non-residents at least during the reflection period. Non-cooperation can make it difficult to prosecute the perpetrators.

New Zealand: Victims may be too traumatized to cooperate. States increasingly recognize the right of victims to protection regardless of cooperation.

Norway: In Norway the residence permit may only be given if the victim participates in the criminal proceedings.

Poland: A reflection period gives victims time to consider whether they will cooperate.

Kyrgyzstan, Mali, Morocco, Romania: Protection should be a guaranteed right, not a conditional one.

Russian Federation: Protection should be provided immediately upon the suspicion that a person has been a victim of forced labour. As written, this passage means that persons have to be identified first as victims. States should also protect victims from re-traumatization as a result of being required to give evidence in open court, for instance.

Switzerland: A certain level of protection should be independent of cooperation. There should be ways of encouraging cooperation or the guilty parties will not be identified and convicted.

Togo: The victim should be willing to cooperate in criminal investigation proceedings.

United States: It is appropriate to make protection measures dependent on cooperation unless such cooperation would be unreasonable. This is an important tool for prosecutors.

Employers

Total number of replies: 26

Yes: 15

No: 3

Other: 8

Comments

CNI (Brazil), ZFE (Zambia): Victims should participate if the penal system is to work correctly.

ANDI (Colombia): The instrument should not affect any possible requirement to participate in criminal proceedings.

Workers

Total number of replies: 72

Yes: 61

No: 5

Other: 6

Comments

Consolidated reply: Protection (and all other victim-related) measures should be provided immediately upon the suspicion that a person has been a victim of forced labour. States should also protect victims from re-traumatization, such as at trials, in accordance with EU directives and OHCHR principles and guidelines.

GEFONT (Nepal): It is the duty of the State to rescue forced labour victims immediately, otherwise they will be re-victimized.

UGT (Spain): Protection measures, including documentation for victims in an irregular situation, should not depend on collaboration, or the victim and the victim's family will be vulnerable to reprisals.

TUC (United Kingdom), AFL-CIO (United States): Many Members make protective measures contingent on cooperation with criminal proceedings. However, the goal of protection should be to stabilize workers subjected to forced labour so that they can participate in a civil or criminal investigation or proceedings. Until the worker's circumstances are stable, the worker cannot freely make a decision about whether to participate.

Qu. 23

(c) *victims of forced labour should not be held liable for offences committed as a direct consequence of the forced labour situation in which they find themselves, such as immigration offences, possession or use of fraudulent travel or identity documents and offences related to their involvement in other unlawful activities?*

Governments

Total number of replies: 90

Yes: 55

No: 24

Other: 11

Comments

Benin, Eritrea: The individual who forces a person under constraint to commit a crime is the one responsible.

Colombia: There are problems with evidence and effective demonstration of victim status in order to benefit from these prerogatives.

Democratic Republic of the Congo: They are not responsible for acts committed against their will and should benefit from clemency.

Guatemala, Islamic Republic of Iran, Japan: When the victim participated with awareness of the situation, the degree of responsibility will have to be established.

Kyrgyzstan: Everyone is equal before the law and should be held liable for their actions, but all the circumstances should be taken into consideration.

Latvia: It should be possible to assess whether the person could be released from criminal responsibility in each particular case.

Mexico: Victims of forced labour must not be victims of the legislation as well, but the law must be applied. There should be special protection for children.

Morocco: Provided that these victims are not guilty of other offences qualified as crimes by the law.

Nepal: Forced labour should be considered to be a state of duress.

Netherlands: The 2011 EU Directive on trafficking in persons stresses that States should have the option of not prosecuting victims for such crimes.

New Zealand: See question 15. Yes, on the basis of the ILO report, at footnote 7, page 36.

Romania: As long as the offences are not serious.

Russian Federation: Punishment for offences directly linked to their forced labour situation blames them for the crimes of their exploiters, who can exert further control over victims by threatening them, and dissuade them from giving evidence against exploiters.

Serbia: This is too broad. Responsibility of any person allegedly committing criminal acts cannot be a priori denied, but a court may establish absence of criminal responsibility.

South Africa: If there is sufficient protection for the individual, there must be consequences for not reporting incidents of forced labour.

Switzerland: If this implies that the situation of illegal immigrants must be legalized, it could encourage people to take risks and become victims.

United Arab Emirates: Yes, provided that it is decided judicially that the crime committed is a direct product of the situation of forced labour and that workers were forced to commit it.

United Kingdom: There is an expectation that genuine victims would not be held liable for crimes that they were compelled to commit. Prosecutorial discretion must be allowed.

United States: Add “criminal” before “immigration”. Prefer the language from question 15.

Uruguay: They are victims of organized crime and are guilty only of administrative offences for which they should not be held responsible.

Employers

Total number of replies: 26

Yes: 11

No: 8

Other: 7

Comments

CNI (Brazil): Victims should be held responsible for their acts, regardless of their alleged situation of vulnerability.

ANDI (Colombia): The instrument should not refer to the requirements for determining whether criminal responsibility exists within member countries.

CONCAMIN (Mexico): This may reinforce organized crime.

CNP, CNES, MEDS (Senegal), ZFE (Zambia): Victims are often deceived by traffickers and cannot be held liable for certain acts.

Workers

Total number of replies: 72

Yes: 62

No: 2

Other: 8

Comments

Consolidated reply: This provision would require proof that they were forced to use false documents. The following language is proposed: “victims of forced labour should not be held liable for immigration offences or possession or use of fraudulent travel or identity documents or for offences committed which are directly linked to the forced labour situation in which they find themselves.” See June 2013 guidelines on non-punishment from the Office of the Special Representative for Combating Trafficking in Human Beings of the Organization for Security and Co-operation in Europe (OSCE).

CSA, MTCB (Benin): Victims seeking survival should not be held liable for abusive working conditions.

CSN (Canada): Victims’ immunity is the keystone to eliminating forced labour.

CGIL, UIL (Italy): Laws and international standards provide for humanitarian exceptions in cases of serious labour exploitation. This may be conditional on the victim denouncing the exploiter, but this may not always be possible. There should be a reference to the protective roles trade unions can play.

CISL (Italy): Depends on the offence.

United Nations

UNODC: Question 23(c) seems to refer to what is known as the causation model, while question 15 seems to refer to the duress model.

OFFICE COMMENTARY

Paragraph 4 of the proposed Recommendation corresponds to questions 23(a) and (b). In response to the concerns expressed by a number of respondents, additional language on encouragement to take part in proceedings has been added. The language in Paragraph 5 of the proposed Recommendation corresponding to question 23(c) has been adapted to be more consistent with that used in the proposed Protocol under question 15, which also addresses the UNODC comment.

- Qu. 24** *Should the proposed Recommendation provide that Members should ensure that protection measures to meet the needs of all victims for both immediate assistance and long-term recovery include:*
- (a) adequate and appropriate accommodation?*

Governments

Total number of replies: 90

Yes: 79

No: 5

Other: 6

Comments

Benin: Points (a) to (c): Only for the time required to regularize the situation.

Botswana, Colombia, Latvia, Poland: Depending on the resources available, especially in case of long-term unemployment.

Canada: Measures listed in question 24(a) to (g) are only examples and Members should not limit themselves to them.

Indonesia: Points (a) to (g): implemented gradually in accordance with national conditions.

Italy, Slovenia: See EU Directive 2011/36.

Netherlands: There should not be a different approach for immediate assistance and long-term recovery.

Norway: The parties should have the possibility to set conditions for the right to accommodation after a period of immediate assistance, for example that the victim has a legal right (temporary or permanent residence permit) to reside in the country. For all points under question 24: Some protection measures apply to victims of forced labour only to the extent that they are victims of trafficking.

Russian Federation: “Accommodation” should be replaced with “adequate housing”. Add “non-custodial” to ensure that victims are not warehoused in detention facilities.

Sweden: For the whole of question 24: The details should be determined on the basis of national conditions. Accommodation must be provided when an urgent need exists. Children should be guaranteed social protection.

Turkey: To assist the immediate recovery of all victims, structures such as shelters and migrant camps should operate for protective purposes and to prevent abuses.

United Kingdom: The Council of Europe Convention on Action against Trafficking in Human Beings and the EU Directive on trafficking in human beings require a minimum level of support to individuals identified as potential victims of human trafficking. Those identified as such through the National Referral Mechanism are entitled, where necessary, to various support and assistance measures to assist in their recovery (including appropriate and secure accommodation).

United States: Reword entire paragraph: “Members should ensure that protection measures are in place to meet the needs of all persons who are victims of forced labour within their jurisdiction or territory, both for immediate assistance and for long-term recovery. Such measures could include, but are not limited to, ...”.

Employers

Total number of replies: 26

Yes: 15

No: 3

Other: 8

Comments

SEV (Greece), NHO (Norway), UPS (Switzerland): General support for the measures outlined in question 24 in so far as they are sustainable mechanisms to remove victims from situations that make them liable to fall back into forced labour. This does not necessarily mean according special privileges or treatment to victims of forced labour, compared to victims of other criminal acts.

ZFE (Zambia): This will be costly for member States. When victims are withdrawn from forced labour they should simply be assisted to get back to their homes.

Workers

Total number of replies: 72

Yes: 65

No: 2

Other: 5

Comments

Consolidated reply: “Accommodation” should be replaced with “adequate housing” as defined by CESC general comment 4 (that is, including access to essential services and infrastructure, including water and sanitation). Add “non-custodial” to ensure that victims are not warehoused in detention facilities. See the OHCHR principles and guidelines.

BAK (Austria): Particular attention has to be paid to the most vulnerable, especially children and teenagers.

CSA (Benin): This could be seen as condoning forced labour.

CGIL, UIL (Italy): Victims have no means of subsistence once the forced labour situation has been reported.

Qu. 24 (b) *health care including both medical and psychological assistance?*

Governments

Total number of replies: 90

Yes: 83

No: 2

Other: 5

Comments

Austria: Social protection is guaranteed to all workers, including those in forced labour and undocumented workers.

Côte d'Ivoire, Eritrea, Kyrgyzstan: Health care and counselling are a basic right and are necessary for the victim to recover from injuries sustained during forced labour.

Morocco: The assistance made available to victims depends on the resources available. In general, victims must benefit from all available public health services without discrimination.

Netherlands: If necessary.

Sweden: Victims under the jurisdiction of a member State should be guaranteed the health care and social services necessary to avoid deterioration of their health or the development of a serious illness.

South Africa: Not applicable.

Turkey: Free of charge medical and psychological assistance should be considered as a basic human right, but it should not be abused.

Employers

Total number of replies: 26

Yes: 17

No: 1

Other: 8

Comments

ANDI (Colombia): Should be evaluated in each case so as to be granted according to State capacity and the necessity of the measure.

Workers

Total number of replies: 72

Yes: 68

No: 0

Other: 4

Comments

CSN (Canada): Including treatment for addiction.

CGIL, UIL (Italy), GEFONT (Nepal): The people concerned have suffered psychologically and physically, and need this care.

AFL-CIO (United States): Victims should receive full information about their care options. They should not be subject to mandatory testing. Dental care should be included.

United Nations

OHCHR: Should be provided immediately after identification and all through the course of rehabilitation.

Qu. 24 (c) material assistance?

Governments

Total number of replies: 90

Yes: 69

No: 10

Other: 11

Comments

Austria, Botswana, Serbia, Sri Lanka, Trinidad and Tobago, Zimbabwe: Not clear, and not all countries have the resources.

Benin: For the time necessary.

Kyrgyzstan, Sweden: Only in case of emergency or acute need.

Latvia: This should not be the primary obligation of the member State if the victim has full access to measures such as appropriate accommodation, health care, psychological assistance, legal information and assistance free of cost.

Nepal: In case of cross-border forced labour, the State should come to the rescue of victims, where necessary, with material assistance as per its national capacity.

Netherlands, Turkey: Money for day-to-day expenses should be available.

Switzerland: It should be possible to limit the amount of material assistance to the subsistence level to foster acceptance of such measures and avoid growing scepticism of increased social spending. There should be a reference to national conditions.

United States: See question 24(a). Include in a menu of options.

Employers

Total number of replies: 26

Yes: 14

No: 2

Other: 10

Comments

CONCAMIN (Mexico): Depending on national capacity
 ECA (Trinidad and Tobago), FEDECAMARAS (Bolivarian Republic of Venezuela): Define “material assistance”.

ZFE (Zambia): Only to help them recover from victimization.

Workers

Total number of replies: 72

Yes: 66

No: 1

Other: 5

Comments

CSA (Benin): Should be left to agreement between the parties.

CSN (Canada): To compensate for loss of income.

CISL (Italy): With regard to question 24(a), (b) and (c), it is worth highlighting the economic costs that such measures might entail, and their sustainability.

CATP (Peru): What is important is entry into the labour market, in conditions ensuring decent work.

Qu. 24 *(d) information and advice regarding their legal rights and the services available, in a language that they can understand, as well as legal assistance, preferably free of cost, during legal proceedings?*

Governments

Total number of replies: 90

Yes: 84

No: 2

Other: 4

Comments

Côte d'Ivoire: Trade unions should be able to help throughout the process.

Kyrgyzstan: Brochures and booklets should be issued to explain their rights and duties.

Netherlands: The EU anti-trafficking directive states, "Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources", so replace "preferably" by "where necessary".

Russian Federation: Delete "preferably".

Sri Lanka: According to national capacity.

Sweden: Information and advice should be made available to the recipient, regardless of language, level of literacy or disability.

Employers

Total number of replies: 26

Yes: 15

No: 3

Other: 8

Comments

CONCAMIN (Mexico): All these measures should be conditional on the resources available, and care should be taken that they are not made obligatory.

Workers

Total number of replies: 72

Yes: 69

No: 0

Other: 3

Comments

Consolidated reply: Legal assistance should be free of cost. See Article 15 of the Council of Europe Convention on Action against Trafficking in Human Beings. Free assistance should be provided also to assist trafficked persons in pursuing compensation claims for lost wages and/or in immigration and asylum proceedings. States should also be required to provide translation services, if necessary.

CGIL (Italy): Victims cannot always represent themselves, so the role of unions should be emphasized. Could be in both the Protocol and the Recommendation.

Qu. 24 (e) protection of privacy and identity?

Governments

Total number of replies: 90

Yes: 84

No: 0

Other: 6

Comments

Côte d'Ivoire: Victims could be in danger if their identity is revealed.

France: This protection must be reconciled with freedom of expression, which helps bring forced labour to light, awareness raising and the involvement of individuals in reporting forced labour. It could be made clearer that protection of privacy and identity is assured, including courses of action when freedom of information leads to an abuse of these rights.

Japan, Sweden: The scope of this expression is very wide. A broad definition of protection of the privacy of victims could be incompatible with an open judicial process.

Mauritius: This will enhance their willingness to participate in legal proceedings and will lead to an increase in successful prosecutions.

Netherlands: Before, during and for an appropriate time after criminal proceedings.

Russian Federation: The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking recognize that it may be difficult to protect identities from public disclosure and so, in order to enable victims to assess the risks, guideline 6(6) recommends that “[t]rafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard”.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Workers

Total number of replies: 72

Yes: 65

No: 0

Other: 7

Comments

Consolidated reply: Article 11(2) and 11(3) of the Council of Europe Convention on Action against Trafficking in Human Beings requires parties to protect private information, whether in court proceedings or elsewhere, and to ensure that information about minors is not made publicly known. See also the OHCHR principles and guidelines.

CGIL (Italy): To protect victims from reprisals when they complain.

United Nations

OHCHR: A human rights approach advises against public disclosure of the identity of the victim and calls for the respect of privacy.

Qu. 24 (f) *ensuring the safety of victims as well as family members and witnesses, as appropriate, from intimidation and retaliation?*

Governments

Total number of replies: 90

Yes: 86

No: 0

Other: 4

Comments

Côte d'Ivoire: Before, during and after judicial proceedings.

France: Agree with the objective, but special measures for forced labour victims could have financial and budgetary implications.

Kyrgyzstan: Ensuring the safety of victims enables them to render assistance to the law enforcement bodies.

Morocco: It is up to both the countries of origin and of destination to ensure respect for the physical and psychological integrity, dignity and security of victims of forced labour and their families.

Russian Federation: This should be more comprehensive in order to increase the likelihood that no one involved will be at risk of retaliation and thus will be more likely to cooperate. The European Trafficking Convention requires parties to take legislative or other measures “as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators”.

United States: Add “measures aimed at” before “ensuring”.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: Should be more comprehensive in order to increase the likelihood that no one involved will be at risk of retaliation and thus increase the likelihood of cooperation. See Article 28(4) of the Council of Europe Convention on Action against Trafficking in Human Beings.

CGT (Colombia): To avoid re-victimization.

CGIL, UIL (Italy): Measures to protect the identity of victims are sometimes not sufficient and it is necessary to provide effective protection for victims and their families.

UGT (Spain): These measures should be taken before the possibility of reprisals arises, not after the fact.

Qu. 24 (g) *social and economic measures, including employment, educational and training opportunities?*

Governments

Total number of replies: 90

Yes: 76

No: 11

Other: 3

Comments

Eritrea: This could be beyond the reach of developing countries.

Estonia: For third-country nationals, the integration measures should apply to victims of forced labour who hold residence permits. States should have the right to define the rules under which they have access to the labour market and to vocational training and education, which should be limited to the duration of the residence permit.

Finland: Access to education, especially for children and young people.

Islamic Republic of Iran: For those who are confirmed as eligible.

Lebanon: Ensuring employment could give rise to competition with the national workforce, but it is necessary to provide assistance in education and training.

Myanmar: Social and economic measures, including employment, educational and training opportunities are vital for victims' rehabilitation.

Netherlands: This cannot be a general rule.

Poland: Subject to restrictions due to the labour market situation.

Russian Federation, Sweden: While they are awaiting judicial or other remedies.

Sweden: Should be guaranteed for persons who are legally resident in a member State, and for other persons whose needs are acute.

Togo: This access should not be too complicated.

United Kingdom: Should be "as required".

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Comments

EK (Finland): The victims of forced labour must not be placed in a special position compared to victims of other crimes. There is no mention of the possible costs and who should pay them.

Workers

Total number of replies: 72

Yes: 63

No: 1

Other: 8

Comments

Consolidated reply: Victims should be granted work permits during the time they are awaiting judicial or other remedies.

CGT (Colombia): Should refer to opportunities for decent work.

CGIL, UIL (Italy): States do not always offer much more than humanitarian protection.

CISL (Italy): Desirable, but not always feasible or sustainable.

OFFICE COMMENTARY

There is general agreement on all the aspects of this point, subject to some reservations. The point in question 24(d) has been moved in the draft Recommendation to Paragraph 10(d) in the section on access to justice, and combined with the point in question 27(a), as it should apply to all stages of the experience.

- Qu. 25** *Should the proposed Recommendation provide that protection measures for children subjected to forced labour should include, along with consideration of the special needs and best interests of the child:*
- (a) *the appointment of a guardian, where appropriate?*

Governments

Total number of replies: 90

Yes: 82

No: 4

Other: 4

Comments

Canada, United States: Should be part of a menu of options listing possible measures.

Colombia: But the child must always be heard directly by the authority if he or she so wishes, even if the guardian is not in agreement.

Finland, Myanmar: Under the UN Convention on the Rights of the Child, the child's best interests should always be of primary importance and the child should be treated primarily as a child in all instances. The task of the guardian is to inform the child and to find out his or her opinion, and to represent the interests of the child in lieu of the parent or legal guardian.

France: The notion of guardianship may not always be compatible with this idea.

Ghana: Due diligence needs to be exercised in appointing guardians.

Latvia, Mexico: If the child's parents are unable to represent the child's interests.

Turkey: It may be necessary to protect children against their parents.

Employers

Total number of replies: 26

Yes: 17

No: 2

Other: 7

Comments

CNI (Brazil): Should be evaluated on a case-by-case basis.

ANDI (Colombia): The child must be able to be heard even if the guardian is opposed to it.

SEV (Greece), UPS (Switzerland): Explore coherence with ILO child labour standards.

ZFE (Zambia): This should be encouraged as a good practice rather than being imposed.

Workers

Total number of replies: 72

Yes: 68

No: 1

Other: 3

United Nations

OHCHR: International law requires that the best interests of child victims are to be a primary consideration in all decisions or actions that affect them.

Qu. 25 (b) *when the person's age is uncertain but there are reasons to believe him or her to be less than 18 years of age, a presumption of minor status, pending age verification?*

Governments

Total number of replies: 90

Yes: 83

No: 2

Other: 5

Comments

Canada: As part of a menu of options.

Eritrea: When the person's age is uncertain, there should be a presumption that they have reached the age of majority.

Finland: The baseline should be the Council of Europe Convention on Action against Trafficking in Human Beings, which states that, when the age of the victim is uncertain, protective measures should be applied until the age has been verified.

Indonesia: Should involve child protection institutions.

France: It is difficult to apply a legally prescribed presumption of minor status in practice, since the definition of the applicable criteria to determine the presumption can only be very subjective.

Guatemala, Sweden: Age verification should be carried out only to provide the child with protection.

Employers

Total number of replies: 26

Yes: 16

No: 3

Other: 7

Comments

CNI (Brazil): The legal working age varies depending on national legislation.

Workers

Total number of replies: 72

Yes: 67

No: 1

Other: 4

Comments

CSA (Benin): Documents attesting age may be falsified.

United Nations

OHCHR: There is growing acceptance of a presumption of age, where a victim who may be a child is treated as a child unless or until another determination is made.

OFFICE COMMENTARY

Paragraph 8 of the draft Recommendation adds a reference to Convention No. 182. As concerns the appointment of a guardian, a reference to “other representative, where appropriate” has been added to take account of different national situations and circumstances.

- Qu. 26** *Should the proposed Recommendation provide that protection measures for migrant workers subjected to forced labour should include:*
- (a) *provision of a reflection and recovery period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim, during which the person shall be authorized to remain in the territory of the country concerned?*

Governments

Total number of replies: 90

Yes: 73

No: 11

Other: 6

Comments

Bahrain, Indonesia, Oman: This is too broad. Should be determined by national legislation.

Botswana: Not necessary.

Colombia: With limitations on freedom of movement.

Côte d’Ivoire: This will allow time for the victim to take appropriate decisions.

Cuba: National migration policy is separate from labour policy and neither should be made conditional on the other.

Eritrea: When there are reasonable grounds to believe that the migrant worker is a victim, the recovery period should be at least 60 days.

Estonia: Forced labour should be defined as narrowly as possible and be linked closely to trafficking in human beings.

Ethiopia: Provided that the victim does not pose a threat to national security.

Guatemala: Taking into consideration the circumstances in which the victim was found performing forced labour and whether this merits attention for a prolonged period of time.

Japan: Under customary international law, each State has sole discretion on permission to stay in the country and for how long.

Kyrgyzstan: With the assistance of the consular institutions, keep persons of this category at work, until the circumstances are clarified.

New Zealand: For a suitable time.

Norway: Where there are reasons to believe that a foreign national is a victim of trafficking and is prepared to accept help and participate in measures offered by the authorities, a temporary residence and work permit for six months may be granted. This does not form the basis for a permanent residence permit.

Russian Federation: Should be extended until the State has made a determination. Also, the person should be eligible for housing, services, and so on during this period. “And be provided with all necessary support and assistance measures as outlined in question 25” should be added.

Slovenia: Assistance and support for victims should be available for an appropriate time before, during and after criminal proceedings. The EU standards recommend at least 30 days for this purpose. This period allows victims to recover and escape the influence of traffickers while allowing them to come to a decision on cooperating with the competent authorities in prosecuting traffickers.

United Arab Emirates: Provided that it applies to the actual victims of forced labour or migrant workers who are parties to a case concerning forced labour, and not all workers at risk of forced labour.

Uruguay: Workers in this situation should not be expelled.

Zimbabwe: This proposal has mixed up “reflection and recovery”, which is not supported by the Government, and the need for victims to remain on the territory, which is supported.

Employers

Total number of replies: 26

Yes: 12

No: 5

Other: 9

Comments

CNI (Brazil), UPS (Switzerland): This should be determined at the national level.

ANDI (Colombia): This could conflict with national migration policy, and should not be included because it is beyond the ILO’s mandate.

SEV (Greece): Strengthen the provisions of Convention No. 29 to engage in dialogue at the national level to explore the feasibility of the proposed protection mechanisms.

Workers

Total number of replies: 72

Yes: 62

No: 2

Other: 8

Comments

Consolidated reply: The period should run until the State has made a determination. The person should be eligible for housing, services, and so on during this period. “And be provided with all necessary support and assistance measures as outlined in question 25” should be added.

BAK (Austria): 30 days seems reasonable, although it may need to be longer depending on the degree of trauma.

CSN (Canada), CGIL, UIL (Italy), GEFONT (Nepal), AFL-CIO (United States): 30 days is too little time.

United Nations

OHCHR: The reflection period has been included in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, and by the Special Rapporteur on Trafficking in Persons.

UNODC: The ILO may wish to explore not limiting this reflection and recovery to migrant workers, as sometimes domestically exploited persons may also need a period of reflection and recovery, whether they are from remote regions or not.

Qu. 26 (b) *provision of temporary or permanent residence permits and, as appropriate, access to the labour market in the place of destination?*

Governments

Total number of replies: 90

Yes: 68

No: 17

Other: 5

Comments

Botswana: National conditions permitting.

Chile: If it has been verified that the persons are victims of forced labour.

China: Should be dealt with according to the specific situation, to avoid the legalization of illegal immigration.

Côte d'Ivoire: Allows migrant workers to access the labour market legally.

Cuba: Migration and labour policy should not be confused.

Estonia: States have the right to define the rules under which holders of a residence permit gain access to the labour market. Access should be limited to the duration of the residence permit.

Finland: For victims of human trafficking, it is important to guarantee access to the regulated labour market.

France, Israel, Latvia, Trinidad and Tobago: Only for a temporary residence permit.

Japan: See question 26(a).

Netherlands: The Council of Europe Convention on Action against Trafficking in Human Beings states that member States shall issue a renewable residence permit to victims if their stay is necessary owing to their personal situation, or for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.

Norway: Whether victims of forced labour who are not victims of trafficking should have similar rights might have financial and administrative consequences.

Russian Federation: “As appropriate” should be removed or clarified. Temporary or permanent residence permits are not useful if the person is left destitute because he or she is not allowed access to either the labour market or comprehensive social security. In this respect, “and adequate social security provision” should be added after “labour market”.

Lebanon, Switzerland, Turkey, Bolivarian Republic of Venezuela: This will encourage people to take risks in order to obtain legal status.

Bahrain, United Arab Emirates: Should cover only actual victims of forced labour or migrant workers who are parties to a case concerning forced labour, and not all workers at risk of forced labour.

United Kingdom: This should not go beyond what is currently required under international conventions. Being a victim does not automatically entitle someone to remain indefinitely and those who do not meet internationally recognized protection criteria and are not cooperating with a police investigation may not qualify for leave to remain.

United States: Move “as appropriate” to the end.

Uruguay: The criminalization of victims of these crimes has to be avoided, and they should not be left without options.

Viet Nam: This issue goes beyond the scope of forced labour, and involves the security, entry and visa regulations and labour market policies of the country involved.

Zimbabwe: Normal immigration processes should apply. This appears to go beyond the purview of labour administrations or international labour standards.

Employers

Total number of replies: 26

Yes: 9

No: 9

Other: 8

Comments

ANDI (Colombia): See question 26(a).

CNI (Brazil), UPS (Switzerland): Should be handled at the national level.

CNP, CNES, MEDS (Senegal): Yes, for the provision of temporary or permanent residence permits; No, for access to the labour market.

ECA (Trinidad and Tobago): Temporary only.

ZFE (Zambia): Persons found to have been trafficked must be assisted to get back to their countries of origin. Giving them permanent residence permits may lead to certain people claiming to have been trafficked when they have not.

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: “As appropriate” should be removed or clarified. Temporary or permanent residence permits are not useful if the person is left destitute because he or she is not allowed access to

either the labour market or comprehensive social security. After “labour market”, add “and adequate social security provision”.

BAK (Austria): If testimony is required, it is important that people have a longer right to stay and are protected, with access to the labour market. This could be an incentive to cooperate with the authorities.

CSN (Canada): The work permit is an essential element.

CGT-FO (France): Temporary residence permit only.

CGIL, UIL (Italy): At least until proceedings against the exploiter are concluded, with a permanent permit afterwards if possible.

United Nations

OHCHR: The human rights approach requests States to provide legal and other assistance to trafficked persons, for the duration of any criminal, civil or other actions against suspected traffickers. States should provide protection and temporary residence permits to victims and witnesses during legal proceedings.

Qu. 26 (c) *facilitation of safe and preferably voluntary repatriation?*

Governments

Total number of replies: 90

Yes: 82

No: 4

Other: 4

Comments

Eritrea: Could be beyond the reach of developing countries.

Estonia: Voluntary return should be preferred over forced return. States should have the right to refrain from granting a period for voluntary departure in certain circumstances.

Finland: Voluntary return should be the primary option. The return should take place in a planned, controlled manner, and in cooperation with officials.

Ghana, Portugal: Where voluntary repatriation will not endanger the life of the victim.

Islamic Republic of Iran: This point should take more account of international law and regulations, and laws related to the extradition of offenders.

Norway: See question 24(a).

Russian Federation: Forced repatriation may be incompatible with States’ international obligation of non-refoulement to a country where they would be at risk of persecution or serious human rights violations or abuses. The UN Trafficking in Persons Protocol says nothing about stateless people and this instrument could fill this gap.

Slovenia: This should be an elementary right of the victim which is defined in several international instruments.

Trinidad and Tobago: Delete “preferably voluntary”.

Uruguay: This should be with the victim’s consent and should ensure that he or she is not put at risk.

Employers

Total number of replies: 26

Yes: 16

No: 3

Other: 7

Comments

CNI (Brazil): Repatriation of migrant workers is up to each country.

ANDI (Colombia): If it is not voluntary and the status of the migrants is irregular, they should only benefit from the recovery period indicated in question 26(a).

ZFE (Zambia): Trafficked people engaged in forced labour must be assisted to get back to their countries of origin.

Workers

Total number of replies: 72

Yes: 66

No: 1

Other: 5

Comments

Consolidated reply: Forced repatriation may be incompatible with States' international obligation of non-refoulement. The UN Trafficking in Persons Protocol says nothing about stateless people and the Protocol could fill this gap. "Safe" should go beyond safe travel home to include safety at the destination. Repatriation programmes must avoid re-victimization.

BAK (Austria): When repatriation is required and possible and an appropriate level of protection in the country of origin can be ensured.

CSN (Canada): Ensuring that the conditions of return do not force people back into forced labour.

CGIL, UIL (Italy): Only if the victim so desires, and never through expulsion.

UGT (Spain): Delete "preferably".

AFL-CIO (United States): Victims should not bear the cost of repatriation. "Safe" should include means to avoid being forced to repay debts related to forced labour, including those incurred through the recruitment process.

United Nations

OHCHR: There should be scrupulous respect of the principle of non-refoulement, and other reasons that could present a defence against expulsion or return. Any use of force should be as a last resort and strictly proportionate to the circumstances.

OFFICE COMMENTARY

Paragraph 9(a) of the proposed Recommendation does not specify a time period for the reflection and recovery period, in accordance with a number of replies.

COMPENSATION AND ACCESS TO JUSTICE

- Qu. 27** *Should the proposed Recommendation provide that Members should take measures to ensure that all victims of forced labour have access to effective and appropriate legal remedies, in particular compensation for material and non-material damages, including by:*
- (a) *providing legal assistance, preferably free of cost?*

Governments

Total number of replies: 90

Yes: 81

No: 3

Other: 6

Comments

Canada: Measures in question 27(a) to (f) are examples of measures that could be implemented, but the list should not be limited to them.

Democratic Republic of the Congo, Mali: Victims of forced labour do not know the national legislation and do not have the means to deal with the justice system.

Eritrea: Nothing can be done without free legal assistance.

France: Under the European Convention on Human Rights, legal assistance must be provided whenever necessary.

Latvia: Depending on resources.

Myanmar: Although free legal assistance for adequate compensation is preferable as the victims may be in a helpless situation, it should also be harmonized with other relevant national laws and procedures.

Netherlands: The EU anti-trafficking directive states, “Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources”, so “where necessary” would be better than “preferably”.

Russian Federation: On question 27 in general: This formulation should be aligned with human rights principles on the right to remedy and reparation for victims of serious human rights violations. For example: “Members should take measures to ensure that all victims of forced labour have access to effective and appropriate legal and other remedies and are granted full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination”. On (a): The word “preferably” should be deleted and it should specify legal assistance for criminal, civil and administrative matters, such as back wages.

United States: Rephrase as “Members should take measures to ensure that all persons who are victims of forced labour within their jurisdiction or territory have access to effective and appropriate legal remedies, in particular compensation for material and non-material damages. Such measures could include, but are not limited to ...”.

Employers

Total number of replies: 26

Yes: 14

No: 2

Other: 10

Comments

EK (Finland): For all of question 27, victims of forced labour should not be placed in a different position than the victims of other crimes.

ZFE (Zambia): Legal services can be provided, but compensation for material or non-material damages should not be a responsibility of Members.

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: On question 27 in general: This formulation should be aligned with human rights principles on the right to remedy and reparation for victims of serious human rights violations. For example: “Members should take measures to ensure that all victims of forced labour have access to effective and appropriate legal and other remedies and are granted full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination”.

CGIL, UIL (Italy): At a minimum. Unions can help, but this is not enough.

GEFONT (Nepal): Every State should provide free legal assistance.

UGT (Spain): Delete “preferably” and add “in a language they understand, with translation when needed”.

AFL-CIO (United States): Add “regardless of their nationality and/or location”.

United Nations

OHCHR: States should ensure that domestic legal systems contain measures offering victims the possibility of obtaining compensation for any damage suffered. This could be done by granting them the right to bring a civil action against their traffickers, regardless of their nationality or migration status, initiatives aimed at social assistance or reintegration of victims, as well as the establishment of a special fund that uses seized proceeds of trafficking to compensate victims.

- Qu. 27** (b) *ensuring that all victims, both nationals and non-nationals, can pursue administrative, civil and criminal remedies in the country concerned, irrespective of their presence in the national territory?*

Governments

Total number of replies: 90

Yes: 73

No: 7

Other: 10

Comments

Canada: In some instances, criminal remedies or administrative measures may require the victim to be present in the territory. While Canada could support such a provision in principle, greater clarity is needed.

Côte d'Ivoire: The right to administrative, civil and criminal remedies is a universal right.

Chile: Only in the national territory. Be attentive to the principles of territoriality and sovereignty.

France: Victims should have every opportunity to have perpetrators prosecuted, whether or not in the territory where the offence was committed, and to obtain reparations. Legal representation should be available. Illegal employers should be required to cover costs.

Mali: To avoid discrimination between national and foreign workers.

Netherlands: Replace “can pursue” with “have access to”.

Norway: In criminal cases, the absence of the victim – who is often the main witness – may constitute a practical obstacle, which may prevent criminal prosecution in practice. The Recommendation could encourage States to allow remote examination of victims of forced labour.

Russian Federation: Irregular status should not preclude access to effective remedies, and where necessary, trafficked people should be provided with a residence permit in order to pursue the claim. Suggested formulation: “ensuring that all victims can and are assisted to pursue all available administrative, civil and criminal remedies in the country concerned, without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, migration or other status”.

South Africa: If the necessary proof can be provided.

United Kingdom: Criminal proceedings are the responsibility of the State, but individuals must still pursue civil remedies.

United States: Replace “ensuring that” by “providing that, as appropriate”. Add “or immigration status” before “in the national territory”.

Employers

Total number of replies: 26

Yes: 16

No: 1

Other: 9

Comments

EK (Finland): Victims of forced labour should not be in a different position than the victims of other crimes.

ECA (Trinidad and Tobago): Yes, but there must be limits.

FEDECAMARAS (Bolivarian Republic of Venezuela): It is difficult if the person is outside the country or of a different nationality.

Workers

Total number of replies: 72

Yes: 66

No: 0

Other: 6

Comments

Consolidated reply: Irregularity of status should not preclude access to effective remedies, and where necessary, trafficked people should be provided with a residence permit in order to pursue the claim. Suggested formulation: “ensuring that all victims can and are assisted to pursue all available administrative, civil and criminal remedies in the country concerned, without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, migration or other status”.

CSA (Benin): The legal status of the victim should not be an obstacle.

CSN (Canada): A victim who pursues legal recourse should have the right of residence until the end of the proceedings, or at least the right to pursue the proceedings even after leaving the country.

CGIL, UIL (Italy): Already provided for in Convention No. 143, European directives and many national laws, but is useful to recall it here.

GEFONT (Nepal): Irrespective of their nationality and status, and should also be available to family members.

Qu. 27 (c) *ensuring that victims can exercise their right to recover damages from perpetrators?*

Governments

Total number of replies: 90

Yes: 82

No: 0

Other: 8

Comments

Côte d’Ivoire: Many countries have established reparations systems for victims of forced labour.

France: Members need to decide in what form and before which courts victims of forced labour can obtain damages.

Japan: The outcomes of cases settled in the past should be maintained.

Nepal: When calculating the amount of compensation, the duration of work, physical and mental condition of workers and wages paid during the work should also be taken into account.

Russian Federation: This should include unpaid wages and all social benefits due according to relevant labour legislation in addition to any physical or moral damages. The right to recover damages should be guaranteed to all workers, regardless of residence status. “And benefit from any criminal injuries compensation schemes” should be added.

Togo: Those involved in such acts should be held criminally responsible.

United Kingdom: Victims are able to pursue a claim for damages in the civil courts.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Comments

CNI (Brazil): The right to damages depends on national legislation.

EK (Finland), SEV (Greece): Victims of forced labour should not be placed in a different position than the victims of other crimes.

Keidanren (Japan): The outcomes of cases settled in the past should be maintained.

NHO (Norway): Victims should have the right to compensation from perpetrators, but not from other companies in the supply chain. We support the establishment of compensation schemes, such as the use of state funds for the compensation of victims to recover compensation from offenders and in the event that a claim against a perpetrator cannot be enforced.

Workers

Total number of replies: 72

Yes: 68

No: 0

Other: 4

Comments

Consolidated reply: This should include unpaid wages and all social costs owed in addition to any physical or moral damages. The right to recover damages should be guaranteed to all workers, regardless of residence status. “And benefit from any criminal injuries compensation schemes” should be added.

CGT (Colombia): The concept of full reparation, based on the principles adopted in UN resolution 56/83 on 28 January 2002, should be included.

CGIL, UIL (Italy): These guarantees are expressly provided for in Convention No. 143, in European directives and in much national legislation.

GEFONT (Nepal): Should also be in the Protocol.

- Qu. 27** (d) *allowing a representative of the victim to pursue legal remedies, including compensation, on his or her behalf?*

Governments

Total number of replies: 90

Yes: 77

No: 4

Other: 9

Comments

Botswana, France: Victims, who are in a fragile situation and may have linguistic and cultural problems, do not always have the means to defend their interests. They need to have representation, for example by trade unions.

China: Out of fear of being punished by the local government or unable to get aid or legal assistance, women abducted and trafficked and forced into prostitution in other countries do not often report to the competent authorities. Compensation and remedies should be improved in the new Recommendation.

Norway: Limitations concerning who can represent the victim may be justified, depending on the level at which remedies are pursued. When a party has an obligation to be present during the proceedings (see question 27(b)), the fact that the party is represented by someone else does not exempt him or her from this obligation.

Poland: Yes, but particular care should be taken while developing provisions authorizing an attorney or any other person to use, for instance, compensation.

Russian Federation: Suggested language, borrowed from Article 13 of the EU Directive on sanctions against employers: “allowing a representative of the victim, such as trade unions or other associations, to pursue legal remedies, including compensation, on his or her behalf or in his or her support, with his or her approval”.

Employers

Total number of replies: 26

Yes: 14

No: 2

Other: 10

Comments

ZFE (Zambia): Compensation should be claimed only from the perpetrators.

FEDECAMARAS (Bolivarian Republic of Venezuela): Could lead to fraud.

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: Suggested language, from Article 13 of the EU directive on sanctions against employers: “allowing a representative of the victim, such as trade unions or other associations, to pursue legal remedies, including compensation, on his or her behalf or in his or her support, with his or her approval”.

CSA (Benin): Yes, because children or uneducated adults may be unaware of the possible legal remedies and procedures.

CGIL (Italy): Many unions already do this.

United Nations

UNODC: The ILO may wish to deliberate on whether or not this question is also relevant for civil law countries.

Qu. 27 (e) *providing for alternative dispute resolution mechanisms, where appropriate, with simplified procedural requirements?*

Governments

Total number of replies: 90

Yes: 66

No: 18

Other: 6

Comments

Benin: To increase speed in resolving disputes and to reduce the workload of courts.

Botswana: Not necessary.

Canada, Russian Federation, Sweden, United Kingdom, United States: Not clear.

Côte d'Ivoire: Complex judicial procedures can slow down compensation.

Cuba: May circumvent the obligations under existing laws.

Finland: Such mechanisms can ease a process that is otherwise burdensome for the victim, and result in larger sums in compensatory damage than in a court.

Guatemala: If the victim agrees, dispute resolution could include arbitration and conciliation mechanisms in order to speed up the process and obtain adequate compensation.

Nepal: No compromise should be made on punishment of the criminals.

Russian Federation: Such mechanisms should not undermine the penal responsibility of those exacting forced labour. In workplaces, such mechanisms are not an alternative for representative trade unions and collective bargaining.

Senegal: An amicable settlement applies only to administrative or civil actions, and not to those under criminal law.

Employers

Total number of replies: 26

Yes: 13

No: 3

Other: 10

Comments

EK (Finland): Victims of forced labour should not be placed in a different position than the victims of other crimes.

ZFE (Zambia): So that the process does not always require legal representation.

Workers

Total number of replies: 72

Yes: 38

No: 28

Other: 6

Comments

Consolidated reply: This is vague and unclear. While alternative dispute resolution mechanisms can be a useful tool for resolving employment disputes, they can also favour employers and there is a particular danger of this occurring in the context of forced labour abuses due to the vulnerability of the victims. It should be indicated that such mechanisms should in no way undermine the penal responsibility of those exacting forced labour. In workplaces, these mechanisms are no alternative to representative trade unions and collective bargaining.

LBAS (Latvia): Doubtful that this will work given the nature of the offences.

United Nations

UNODC: The ILO may wish to clarify whether these mechanisms relate to civil or criminal claims, as otherwise there might be the risk of a misinterpretation whereby forced labour could be regarded as nothing more than a labour violation.

Qu. 27 (f) *establishing victim compensation funds?*

Governments

Total number of replies: 90

Yes: 55

No: 24

Other: 11

Comments

Austria, Switzerland: Other methods should also be possible.

Burkina Faso: This helps fill the void left by the failure of perpetrators to compensate victims.

Japan: Should be settled mainly through judicial procedures. It is not appropriate to request all Members to establish victim compensation funds in a single uniform way. It should be clarified that no compensation will be paid for claims already settled in the past.

Latvia, Netherlands: The EU anti-trafficking directive provides that it is important to ensure that victims of trafficking have access to existing compensation schemes for victims of violent crimes.

Sri Lanka: Depending on national capacity.

France, Jordan, Panama, Saint Vincent and the Grenadines, Senegal, South Africa, Zimbabwe: The funds must come from the perpetrators.

Russian Federation: Compensation of the victim is a state obligation and remains one of the most neglected aspects of providing justice in forced labour cases. States must ensure that victims can access their right to compensation, either by creating a compensation fund specifically for victims of forced labour, or ensuring that those subjected to forced labour are able to access existing national compensation funds for victims of crime.

United States: Should be in a menu of options.

Zimbabwe: Might be seen as allowing victims ultimately to benefit from forced labour.

Employers

Total number of replies: 26

Yes: 8

No: 8

Other: 10

Comments

ANDI (Colombia): Should depend on national capacities.

EK (Finland): Victims of forced labour should not be placed in a different position than the victims of other crimes.

MEDEF (France): This could fill a gap in Convention No. 29. The responsibility of enterprises in the supply chain should be clarified.

CNP, CNES, MEDS (Senegal): Compensation must be the exclusive responsibility of the perpetrators.

ZFE (Zambia): This may encourage some people to pretend to be victims of forced labour. It may be costly for member States.

Workers

Total number of replies: 72

Yes: 65

No: 2

Other: 5

Comments

Consolidated reply: This remains one of the most neglected aspects of providing justice in forced labour cases. States should combine different models for victim compensation, as no single system is adequate.

GEFONT (Nepal), CSA (Senegal): In addition to recovery directly from perpetrators.

UGT (Spain): Should be funded by public funds supplemented by resources from perpetrators.

United Nations

OHCHR: Consideration should be given to the use of confiscated assets to finance a compensation fund for victims of trafficking.

OFFICE COMMENTARY

As concerns question 27(a), there is an overlap with question 24(d), and the proposed provisions have been combined in Paragraph 10(d) of the proposed Recommendation. As concerns question 27(b), a reference to the victim's legal status has been added in response to the replies. The phrase "simplified procedural requirements" has replaced a reference to alternative dispute mechanisms, and the points raised under question 27(e) have been joined to those made under question 27(b) in Paragraph 10(e) of the proposed Recommendation. The replies relating to question 27(d) made it apparent that a mention of the need for the victim's consent should be added to Paragraph 10(a). As concerns question 27(f), a reference to access to existing compensation schemes has been added in addition to a reference to compensation funds. Generally on this section, a number of suggestions were made for more detailed provisions, but the proposed Recommendation has retained a more general approach which will allow detailed measures of different kinds to be adopted according to national circumstances, legal systems and other considerations.

ENFORCEMENT

Qu. 28

Should the proposed Recommendation provide that Members should:

- (a) *provide all necessary resources and training to the labour inspection services to enable them to fulfil their role, in collaboration with other relevant agencies, in prevention, law enforcement and protection of victims of forced labour?*

Governments

Total number of replies: 90

Yes: 85

No: 2

Other: 3

Comments

Austria: Labour inspectorates in different countries have different responsibilities.

Canada: Delete "all".

Eritrea: Collaboration with other relevant agencies is necessary.

Finland: A national mechanism is needed. The occupational health and safety service should work with others on human trafficking for exploitation. States should ensure that adequate resources are provided.

Latvia, Mali, Saint Vincent and the Grenadines: Depending on resources.

Lebanon: Social organizations also have a role.

New Zealand: Labour inspectors have a broad mandate and there is a requirement for balance with their other enforcement activities.

Russian Federation: Where no or insufficient labour inspection exists, structures should be created. Mandates should be expanded as required to cover all sectors and groups, with a particular focus on the most vulnerable. States should consider joint training between labour inspectors, unions, and other workers' organizations. Labour inspectors should not have any migration enforcement function or role, in line with ILO Convention No. 81 on labour inspection.

Serbia: Requires continuous training of labour inspectors.

Slovenia: Should be provided to all officials working in prevention, law enforcement and protection of victims of forced labour, not only the labour inspectorate.

Mauritius, Spain: See question 14.

Sweden: Add "where relevant".

Switzerland: See question 11(b).

Togo: Inspection services are often underfunded.

Employers

Total number of replies: 26

Yes: 17

No: 1

Other: 8

Comments

SEV (Greece), NHO (Norway), UPS (Switzerland): Focus on the implementation of national regulations rather than the adoption of new ones.

Workers

Total number of replies: 72

Yes: 68

No: 1

Other: 3

Comments

Consolidated reply: Mandates should be expanded as required to cover all sectors and groups, with a particular focus on the most vulnerable. States should consider joint training between labour inspectors, unions, and other workers' organizations. Labour law should take precedence over immigration enforcement. Add that labour inspectors should not have any migration enforcement function or role, in line with Convention No. 81.

CSA (Benin): Resources are needed, but there is often corruption and mismanagement.

CGIL, UIL (Italy): Education and training for personnel responsible are particularly desirable in view of the structural changes occurring in the labour market.

CTM (Mexico): Concentrated efforts are required for collaboration between the various authorities with a view to mobilizing public support for action to prevent and eradicate forced labour. Government action is indispensable.

AFL-CIO (United States): Move to the Protocol and add that labour inspectors should not have any migration enforcement role in line with Convention No. 81.

United Nations

OHCHR: Ensure that the role of labour inspectors is kept strictly separate from that of immigration enforcement authorities.

UNODC: The ILO may wish to consider the need to train not only labour inspectors but also police, prosecutors, judges, immigration officials and other relevant actors.

Qu. 28 (b) *in addition to penal sanctions and in accordance with national laws and regulations, provide for the imposition of other penalties, such as the confiscation of profits of forced labour and of other assets?*

Governments

Total number of replies: 90

Yes: 72

No: 14

Other: 4

Comments

Benin: Proceeds should be channelled to compensation funds.

Democratic Republic of the Congo: Confiscation of profits is unacceptable because it would harm transition from the informal to the formal economy.

Eritrea: Penal sanctions will not be sufficient without civil penalties, accompanied by the confiscation of profits from forced labour and other assets.

Guatemala: Such measures should be closely monitored in order to prevent persons other than victims from benefiting.

Japan: The proposed text should not provide for a single uniform model of sanctions.

Côte d'Ivoire, Mali, Mauritius: This will have a strong deterrent effect.

Mexico: For the benefit of the victim.

Morocco: Criminal sanctions and compensation of victims are sufficient.

Poland: Care should be taken to respect national legal traditions, especially a requirement to introduce definitions of forced labour and exploitation into the legal systems of States parties.

Russian Federation: Should encourage member States to resort to extraterritorial jurisdiction to obtain better enforcement of sanctions against the use of forced labour.

United Kingdom: Confiscation is not necessarily a penalty – the system is meant to be restorative, so “imposition of other penalties” is not accurate.

Employers

Total number of replies: 26

Yes: 10

No: 7

Other: 9

Comments

EK (Finland), SEV (Greece), UPS (Switzerland): Beyond the ILO's mandate.

Workers

Total number of replies: 72

Yes: 65

No: 1

Other: 6

Comments

Consolidated reply: The Recommendation should encourage member States to resort to extraterritorial jurisdiction as an instrument to obtain better enforcement of sanctions against the use of forced labour.

CSN (Canada): As well as revocation of operating permits and a ban on future public contracts.

GEFONT (Nepal): Should also be in the Protocol.

United Nations

OHCHR: Trafficking is a high-profit crime and tracing, seizure and confiscation of assets is becoming an increasingly important part of an effective criminal justice response. It should also help in the enforcement of criminal or civil compensation claims against traffickers.

Qu. 28 *(c) in giving effect to Article 25 of Convention No. 29, ensure that legal persons can be held liable for the violation of the prohibition of forced labour?*

Governments

Total number of replies: 90

Yes: 79

No: 4

Other: 7

Comments

Panama: Provided that, when it is found that a limited liability company was involved, the liability lies with individuals linked to the company or legal person.

Poland: But not only legal persons, for example in regard to domestic work.

Russian Federation: This provision should be in the Protocol, taking into account its fundamental importance and specific reference to a provision of Convention No. 29.

Sweden: A legal person can be subject to other legal consequences of an offence, such as corporate fines, financial penalties or forfeiture, but this does not constitute a criminal penalty.

Uruguay: Natural persons must always be held liable for offences; however, for indemnification, both natural and legal persons using forced labour can or must be held responsible.

Employers

Total number of replies: 26

Yes: 11

No: 5

Other: 10

Workers

Total number of replies: 72

Yes: 63

No: 1

Other: 8

Comments

Consolidated reply: This provision should be in the Protocol, taking into account its fundamental importance and specific reference to a provision of Convention No. 29. It should read “in giving effect to Article 25 of Convention No. 29, adopt measures to effectively ensure that ...”.

CSN (Canada): Administrators as well. The enterprise should be held responsible for forced labour anywhere in the supply chain.

GEFONT (Nepal): The responsible person or chief executive of the legal person must also be held liable.

United Nations

OHCHR: The nature of trafficking makes it especially important to extend liability for trafficking offences to legal persons in addition to natural persons.

Qu. 28 *(d) strengthen efforts to identify victims, including by developing indicators of forced labour for use by labour inspectors, police, public prosecutors, representatives of employers’ and workers’ organizations, non-governmental organizations and other relevant actors?*

Governments

Total number of replies: 90

Yes: 83

No: 2

Other: 5

Comments

Eritrea: No one can identify victims of forced labour without coordination of labour inspectors, police, public prosecutors and other relevant actors.

France: Attention must be paid to victims' privacy.

Mali: It is important to strengthen links between different administrations for an exchange of information and data.

Netherlands: Also refer to existing ILO indicators of forced labour and human trafficking.

Russian Federation: Add "perpetrators" to victims, and indicators should be disaggregated by sex, age, ethnicity, nationality and migration status.

United States: Add "Undertake and/or" at the beginning.

Employers

Total number of replies: 26

Yes: 15

No: 1

Other: 10

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: "Perpetrators" should be added to victims and indicators should be disaggregated by sex, age, ethnicity, nationality and migration status.

AFL-CIO (United States): Add, "and perpetrators, including those who aid and abet trafficking and forced labour ...".

INTERNATIONAL COOPERATION

Qu. 29

Should the proposed Recommendation provide that Members should strengthen cooperation and coordination at the international level, including through other multilateral institutions, as well as assist each other in ensuring the effective elimination of forced labour, including by:

(a) mobilizing resources for national action programmes and international technical cooperation and assistance?

Governments

Total number of replies: 90

Yes: 84

No: 2

Other: 4

Comments

Côte d'Ivoire, Eritrea, Mexico: The cooperation of member States through multilateral institutions and otherwise is indispensable.

Indonesia: Particularly for migrant workers.

Lebanon: Helping poorer States reduces illegal migration and unskilled labour export.

Mali: As provided in ILO Conventions Nos 182 and 189.

Russian Federation: Could fill the gap in approaches to combating forced labour and trafficking. The emphasis should be on cooperation and coordination between labour administrations.

Serbia: Bearing in mind the various bilateral agreements on cooperation in criminal affairs, and given the Conventions dealing with this matter.

Uruguay: This has worked, and is necessary because of the international nature of the problem.

Employers

Total number of replies: 26

Yes: 17

No: 2

Other: 7

Comments

CNI (Brazil): Should not be imposed.

NHO (Norway): The new instrument should address policy coherence and coordination and international cooperation, as there are no specific provisions for them in Convention No. 29.

UPS (Switzerland): Should focus on the application of national regulations, not the creation of additional regulations.

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Comments

Consolidated reply: The Protocol could fill the gap left by Convention No. 29 by calling for strengthened international cooperation and coordination between labour enforcement and criminal law enforcement and justice systems. The emphasis should be on cooperation and coordination between labour administrations.

United Nations

OHCHR: Trafficking cannot be dealt with effectively at the national level only. OHCHR guidelines encourage international cooperation through bilateral or multilateral assistance; information exchange on traffickers and their methods of operation; cooperation arrangements to facilitate rapid identification of victims; and the development of procedures and protocols for joint investigations by law enforcement authorities.

Qu. 29 (b) *mutual legal assistance?*

Governments

Total number of replies: 90

Yes: 80

No: 4

Other: 6

Comments

China: Proposed modification: “judicial assistance under bilateral or multilateral frameworks”.

India: Under Convention No. 81, labour inspection should remain the responsibility of national governments; it cannot be taken over by other agencies and accreditation bodies.

Mali: To facilitate extradition.

Mexico: With complete respect for the legislation of each Member.

Employers

Total number of replies: 26

Yes: 17

No: 1

Other: 8

Workers

Total number of replies: 72

Yes: 67

No: 0

Other: 5

Qu. 29 (c) *mutual technical assistance including the exchange of information and the sharing of good practice and lessons learned in combating forced labour?*

Governments

Total number of replies: 90

Yes: 84

No: 1

Other: 5

Comments

Estonia: Should include translation services.

India: The ILO's technical expertise can be called upon for research, training and capacity building.

Employers

Total number of replies: 26

Yes: 18

No: 1

Other: 7

Comments

MEDEF (France): Would fill a gap left by Convention No. 29.

Workers

Total number of replies: 72

Yes: 68

No: 0

Other: 4

Summary of answers to the questionnaire (6 February 2014)

95

ILC.103/IV/2A

97

Y: Yes; N: No; O: Other; B: Both -; No answer
Q8 – P+R: Protocol and Recommendation; R: Recommendation only; B: Both options selected; O: Other.
NAP: national action plans.

VAP: national action plans.

[illegible]

Summary of answers to the questionnaire (6 February 2014)

	Government			Employers			Workers		
	Yes	No	Other	Yes	No	Other	Yes	No	Other
Preamble	1	85	3	2	15	2	9	0	0
	2	87	2	1	17	1	8	0	0
	3	85	4	1	14	3	8	1	0
	4	86	3	1	17	0	8	1	0
	5	84	5	1	14	4	7	1	0
	6	83	5	2	16	2	8	0	0
	7	81	8	1	17	2	7	0	0
	8								
Protocol	9	66	3	21	12	3	9	2	0
	10	57	10	23	12	3	8	3	1
	11a	66	4	20	16	2	7	1	0
	11b	50	17	22	11	5	8	2	0
	11c	66	6	18	13	3	8	2	0
	12	65	5	20	12	3	8	3	0
	13	64	5	21	12	4	8	2	0
	14	62	7	21	14	2	8	2	0
	15	54	14	22	9	6	8	3	0
	16	67	4	19	15	1	8	2	0
	17	52	17	21	8	9	8	1	1
	18	63	6	21	15	2	7	2	0
	19	82	3	5	15	2	8	1	0
	20	80	5	5	16	2	8	0	0
National policies and plans of action	21a	87	1	2	19	0	7	0	0
Prevention	21b	75	13	2	18	1	7	0	0
	21c	84	2	4	19	0	7	0	0
	21d	72	9	9	10	10	6	0	0
	21e	73	10	7	11	9	6	0	0
	21f	75	10	5	18	1	7	0	0
	21g	78	4	8	13	2	9	2	0
	21h	75	9	6	11	8	6	1	0
	22	82	6	2	16	4	6	0	0
Prevention									

	Government				Employers				Workers				
	Yes	No	No answer	Other	Yes	No	No answer	Other	Yes	No	No answer	Other	
Protection	23a	80	7	3	0	18	1	7	0	66	2	4	0
	23b	71	13	6	0	15	3	7	1	61	5	5	1
	23c	55	24	10	1	11	8	6	1	62	2	5	3
	24a	79	5	6	0	15	3	6	2	65	2	5	0
	24b	83	2	5	0	17	1	6	2	68	0	4	0
	24c	69	10	10	1	14	2	7	3	66	1	4	1
	24d	84	2	4	0	15	3	6	2	69	0	3	0
	24e	84	0	6	0	18	1	5	2	65	0	5	2
	24f	86	0	4	0	18	1	5	2	67	0	5	0
	24g	76	11	3	0	18	1	6	1	63	1	6	2
	25a	82	4	4	0	17	2	6	1	68	1	3	0
	25b	83	2	5	0	16	3	6	1	67	1	4	0
	26a	73	11	6	0	12	5	8	1	62	2	8	0
26b	68	17	5	0	9	9	7	1	67	0	5	0	
26c	82	4	4	0	16	3	7	0	66	1	5	0	
Compensation	27a	81	3	6	0	14	2	9	1	67	0	5	0
	27b	73	7	9	1	16	1	9	0	66	0	6	0
	27c	82	0	8	0	18	1	7	0	68	0	4	0
	27d	77	4	9	0	14	2	10	0	67	0	4	1
	27e	66	18	6	0	13	3	10	0	38	28	5	1
	27f	55	24	9	2	8	8	10	0	65	2	5	0
	28a	85	2	3	0	17	1	8	0	68	1	3	0
Enforcement	28b	72	14	4	0	10	7	9	0	65	1	6	0
	28c	79	4	7	0	11	5	9	1	63	1	5	3
	28d	83	2	5	0	15	1	9	1	67	0	4	1
	29a	84	2	4	0	17	2	6	1	67	0	5	0
International cooperation	29b	80	4	5	1	17	1	8	0	67	0	4	1
	29c	84	1	5	0	18	1	7	0	68	0	4	0

Summary of question 8 (6 February 2014)

Q8	Total	Government	Employers	Workers
Protocol and Recommendation	117	44	6	67
Recommendation	58	41	15	2
Both options selected	6	3	2	1
None	1	1	0	0
Other	6	1	3	2