

International
Labour
Organization

ILO STANDARDS ON FORCED LABOUR

THE NEW PROTOCOL AND RECOMMENDATION

AT A GLANCE





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THE NEW PROTOCOL
AND RECOMMENDATION AT A GLANCE

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“I believe that this Conference session ... will be remembered, above all, for the collective determination to put an end to an abomination which still afflicts our victims. It is a demonstration of our capacity to adopt international labour standards to supplement our means to defend and promote fundamental principles and giving a very clear answer to global society.”

Guy Ryder
Director-General
International Labour Office

“These instruments will bring the ILO forced labour standards into the twenty-first century so that they will be effective to address all forms of modern-day forced labour, and human trafficking that results in forced labour... [They] set out a path for ending forced labour on this earth by spelling out the implementation of Convention No. 29, in consultation and coordination with employers’ and workers’ organizations, with provisions that protect, prevent and remediate forced labour that were not set out in Convention No. 29 in 1930... The Protocol and the Recommendation represent a call to action. They go beyond pious words; they are more than text on a piece of paper. Their potential impact can only be realized if there is rapid and universal ratification of the Protocol and its complete and effective implementation.”

*Ed Potter
Employer Vice-Chair
Committee on Forced Labour*

“The new instruments before you contain obligations and guidance to get to the root of the problem and to achieve the effective elimination of forced labour... Those subjected to forced and compulsory labour on a daily basis need your resolve and firm commitment to effective action through these instruments. Twenty-one million enslaved people are depending on you.”

*David Garner
Chairperson
Committee on Forced Labour*

e adoption, by an overwhelming majority,
Recommendation. It is the fruit of our
ur world of work, and to free its 21 million
ndards, to meet real needs, and in this case
d rights at work... with this Protocol we are

“The Protocol calls on member States of the ILO to universally commit, to give effect, systematically and continually, to Convention No. 29, through prevention, protection, reparation and compensation for victims. The Recommendation sets forth specific measures... By adopting this Protocol, we will send out a political signal showing the high level of our commitment to swiftly rid ourselves of this scourge... The adoption of the Protocol and the Recommendation will mark a new stage, a little after its centenary, in the action and the indispensable role of the ILO during a troubled and uncertain time. It will demonstrate the strength of tripartism when it is motivated by social justice and human rights.”

Yves Veyrier
Worker Vice-Chair
Committee on Forced Labour





Introduction

At its 103rd Session in June 2014, the International Labour Conference voted overwhelmingly in favour of adopting a new Protocol to the Forced Labour Convention, 1930 (No. 29), as well as a Recommendation that supplements both the Protocol and Convention No. 29.

The Protocol and Recommendation give new impetus to the global fight against all forms of forced labour, including trafficking in persons and slavery-like practices. The instruments – also referred to as the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation (No. 203), 2014 – were adopted following a two-year consultative process.¹

The preparatory work leading to the adoption of the new instruments involved extensive research into national law and practice, as well as the comments of the supervisory bodies relating to the application of the forced labour Conventions. This work also involved consultations with and among the ILO's tripartite constituents, as well as inputs from the United Nations partners and non-governmental organizations. Under the ILO Constitution, governments are required to submit any instrument adopted by the International Labour Conference to their national competent authorities for the enactment of relevant legislation or other action, including ratification.

The ILO has prepared this brochure in response to requests from ILO constituents for information about the new instruments and their provisions. It is intended as a reference for government officials and employers' and workers' representatives concerned with laws and policies on forced labour, as well as those responsible for the follow-up of ILO instruments. The brochure is also addressed to partners within the UN system, NGOs and other stakeholders interested in the new ILO instruments on forced labour and their promotion.

While this brochure focuses on the new Protocol and Recommendation, it also provides an overview of the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).

Additional practical tools and resources can be accessed on the ILO website at www.ilo.org/forcedlabour and www.ilo.org/normlex

¹ The new instruments represent the outcome of a single discussion in the Committee on Forced Labour of the International Labour Conference in 2014. The official reports submitted to the Committee, as well as the reports summarizing the Committee's discussion, are available at: <http://www.ilo.org/ilc/ILCSessions/103/on-the-agenda/forced-labour/lang--en/index.htm>.

The ILO Standards against forced labour

Why adopt new standards on forced labour?

ILO Convention No. 29, adopted in 1930, defined forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” While this definition remains effective and while the ILO’s forced labour Conventions are among its two most highly ratified instruments, much has changed since the first forced labour Convention was adopted in 1930. At the time, forced labour was primarily used by colonial administrations and in certain independent states. Today, the ILO estimates that about 21 million men, women and children are in forced labour around the world – trafficked, held in debt bondage or working in slavery-like conditions. Ninety per cent are exploited in the private economy, and almost half of all victims have migrated internally or across borders. Forced labour generates an estimated US\$150 billion in illicit profits, causing industries and businesses to face unfair competition and States to lose billions in tax income and social security contributions.

Together, the **ILO’s forced labour instruments** – including the **new Protocol and Recommendation**, as well as **Conventions Nos 29 and 105** – provide all actors with a comprehensive strategy and set of tools to address the challenge of the elimination of all forms of forced labour. The Protocol and Recommendation bring ILO standards against forced labour into the modern era. The new Protocol establishes the obligations to **prevent** forced labour, **protect** victims and provide them with **access to remedies**, and emphasizes the **link between forced labour and trafficking in persons**. In line with Convention No. 29, the Protocol also reaffirms the importance of prosecuting the perpetrators of forced labour and ending their impunity. The Recommendation provides orientations and guidelines to implement these obligations.

The Protocol and Recommendation will complement and strengthen existing international law, including the UN Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 and the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children. These instruments have contributed to widespread prohibitions of slavery, forced labour and human trafficking practices. But the scale of the problem suggests a need for new strategies, including a focus on prevention, for instance through measures that strengthen the role of labour inspection and workers’ and employers’ organizations. The greater emphasis on protection and access to remedies brought by the Protocol will also help to ensure that the human rights of victims are respected and perpetrators more effectively punished.

The widespread support for the new instruments by government, employer and worker delegates to the Conference in 2014 represents a call to action and evidences a powerful political will to respond to the challenges posed by forced labour today. If widely ratified and implemented, the Protocol, together with the existing ILO Conventions on forced labour and other relevant international instruments, will act as a catalyst in turning the vision of a world without forced labour into reality.

What are the international labour standards concerning forced labour?

The ILO has adopted two conventions on forced labour, which are legally binding instruments open to ratification by ILO member States².

Forced Labour Convention, 1930 (No. 29)

Convention No. 29 requires ratifying States to suppress all forms of forced or compulsory labour (Art. 1(1)). As the first convention on the subject, it provides a legal definition of “forced or compulsory labour” (Art. 2(1)) and lists 5 exceptions. It also requires ratifying States to ensure that the use of forced labour is punishable as a penal offence and that penalties are “really adequate and strictly enforced” (Art. 25).

Abolition of Forced Labour Convention, 1957 (No. 105)

The ILO adopted a second convention on forced labour, Convention No. 105, which does not revise Convention No. 29 but aims at complementing it focussing on five practices that had emerged following the Second World War, including forced labour as punishment for the expression of political views, for the purposes of economic development, for participation in strikes, as a means of racial or other discrimination or as labour discipline. Convention No. 105 primarily concerns forced labour imposed by state authorities.

In 2014, the ILO adopted two new instruments on forced labour:

Protocol to the Forced Labour Convention, 1930

The Protocol is a legally-binding instrument that requires States to take measures of prevention, protection and remedy in giving effect to the Convention’s obligation to suppress forced labour. It supplements Convention No. 29, so only ILO member States that have ratified the Convention can ratify the Protocol. The Convention itself remains open for ratification.

Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

Recommendation No. 203, which supplements both the Protocol and Convention No. 29, provides non-binding practical guidance concerning measures to strengthen national law and policy on forced labour in the areas of prevention, protection of victims and ensuring their access to justice and remedies, enforcement and international cooperation. It builds on the provisions of the Protocol and should be read in conjunction with it.

What must States do to eliminate forced labour?

The fundamental obligation of Convention No. 29 is to suppress all forms of forced labour. The ILO supervisory bodies have considered that States must not only criminalize and prosecute forced labour, but also – as the new Protocol makes clear – take effective measures to prevent forced labour and to provide victims with adequate protection and access to justice, including compensation.

² As of 15 April 2016, the Forced Labour Convention (No. 29) had been ratified by 178 countries and the Abolition of Forced Labour Convention (No. 105) had been ratified by 175 countries.

What is forced labour?

Forced labour can be understood as work that is performed involuntarily and under coercion.

Article 2(1) of Convention No. 29 defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

This definition consists of three elements:

1. **Work or service:** “All work or service” refers to all types of work, service and employment, occurring in any activity, industry or sector, including in the informal economy. Forced labour can occur in both the public and private sectors.
2. **Menace of any penalty:** The “menace of any penalty” refers to a wide range of penalties used to compel someone to perform work or service, including penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological threats or the non-payment of wages. The “penalty” may also consist of a loss of rights or privileges (such as a promotion, transfer, or access to new employment).
3. **Involuntariness:** The terms “offered voluntarily” refer to the free and informed consent of a worker to enter into an employment relationship and his or her freedom to leave the employment at any time. For example, an employer or recruiter could interfere with this freedom by making false promises to induce a worker to take a job that he or she would not otherwise have accepted.

.....
The ILO Committee of Experts has explained that “[w]hen adopting the Convention, ILO constituents opted for a broad definition of the term “forced labour” – comprising the three elements examined above – rather than enumerating a list of prohibited practices. The use of a broad definition has enabled the ILO supervisory bodies to address traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking.”³
.....

The Forced Labour Protocol (Art. 1(3)) explicitly reaffirms the definition of forced labour in Convention No. 29 and confirms that it encompasses situations of trafficking in persons for the purposes of forced or compulsory labour.

³ General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 2008, ILC.101/III/1B, para. 272.

Exceptions to the “forced labour” definition

Article 2(2) of Convention No. 29 describes several limited exceptions to the “forced labour” definition. According to this provision of the Convention the following five situations do not constitute forced labour:

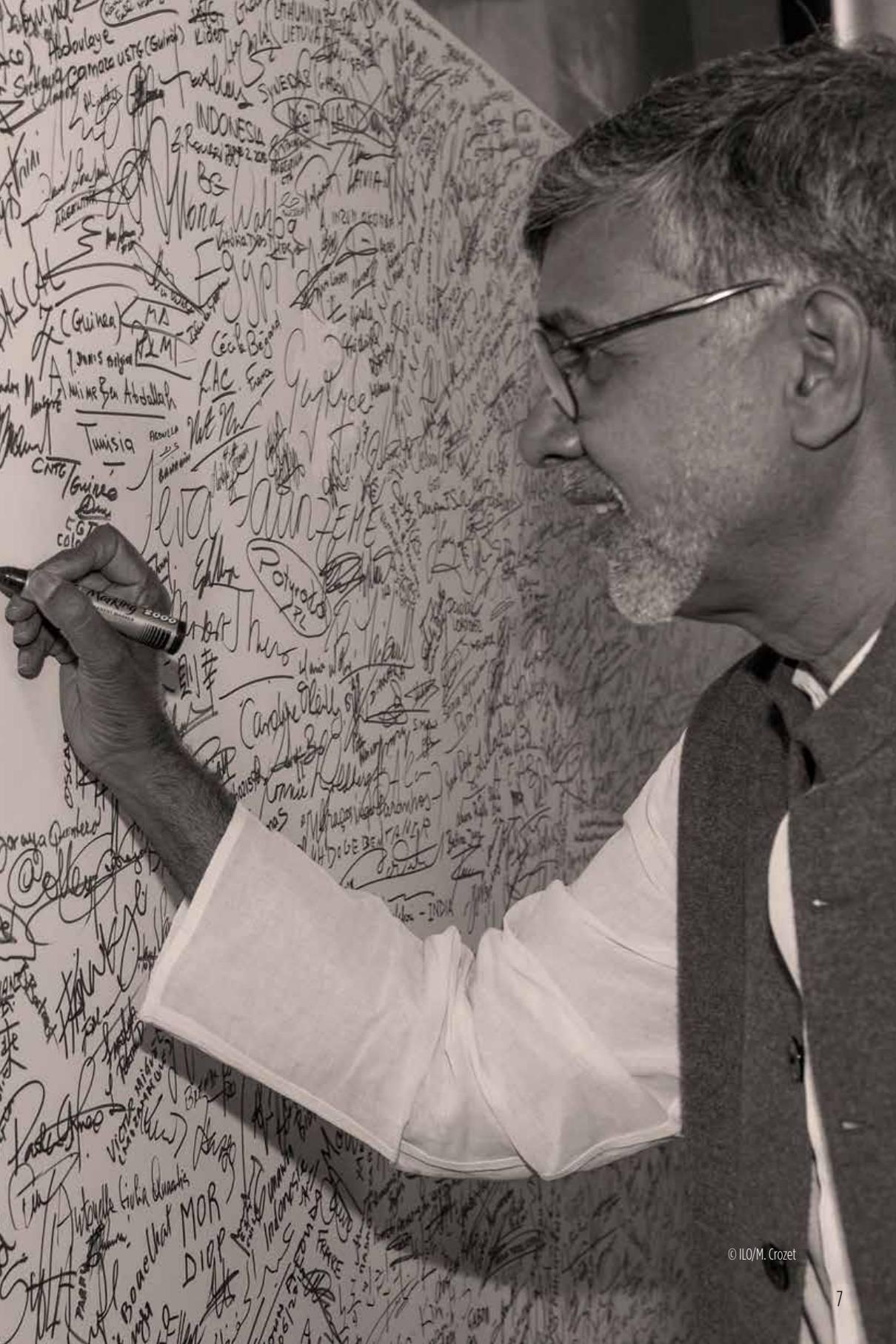
- **Work exacted under compulsory military service** for the necessity of national defence, provided that the work imposed on conscripts is of purely military character.
- **Normal civic obligations** of a fully self-governing country, such as compulsory jury service, or the duty to assist a person in danger.
- **Prison labour** as a consequence of a conviction in a court of law, provided it is carried out under the supervision and control of a public authority and the convicted persons is not hired to or placed at the disposal of private individuals, companies or associations.
- **Work exacted in cases of emergency**, such as war, calamity or threatened calamity (e.g. fire, flood, famine, earthquake) or any circumstance that would endanger the lives or well-being of the whole or part of the population.
- **Minor communal services** performed by the members of a community in the direct interest of that community, provided that the community or its direct representatives are consulted regarding the need for such services.

What are the “transitional provisions”?

The initial aim of Convention No. 29 was to progressively abolish forced labour in colonial territories, while requiring the immediate suppression of forced labour for private purposes. As a result, Articles 1(2) and (3) and Articles 3 to 24 of the Convention allowed for a transitional period during which States could still make limited use of forced labour for public purposes, subject to a number of special regulations.

As recognized by the Conference and noted in the Preamble of the Forced Labour Protocol, this transitional period has long since expired, and therefore the so-called “transitional provisions” are no longer applicable.

Following the entry into force of the Protocol on 9 November 2016, the transitional provisions from Convention No. 29 will be formally deleted (Article 7 of the Protocol).



The provisions of the Protocol and Recommendation at a glance

This section examines the provisions of the Forced Labour Protocol and the principal obligations of member States that ratify it. References to related provisions of Recommendation No. 203 are included to facilitate joint reading and consideration.

Rationale

As recognized in the Preamble, Conventions Nos 29 and 105 have played a vital role in combating all forms of forced or compulsory labour, but gaps in their implementation remain. The context and forms of forced or compulsory labour have changed, and trafficking in persons for forced labour, which may involve sexual exploitation, is the subject of growing international concern. An increased number of workers are in forced labour in the private economy, while certain groups of workers – especially migrants – have a higher risk of becoming victims.

Emphasizing the urgent need to eliminate forced and compulsory labour in all its forms and manifestations, the Preamble explains that the Protocol seeks to address gaps in the implementation of Convention No. 29 by reaffirming that measures of prevention, protection and remedies are necessary to achieve the effective and sustained suppression of forced or compulsory labour.

Definition and scope

The Protocol (Art. 1(3)) reaffirms the definition of forced labour in Convention No. 29. It confirms that this definition encompasses situations of trafficking for forced labour by explicitly requiring that measures taken under the Protocol include specific action against trafficking in persons for the purposes of forced or compulsory labour which may also involve sexual exploitation.

The Preamble also establishes a link between forced labour and trafficking by recognizing that trafficking in persons for forced or compulsory labour is a matter of growing international concern and by referring to other relevant international instruments, including the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children.

Effective measures to suppress forced labour

Article 1, paragraph 1, of the Protocol sets out its central requirement: In giving effect to its obligations under Convention No. 29 to suppress forced or compulsory labour, each Member must take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.

While reaffirming Convention No. 29's fundamental obligation to suppress all forms of forced or compulsory labour, the Article emphasizes that in fulfilling this obligation, Members must take measures of prevention, protection and remedy, as well as to punish perpetrators.

Each Member may implement the Article in a manner that takes into account its unique national circumstances, though the measures adopted must be effective. The provisions that follow further clarify what measures are both required and considered effective.

Examples of national practices

*The **United Kingdom**'s Modern Slavery Act of 2015 criminalizes forced or compulsory labour and human trafficking. Beyond mere criminalization, this law also provides slavery and trafficking prevention orders, provisions on the protection of victims and power for courts to make slavery and trafficking reparation orders, requiring perpetrators to compensate victims of forced or compulsory labour or human trafficking.⁴*

*Building upon legislation adopted in 2007, the Government of **Mauritania** adopted a new Act No. 2015 031 of 10 September 2015 criminalizing slavery and punishing slavery like practices which doubled prison sentences for slavery crimes and created collegial courts to hear cases of offences relating to slavery and slavery-like practices.⁵ The legislation also took important steps towards allowing civil society organizations to lodge complaints on behalf of victims, and establishing victims' right to reparation.*

National policy coherence, consultation and coordination

The development of a comprehensive national strategy on forced labour and an appropriate institutional framework for its implementation can strengthen the impact of measures taken against forced labour. The Protocol encourages such policy coherence by requiring Members to develop a national policy and plan of action on forced labour (Art. 1(2)).

Consultation and exchange of information between representatives of governments, employers and workers as well as engagement with other key stakeholders can also play an important role in ensuring the effectiveness of measures. Under the Protocol, the national policy and plan of action must be developed in consultation with

4 United Kingdom, *Modern Slavery Act 2015*, 26 March 2015.

5 Act No. 2015031 of 10 September 2015 criminalizing slavery and punishing slavery-like practices

employers' and workers' organizations (Art. 1(2)). More generally, measures taken to apply the provisions of the Protocol and Convention No. 29 are to be determined by national laws or regulations or by the competent authority, after consultation with organizations of employers and workers concerned (Art. 6).

Finally, the national policy and plan of action must involve systematic action by the competent authorities – taken, as appropriate, in coordination with employers' and workers' organization, as well as with other groups concerned (Art. 1(2)), which could include, for example, other civil society organizations.

Recommendation No. 203 provisions

In consultation with employers' and workers' organizations and other groups concerned, establish or strengthen competent authorities to develop, coordinate, implement, monitor and evaluate national policies and plans of action, which include time-bound measures using a gender- and child-sensitive approach (Para. 1).

Examples of national practices

*On 11 March 2003, **Brazil** launched the first National Plan to prevent and eradicate forced labour and set up a National Commission for the Eradication of Slave Labour (CONATRAE). A second National Plan was launched in 2008. CONATRAE includes different government departments, the federal police, trade unions and NGOs who are involved in challenging slave labour. It is responsible for implementing the National Plan and finding practical solutions to help eradicate forced labour.⁶*

*In 2014, **Australia**, after consultation with civil society and trade unions through a National Roundtable on Human Trafficking and Slavery, launched its National Action Plan to Combat Human Trafficking and Slavery for 2015-19. Members of the Roundtable will continue to be briefed on outcomes under the National Action Plan.⁷*

6 For more information, see ILO, *Fighting Forced Labour: The Example of Brazil*, Geneva 2009.

7 For more information, see *The National Action Plan to Combat Human Trafficking and Slavery 2015-19*.

Prevention

Article 2 of the Protocol sets forth an overall strategy for the prevention of forced labour, outlining measures that Members must put in place in several specific areas.

Awareness-raising

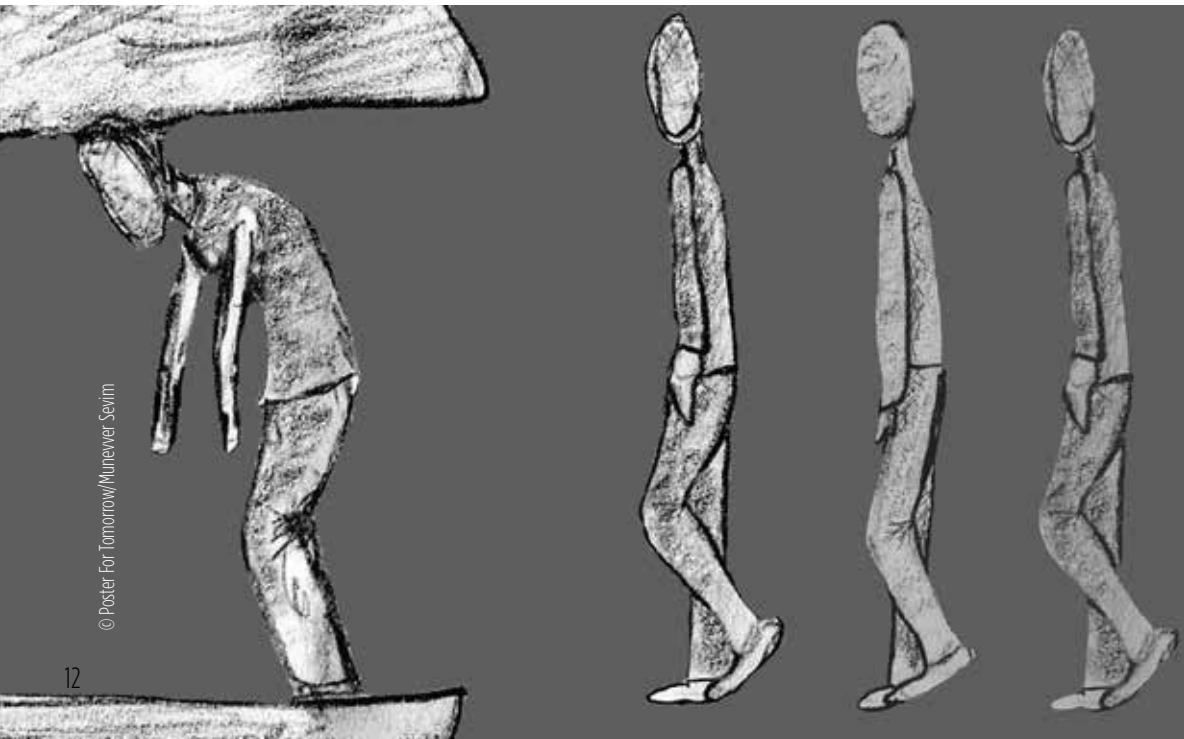
The Protocol requires two different types of awareness-raising measures.

First, Members must educate and inform the general public – and especially those considered particularly vulnerable to forced labour – in order to prevent their becoming victims (Art. 2(a)). The Preamble of the Protocol notes that certain sectors of the economy are particularly vulnerable and that certain groups of workers have a higher risk of becoming victims, particularly migrants. Targeting these groups can prevent them from being caught up in forced labour situations, while sensitizing the general public can both help to prevent and encourage the identification of forced labour situations.

Second, Members must educate and inform employers in order to prevent their becoming involved in forced or compulsory labour practices (Art. 2(b)). For example, providing employers with information about possible indicators of forced labour may help to prevent forced labour situations from arising in the first instance.

Recommendation No. 203 provisions

Take most effective measure such as targeted awareness-raising campaigns on abusive recruitment practices, how to get help and sanctions for forced labour violations (Para. 4(b), 4(c)).



Examples of national practices

In 2009, **Ireland** launched a five-year National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland. The plan, through its Objective 3.1.2, aimed to raise awareness about human trafficking, reduce demand and implement educational campaigns. These awareness raising campaigns targeted vulnerable migrant communities, government actors, employers and the public at large, both nationally and internationally.⁸ A draft Second National Action Plan is being developed, which would place additional focus on the business community and in high risk sectors such as agriculture and construction.⁹

In **Zambia**, the Anti-Human Trafficking Act, of 2008, provides for public awareness raising programmes to inform persons at risk of becoming victims on: common recruitment techniques used by traffickers, other forms of abuse, and institutions and law enforcement agencies that provide assistance. The programmes are also intended to educate victims on their rights and discourage demand that fosters trafficking and exploitation.¹⁰

Legislation and its enforcement, including labour law and administration

The effective enforcement of criminal law can deter forced labour violations, but other types of legislation are also relevant to prevention. The Protocol requires Members to undertake efforts to ensure that the coverage and enforcement of such legislation, including labour law as appropriate, apply to all workers and sectors of the economy (Art. 2(c)(i)) – so that certain vulnerable groups are not left unprotected.

Relatedly, the Protocol also requires Members to undertake efforts to strengthen labour inspection services and other services responsible for the implementation of this legislation (Art. 2(c)(ii)).

While the provision is broadly worded to encompass all legislation relevant to the prevention of forced or compulsory labour and the relevant services, labour law and labour inspection are highlighted, reflecting the important roles they play in combating forced labour.

For example, forced labour cases can involve several simultaneous violations of labour law relating to wages, hours of work, occupational safety and health or other areas. By taking immediate action to address and correct such violations, labour inspectors can prevent exploitative situations from degenerating further into forced labour.

8 Department of Justice, Equality and Law Reform, *National Action Plan to Prevent and Combat Trafficking of Human Beings 2009-2012*, Government of Ireland, 2009.

9 Department of Justice, Equality and Law Reform, *Draft Second National Action Plan to Prevent and Combat Human Trafficking in Ireland 2015*, Government of Ireland, 2009.

10 Zambia, *Anti-Human Trafficking Act, 2008* (No. 11 of 2008).

Recommendation No. 203 provisions

- Ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy and are effectively enforced (Para. 3(e));
- Give relevant authorities, such as labour inspection services, the necessary mandate, resources and training (Para. 13(a));
- Provide for penalties other than penal sanctions, such as confiscation of profits and other assets, and ensure that legal persons can also be held liable (Para. 13(b), (c)).

Examples of national practices

*In **Malaysia**, under the Anti-Trafficking in Persons (Amendment) Act, 2010, labour inspectors have been granted the authority to exercise the same powers of enforcement as the police, and have investigated and assisted in the prosecution of criminal cases involving trafficking for labour exploitation.¹¹*

***South Africa's** 2013 Prevention and Combatting of Trafficking in Persons Act specifically mandates relevant authorities to develop training courses on social contexts, norms, standards and procedures to ensure appropriate, efficient and sensitive responses to matters relating to human trafficking.¹² Additionally, the Basic Conditions of Employment Act empowers labour inspectors to promote monitor and enforce compliance with the law.¹³*

***Jordan** Regulation No. 12 of 2015 on the organization of private offices recruiting non-Jordanian house workers has sought to prevent the risk of forced labour in the particularly vulnerable domestic work sector by regulating the employment relationships between workers, private employment agencies, and employers. Agencies recruiting foreign domestic workers must, among other requirements, obtain a license, pay a bank deposit and pass a records check. It has opened up the possibility for workers to change employers, and prohibits recruitment fees from being charged to domestic workers. In turn, employers contribute to a recruitment insurance scheme, so that any financial outlays they make in the recruitment of migrant workers do not lead to undue pressure upon the workers to remain in their employ.*

¹¹ *Anti-Trafficking in Persons (Amendment) Act 2010*, PU.(B)500.2010, Government of Malaysia

¹² *Prevention and Combatting of Trafficking in Persons Act (Act No. 7 of 2013)*, Government Gazette, 29 July 2013, article 44

¹³ *Basic Conditions of Employment Act*, Chapter 10, Republic of South Africa, 1997

Protection from abusive and fraudulent recruitment practices

Certain workers, including Migrant workers may be particularly vulnerable to abuses committed during the recruitment process that can result in forced labour situations. Such abuses can include, debt process linked to repayment of recruitment fees, illegal wage deductions, retention of passports, threats if workers want to leave their employers and deception about the nature and conditions of work. Ensuring fair and transparent recruitment and placement practices are key in preventing forced labour.

The Protocol establishes that measures to prevent forced labour must include protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process (Art. 2(d)).

Recommendation No. 203 provisions

Take the most effective preventive measures, such as:

- Orientation and information for migrants before departure and upon arrival (Para. 4(g));
- Coherent policies, such as employment and labour migration policies (Para. 4(h));
- Promote coordination between States to prevent trafficking, including coordinated efforts to eliminate recruitment fees and to regulate, license and monitor labour recruiters and employment agencies (Para. 4(i)).



Examples of national practices

In an effort to ensure migrant workers are protected at home and abroad, the **Philippine Overseas Employment Administration's** (POEA) 2012 Rules require labour recruiters to “assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations.”¹⁴ The POEA has also entered in Memorandums of Understanding (MOUs) with receiving countries to set out applicable worker's rights and establish consistent rules relating to cross border recruitment to prevent trafficking and forced labour.

In **Manitoba and several other Canadian Provinces**, in the interest of international cooperation, additional requirements have been put on private employment agencies that recruit workers internationally, including: disclosing all partners, affiliates or agents in or out of the province, listing all countries they intend to recruit from and/or listing the names of any agencies or individuals they intend to work with in foreign countries. Some have also required that employers be held jointly liable for any recruitment fees charged to workers if they are recruited through an unlicensed recruiter in the country of origin or in Canada, with specific offenses have been created for such employers. Some provinces have also entered directly into MoUs with countries of origin in this regard.¹⁵

Due diligence by the public and private sectors

The exercise of due diligence by both the State and the private sector can help to mitigate forced labour risks. Given these risks, States should encourage and, where appropriate, require human rights due diligence by the public agencies themselves and by those business enterprises or projects receiving their support.

Accordingly, the Protocol calls for Members to take measures to support due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour (Art. 2(e)).

¹⁴ POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.

¹⁵ See eg. Manitoba's Worker Recruitment and Protection Act, 2008; Nova Scotia's Labour Standards Code of 1989 (Amendments of 2011); Saskatchewan's Foreign Worker Recruitment and Immigration Services Act of 2013.

Recommendation No. 203 provisions

Provide guidance and support to employers and businesses on addressing the risks of forced labour in their operations or in products, services or operations to which they may be directly linked (Para. 4(j)).

Examples of national practices

In **Denmark**, the Government's National Board of Social Services, in 2014, issued *Preventing Hidden Forced Labour – A Guide for Companies and Employers*,¹⁶ aimed at assisting companies at risk of being affected by forced labour.

In 2012, **the United States** Government emphasized the importance of due diligence in preventing forced labour and trafficking with Executive Order 13627. The Order, and its subsequent federal regulations, set out strict requirements for contractors and subcontractors who receive federal contracts. It forbids fraudulent or abusive recruitment practices and mandates contractors and subcontractors permit compliance audits and report any unlawful activities. Where large contracts are performed outside the United States, contractors must also maintain a compliance plan for the full duration of the contract, including awareness programmes, a complaints reporting process, a recruitment and wage plan, a prohibition against charging recruitment fees to workers, and procedures to prevent subcontractors at any level from engaging in trafficking and to monitor, detect and terminate contracts with any who have.¹⁷

¹⁶ Danish National Board of Social Services, *Preventing Hidden Forced Labour – A Guide for Companies and Employers*, 2014.

¹⁷ Executive Order (E.O.) 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, 25 September 2012.



Addressing root causes and factors

The Protocol (Art. 2(f)) requires that Members take measures to address the root causes and factors that heighten the risks of forced or compulsory labour. Such root causes could include, for instance, poverty, discrimination, climate of impunity, as well as inappropriate labour migration policies.

Recommendation No. 203 provisions

- Promote fundamental principles and rights at work and freedom of association and collective bargaining to enable at-risk workers to join workers' organizations (Para. 3(a), 3(b));
- Programmes to combat discrimination (Para. 3(c));
- Educational initiatives for children and skills-training programmes for at-risk population groups (Para. 3(d), 4(d));
- Basic social security guarantees, as provided for in the Social Protection Floors Recommendation, 2012 (No. 202), to reduce vulnerability to forced labour (Para. 4(f)).

Examples of national practices

South Korea's Supreme Court determined in June 2015 that all people are entitled to basic workers' rights, including the right to join and set up a trade union, regardless of their immigration status. The Migrants' Trade Union (MTU), as of mid-2015, was thereafter able to officially represent the rights of 553,000 registered migrant workers, and 208,778 undocumented migrant workers. Its activities include advocating with the Government to change labour policies that may create risks of abuse or forced labour of migrant workers.¹⁸

In **Argentina**, efforts to prevent trafficking and forced labour by reducing worker vulnerabilities saw the 2004 Immigration Act extend access for immigrants and their families, even when undocumented, to the same conditions of protection, shelter and rights enjoyed by nationals, including social security. Efforts were also taken to regularize the status of over 1 million migrants between 2004 and 2011, to further reduce worker vulnerabilities.¹⁹

¹⁸ See, Korea Herald, *Long road ahead for migrant workers' union*, 23 August 2015; see also, Korea Herald, *Only the beginning for Korea's migrant workers' labor movement*, 21 July 2015.

¹⁹ Argentina, *Law 20.871, the Immigration Act*, 20 January 2004.

Protection and non-punishment of victims

The protection of victims has multiple dimensions. Victims not only need to be identified and removed from situations of forced labour but also provided with the means to recover from their experiences of exploitation. Comprehensive protection measures not only facilitate the recovery of victims but can prevent their re-victimization and encourage them to ascertain their rights in legal proceedings against their exploiters.

The Protocol requires Members to take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support (Art. 3).

The obligation to protect victim thus extends beyond their initial identification and release, encompassing additional measures of recovery, rehabilitation, assistance and support.

Members must also take measures to provide for the possibility of not prosecuting or imposing penalties on victims for unlawful activities they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour, in accordance with the basic principles of their national legal systems (Art. 4(2)). Such unlawful activities could include, for instance, immigration-related, prostitution or drug offences that are linked to victims' forced labour situations.

Recommendation No. 203 provisions

- Encourage the cooperation of victims for the identification and punishment of perpetrators while not conditioning the provision of protective measures on such cooperation (Para. 5(2), (3));
- Recognize the role and capacities of workers' organizations and other organizations concerned in this area (Para. 6);
- Measures to eliminate abuses by labour recruiters and employment agencies, such as the eliminating the charging of recruitment fees to workers, requiring transparent contracts, establishing adequate and accessible complaint mechanisms, imposing adequate penalties, and regulating or licensing related services (Para. 8);
- Provide accommodation, health care, material assistance and social and economic assistance; protect the privacy and identity of victims and their safety along with that of family members and witnesses (Para. 9(a)-(f));
- Measures that take into account the special needs of children as well as migrants who are subjected to forced labour (Paras 10, 11).

Examples of national practices

To avoid penalization of victims some countries have adopted a list of offences committed by trafficked persons that are exempt from punishment. For instance, in **Nigeria**, section 62 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015, provides that where “the circumstances so justify, trafficked persons shall not be detained or prosecuted for offences related to being a victim of trafficking, including non-possession of valid travel documents, use of a false travel or other document.”.²⁰

In **Haiti**, the Act on Combating trafficking in Persons of June 2014, article 22, excludes from prosecution victims of trafficking in persons that committed illegal acts due to the constraint exerted by the perpetrators.²¹

Regarding protection in the employment relationship, many states have outlawed the charging of recruitment fees workers. In **Kuwait**, for example, domestic workers must be given a standard contract which requires any person sponsoring a worker to pay the worker’s travel costs and the associated fees of the recruitment agency. In June 2015, Kuwait passed a new law on domestic work which not only reinforces this prohibition of fees, but also allows for violators to be charged with extortion.²²

Remedies, such as compensation and access to justice

The provision of effective remedies serves multiple purposes. A remedy such as compensation, for instance, can play an important role in the recovery of victims and can prevent their re-victimization. Ordering perpetrators to pay compensation also serves as a form of punishment that can deter would-be offenders. Other possible remedies include access to justice and rehabilitation, further underscoring the link between protection and remedy.

In practice, many victims of forced labour face legal and other obstacles that prevent them from accessing remedies. Under the Protocol, Members must ensure that all victims of forced labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation (Art. 4) in the member State where the forced or compulsory labour occurred (Recommendation No. 203, Para. 12(e)).

²⁰ Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015, Nigerian National Agency for the Prohibition of Trafficking in Persons website

²¹ Loi sur la lutte contre la traite de personnes, 2 Juin 2014, Journal Officiel de la Republique d’Haiti

²² Text of new Law on Domestic Workers, published by Al-Jarida (in Arabic)

Recommendation No. 203 provisions

- Ensure that victims have effective access to courts and tribunals either by themselves or through representatives (Para. 12(a));
- Ensure that victims have access to existing compensation schemes and that they can pursue compensation and damages from perpetrators, including unpaid wages (Para. 12(b), (c));
- Provide accessible information regarding the legal rights of and services available to victims and access to legal assistance (Para. 12(d));
- Appropriate remedies include administrative, civil and criminal remedies, under simplified procedural requirements when appropriate (Para. 12(e)).

Examples of national practices

*In **Armenia**, amendments to the Criminal Code in 2011 allowed for the confiscation of property from offenders. Additionally, victims of trafficking have been included in the list of priority groups covered by the 2014 Law on Social Protection, granting them a right to lump-sum financial benefits and access to work skills training and support for small business or farming activities.*

*In **Honduras**, Chapter VI of the Act against trafficking in persons, Decree No. 59-2012 is devoted to victims' protection. It lists the care that victims should receive as well as the various rights to which they are entitled, including the right to remain on the national territory, the entitlement to full compensation for the damage suffered, the right of protection during the trial, and the right to free legal assistance.²³*

²³ Poder Legislativo, Decreto para combatir el delito de la trata de seres humanos, No. 59-2012, Diario Oficial de la Republica de Honduras.



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International cooperation

Cooperation between and among Members in combating forced labour, including trafficking for forced labour, is essential given its global and cross-border dimensions. Accordingly, the Protocol (Art. 5) requires that each Member cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.

Recommendation No. 203 provisions

- Strengthening international cooperation between labour law enforcement in addition to criminal law enforcement (Para. 14(a));
- Mobilizing resources for national action programmes and international technical cooperation (Para. 14(b));
- Providing mutual legal and technical assistance (Para. 14(c), (e));
- Cooperation to address the use of forced labour by diplomatic personnel (Para. 14(d)).

Examples of national practices

*Regional consultative process on migration, such as the Puebla Process in **Central America and the Caribbean**, provide an inter-governmental forum for the exchange of information, experiences and best practices, and promote regional cooperation on migration within the framework of economic and social development. The Puebla Process, for example, includes the regular meeting of a Liaison Officers Network to Combat Migrant Smuggling and Trafficking in Persons.*

*Similarly, the **Colombo Process** involves Asian countries of origin for migrant workers in regular dialogue as to how best to protect migrant workers from abuse, including through the proper regulation of recruitment, the development of training curriculum for labour attachés, efforts to provide pre-departure orientation programmes to workers, or the establishment of migrant worker welfare funds.*

Ratification, entry into force and supervision

Who can ratify the Protocol?

A Protocol, like a Convention, needs to reach a certain (pre-agreed) number of ratifications by member States to enter into force. By ratifying the Protocol, a government:

- accepts it as a legally binding instrument;
- makes a formal commitment to implement the obligations in that instrument; and
- accepts the ILO supervisory system, in which social partners may intervene.

The Protocol may be ratified by any ILO member State that has already ratified Convention No. 29. The Convention itself remains open for ratification.

A Recommendation, as a non-binding instrument, does not require ratification.

When will the Protocol enter into force?

The Protocol will enter into force one year after the registration of its second ratification²⁴. Thereafter, it enters into force for any ratifying member twelve months after the date on which the ratification by the Member has been registered.

What can the ILO do to support the ratification process?

The ILO has provided technical assistance on combatting forced labour to its members throughout the world through its research, capacity building and field-based projects. The ILO supports countries that pursue the ratification of the Protocol. For instance, it can contribute to awareness-raising campaigns, provide capacity building to strengthen the role of employers' and workers' organizations and advise governments on the development and implementation of relevant laws, policies and programmes.

How will ILO supervision work?

As the Protocol supplements a fundamental ILO Convention, ratifying member States must submit a report every 3 years on measures they have taken to implement both Convention No. 29 and the Protocol, which will be examined by the ILO supervisory bodies. The ILO supervisory bodies will assess the conformity of the national law and practice with these instruments. This assessment and the technical assistance that the ILO can provide will facilitate full implementation of the instruments thus ensuring the suppression of forced labour.

Non-ratifying member States are still required to participate in the annual reporting and review process set out in the Follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work.

²⁴ Following its ratification by Niger, on 14 May 2015, and by Norway, on 9 November 2015, the Protocol will enter into force on 9 November 2016. The Protocol has also been ratified by the United Kingdom, Mauritania and Mali, as of 30 May 2016.

Where to get more information

This brochure was prepared by the Fundamental Principles and Rights at Work Branch (**FUNDAMENTALS**) within the Governance and Tripartism Department, in collaboration with the International Labour Standards Department (**NORMES**)

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The text of the ILO standards against forced labour can be found at:
www.ilo.org/normlex

Additional resources, including information about recent developments, research policies, legislation and good practices regarding combating forced labour can be found through the ILO web portal on forced labour at:
www.ilo.org/forcedlabour



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