

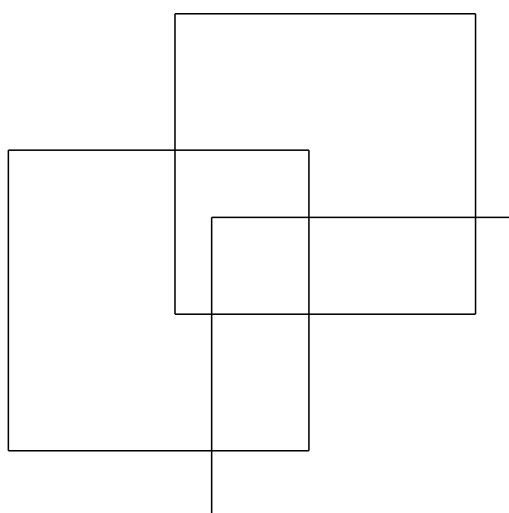
TMELE/2013



International
Labour
Office
Geneva

Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation

**Report for discussion at the Tripartite Meeting of Experts concerning
the possible adoption of an ILO instrument to supplement
the Forced Labour Convention, 1930 (No.29)**



International
Labour Standards
Department

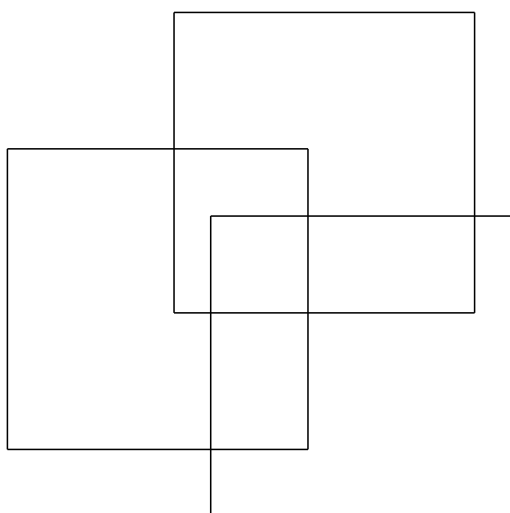
Geneva, 11–15 February 2013

Programme for
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Part I. Introduction

1. The conclusions adopted by the International Labour Conference (ILC) at its 101st Session (2012) concerning the recurrent discussion on fundamental principles and rights at work called on the International Labour Office (ILO) to “conduct a detailed analysis, including through the possible convening of meetings of experts to identify gaps in existing coverage of ILO standards with a view to determining whether there is a need for standard setting to: (i) complement the ILO’s forced labour Conventions to address prevention and victim protection, including compensation; and (ii) address human trafficking for labour exploitation”.¹ At its 316th Session in November 2012, the ILO Governing Body decided to convene a tripartite meeting of experts in February 2013 with the objective of providing recommendations to its 317th Session (March 2013) with respect to a possible standards-related item that could be placed on the agenda for the 103rd Session of the ILC in June 2014.
2. In recent years, the persistent use of forced labour has been the subject of growing international attention, with particular reference to human trafficking. In June 2012, the ILO published a new global estimate of forced labour, emphasizing that it was more pervasive than previous data had suggested. The ILO estimates that there are at least 20.9 million men, women and children who are victims of forced labour globally, affecting all regions.² Of this total, 18.7 million (90 per cent) are exploited by private individuals or enterprises, while the remaining 2.2 million (10 per cent) are forced to work by the State or rebel military groups. Among those exploited by private individuals or enterprises, 4.5 million (22 per cent) are victims of forced sexual exploitation and 14.2 million (68 per cent) of forced labour exploitation.
3. Those who exact or promote forced labour generate vast illegal profits, with domestic work, agriculture, construction, manufacturing and entertainment among the sectors most concerned. While forced labour can occur in both the formal and informal economies, workers in the informal economy lack protection and are more vulnerable. Concerns are also increasing in the globalized economy relating to forced labour in global supply chains.
4. The ILO’s forced labour Conventions are among its most widely ratified instruments, and the elimination of forced labour is one of the 19 strategic outcomes set out in the ILO Strategic Policy Framework.³ The comments of the ILO supervisory bodies and experience from technical cooperation have provided important guidance to member States on the development of a comprehensive response to forced labour, which includes not only the prosecution of those exacting forced labour, but also the prevention of forced labour and the protection of victims. The ILO has supported employers and businesses seeking to identify and prevent situations of forced labour, as well as trade unions seeking to integrate the elimination of forced labour into a broader decent work agenda.
5. This report presents an overview of law and practice in three areas identified in the 2012 ILC conclusions: prevention of forced labour; victim protection, including compensation; and trafficking for labour exploitation. The report covers examples of existing law and

¹ ILO: “Conclusions concerning the recurrent discussion on fundamental principles and rights at work”, *Provisional Record* No. 15, ILC, 101st Session, Geneva, 2012, para. 22(c).

² ILO: *Global estimate of forced labour: Results and methodology*, Geneva, 2012.

³ GB.304/PFA/2(Rev.), para. 70.

practice in member States from different regions and with different legal systems, traditions and circumstances, and it analyses the measures adopted and the corresponding gaps in the three thematic areas.

6. The report does not seek to provide a comprehensive analysis of the situation in all member States, but rather to highlight elements that facilitate the identification of any gaps in the existing coverage, and also perhaps most importantly in the implementation of ILO standards. Consistent with the ILC conclusions, the report provides a basis for assessing the need for further standard-setting to complement the ILO's forced labour Conventions, also taking into consideration the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182).
7. The report has been prepared based on the analysis undertaken by ILO supervisory bodies, including recent general surveys by the Committee of Experts on the Application of Conventions and Recommendations (the "Committee of Experts"),⁴ the supervisory body entrusted with technical supervision of the application of ILO Conventions, as well as other ILO and non-ILO sources. The report also builds on expertise and knowledge relating to the elimination of forced labour acquired through technical cooperation with ILO constituents, and it includes several country examples arising out of this work.
8. Of the estimated 20.9 million victims of forced labour, women and girls account for the majority (11.4 million), compared to men and boys (9.5 million). Children under the age of 18 years represent 26 per cent (5.5 million) of all forced labour victims. Migrant workers and indigenous people are particularly vulnerable to forced labour.
9. Forced labour victims often work in places hidden from public view and at the margins of formal employment: for example, they are found on fishing vessels and construction sites, in commercial agriculture and in factories. Forced labour encompasses brick kiln workers trapped in a vicious cycle of debt, children trafficked for forced begging and domestic workers deceived about their conditions of work.
10. In terms of absolute numbers, the Asia-Pacific region accounts for the majority (11.7 million) of all victims of forced labour, followed by Africa (3.7 million). But there are also large numbers of forced labour cases in Latin America and the Caribbean (1.8 million), Central and South-Eastern Europe and the Commonwealth of Independent States (CIS) (1.6 million), the developed economies and the European Union (1.5 million) and the Middle East (600,000).
11. However, figures estimating the number of victims per 1,000 inhabitants indicate that Central and South-Eastern Europe and the CIS is the region with the highest prevalence of forced labour, with 4.2 victims per 1,000 inhabitants. The lowest estimated prevalence is found in the developed economies and the European Union, with 1.5 victims per 1,000 inhabitants. With no region unaffected, the challenge to eradicate this serious global problem remains as great as ever.
12. While certain forms of forced labour have declined over time, new forms and practices have emerged. Increased labour mobility within and across countries has exacerbated vulnerability to forced labour. Almost half of all victims end up in forced labour following

⁴ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work, ("General Survey, 2012") Report III (Part IB), ILC, 101st Session, Geneva, 2012; ILO: *Eradication of forced labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), ("General Survey, 2007") Report III (Part IB), ILC, 96th Session, Geneva, 2007.

movement within their country (15 per cent) or across international borders (29 per cent). The remaining 56 per cent do not leave their place of origin or residence. Changes in technology and transportation, and transnational organized crime are important drivers of this trend.⁵

13. The economic implications of forced labour are significant. The ILO has estimated the “opportunity cost” of forced labour as US\$21 billion annually, measured as the income lost through being in forced labour rather than a free employment relationship. The sources of lost income include unpaid wages (such as artificial wage deductions and wages significantly lower than market rates) and illegal recruitment fees.⁶ Illegal profits derived from the exaction of forced labour by private enterprises or agents have been estimated at US\$44 billion.⁷ Recent economic research has also shown that forced labour has broader social and economic costs, in terms of impeding economic development and increasing or perpetuating poverty.⁸
14. Despite these challenges, there are grounds for optimism regarding efforts to combat forced labour, and particularly trafficking in persons. With the entry into force in 2003 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children – Supplementing the United Nations Convention Against Transnational Organized Crime (the “Trafficking Protocol”), the past decade has seen renewed international attention on the eradication of human trafficking, prompting efforts by many States to introduce new legislation and national strategies to combat trafficking. Along with governments, employers’ and workers’ organizations and other civil society groups have been active in combating forced labour, including trafficking. There is growing recognition of the need for comprehensive approaches to ensure that perpetrators are punished and victims protected, but most importantly that situations of forced labour never arise in the first place.
15. While much of the initial focus of anti-trafficking efforts was on trafficking for sexual exploitation, trafficking for labour exploitation has received increased attention in recent years. However, anti-trafficking initiatives have continued to emphasize a criminal justice response, which has in some cases meant that efforts to prosecute traffickers are accorded greater priority than the prevention of trafficking and the protection of victims. A complementary labour approach that takes into account the role of labour administration and labour inspection in preventing and combating forced labour could improve prevention, as well as protection and assistance measures for all victims.
16. This report is divided into three Parts. Part II reviews the international legal framework related to forced labour and trafficking and examines the ILO’s forced labour Conventions, other international labour standards and non-ILO instruments, including the Trafficking

⁵ ILO: *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, (“Global Report, 2005”) Report I(B), ILC, 93rd Session, Geneva, 2005, paras 4 and 288.

⁶ ILO: *The cost of coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, (“Global Report, 2009”) Report I(B), ILC, 98th Session, Geneva, 2009, paras 145–150.

⁷ Belser, P.: *Forced labour and human trafficking: Estimating the profits*, Declaration Working Paper No. 42, ILO, Geneva, 2005.

⁸ The ILO is currently working on a new report (due to be published in 2013) on the economics of forced labour, which will include new figures on profits, as well as an analysis of economic determinants and the development impact of forced labour.

Protocol and regional instruments. Part III examines national law and practice respecting prevention and protection measures, as well as measures focused on combating trafficking for labour exploitation. The final chapter builds upon the analysis of international and national frameworks to present specific points for further discussion and proposals for the way forward.

17. The report adopts a pragmatic approach to definitions. Governments, international organizations and other stakeholders have interpreted the concept of “trafficking”, as defined in the Trafficking Protocol, in different ways in their laws, policies and practices. The Committee of Experts has observed that the definition of “trafficking in persons” in the Trafficking Protocol allows for a link to be established between the Protocol and the Forced Labour Convention, 1930 (No. 29), and emphasizes that trafficking in persons for the purpose of exploitation (which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation) is encompassed by the definition of forced or compulsory labour in *Article 2(1)* of Convention No. 29. For the purposes of this report, and consistent with the comments of the Committee of Experts, the term “trafficking” is understood as being encompassed by the definition of forced or compulsory labour in Convention No. 29.⁹ The term “compensation” is broadly understood as referring to payment for injury, loss or harm, including both material damages (such as medical costs, unpaid wages and legal fees) and moral damages (for pain and suffering and emotional distress). The precise definitions of these terms are left to the determination of member States.

Part II. International legal framework

Chapter 1. ILO standards concerning forced labour: Conventions Nos 29 and 105

History and development of the forced labour Conventions

18. The prohibition of forced or compulsory labour in all its forms is considered to be a peremptory norm of international human rights law, which is therefore absolutely binding and from which no derogation is permitted. The two fundamental ILO Conventions on the subject, the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), are among the most widely ratified of all ILO instruments.¹⁰ The principles embodied in these Conventions have found universal acceptance and endorsement, and have become an inalienable part of fundamental human rights. They have been incorporated into various international instruments, both universal and regional.
19. ILO action to combat forced labour is almost as old as the Organization itself. In 1926, the Governing Body appointed a Committee of Experts on Native Labour, which was entrusted with the task of studying existing systems of forced or compulsory labour, especially in countries that were not self-governing. At that time, forced labour was viewed as largely a colonial phenomenon, based on the compulsion to work developed within a system of colonial administration, which frequently relied on traditional tribal relationships. The work of the Committee of Experts on Native Labour led to the adoption

⁹ General Survey, 2012, para. 297.

¹⁰ A list of the ratifications of these Conventions is set out in the appendix to this paper.

by the Conference in 1930 of the Forced Labour Convention (No. 29). Although Convention No. 29 took special account of the problems existing at that time in territories under colonial administration and in certain independent States at a similar stage of economic and social development, the Conference nonetheless decided that the Convention should be of general application.

20. After the Second World War, when significant political and economic changes had occurred, the ILO adopted new approaches to forced labour. The international inquiries carried out in 1951–53 by the UN–ILO ad hoc Committee on Forced Labour (established jointly by the ILO Governing Body and the United Nations Economic and Social Council), and subsequently from 1956–59 by the ILO Committee on Forced Labour, revealed the existence throughout the world of various types of forced labour, including as a means of political coercion and as a punishment for the infringement of labour discipline and for economic purposes. These extensive inquiries led to the adoption in 1957 of the Abolition of Forced Labour Convention (No. 105), aimed at the abolition of the compulsory mobilization and use of labour for economic purposes, as well as the abolition of forced labour as a means of political coercion or punishment in various circumstances.

Measures called for by the forced labour Conventions

21. Conventions Nos 29 and 105 are aimed at guaranteeing freedom from forced labour for all human beings, irrespective of the nature of the work or the sector of activity in which it is performed. The two instruments supplement each other, and their concurrent application should contribute to the complete elimination of forced or compulsory labour in all its forms. Conventions Nos 29 and 105 contain no provisions limiting the scope of their application through the exclusion of certain categories of workers. Both Conventions are of general application and are designed to protect the entire population of the countries that have ratified them.

Forced Labour Convention, 1930 (No.29)

22. The undertaking made by States which ratify Convention No. 29 “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period” (*Article 1(1)*) includes both an obligation to abstain and an obligation to act. The States must neither exact forced or compulsory labour, nor tolerate its exaction. They therefore have to repeal any laws or regulations which provide for or allow the exaction of forced or compulsory labour, and ensure that any such exaction, whether by public bodies or private individuals or enterprises, is illegal under national law. Forced or compulsory labour is defined in the Convention so as to exclude from its scope, under certain conditions, specific kinds of clearly defined obligations, such as compulsory military service, certain forms of prison labour and work exacted in cases of emergency (*Article 2(1) and (2)*). States parties to the Convention also have to ensure that the “illegal exaction of forced or compulsory labour shall be punishable as a penal offence” and “that the penalties imposed by law are really adequate and are strictly enforced” (*Article 25*).

Present status of Article 1(2), and Articles 3 to 24 of Convention No. 29.

23. While Convention No. 29 establishes the requirement to suppress forced or compulsory labour, it also provides that: “With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided” (*Article 1(2)*). However, since the Convention, which was adopted in 1930, calls for the suppression of forced labour “within the shortest possible period”, the supervisory bodies have considered that it is no longer possible to invoke these transitional provisions

to the detriment of the main purpose of the Convention. For a State to rely on these transitional provisions now would be to disregard their transitional function and would be in contradiction with the spirit of the Convention. Moreover, the status of the abolition of forced or compulsory labour in general international law as a peremptory norm from which no derogation is permitted means that any attempt to invoke the transitional provisions would be contrary to international standards. The Committee of Experts has therefore considered that use of any form of forced or compulsory labour falling within the scope of the Convention as defined in *Article 2* may no longer be justified by invoking observance of the provisions of *Article 1(2) and Articles 3 to 24*, the transitional provisions.¹¹

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

24. Convention No. 105 is not a revision of Convention No. 29, but supplements it. Although Convention No. 105 does not contain a definition of forced or compulsory labour, the definition contained in Convention No. 29 has been considered generally valid and therefore serves to determine what constitutes “forced or compulsory labour” within the meaning of the 1957 Convention. While Convention No. 29 calls for the general prohibition of forced or compulsory labour in all its forms (subject to certain exceptions), Convention No. 105 requires the abolition of any form of forced or compulsory labour in the five specific cases listed in *Article 1*:

- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.

Definition of forced or compulsory labour in Convention No. 29, and exceptions from the definition.

25. *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 relates to three elements: work, the menace of a penalty and consent.

26. It follows from the words “all work or service” that the Convention applies to all types of work, service and employment, regardless of the industry or sector in which it is found, including the informal economy. The words “any person” refer to all human beings – adults and children, nationals and non-nationals, including migrants in an irregular

¹¹ See *Bangladesh* – Committee of Experts, Convention No. 29, observation, 1998 [references to the comments of the Committee of Experts are hereafter indicated by the abbreviation CEACR, followed by the year. Unless otherwise stated, all the comments cited are for Convention No. 29. The comments of the Committee of Experts are available on NORMLEX]; and *Myanmar* – CEACR, observation, 2000. See also the report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by *Myanmar* of the Forced Labour Convention, 1930 (No. 29) (ILO, *Official Bulletin*, Special Supplement, Vol. LXXXI, 1998, Series B), para. 218.

situation. The forced labour Conventions are therefore applicable to *all workers in the public and private sectors, as well as workers in the informal economy*.

27. The “menace of any penalty” should be understood in a very broad sense as covering both penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological coercion or the retention of identity documents. The penalty may also take the form of a loss of rights or privileges.
28. The terms “offered voluntarily” refer to the freely given and informed consent of workers to enter into an employment relationship and their freedom to leave their employment at any time. Free and informed consent must be given by the worker when accepting the work and must cover the whole duration of the work or service. An external constraint or indirect coercion that interferes with a worker’s freedom to “offer himself voluntarily” may be a result not only of an act of the authorities, such as a statutory instrument, but also of a practice by an employer, for example if an employer uses deception or false promises to induce a worker to provide services. Such practices represent a clear violation of the Convention. With regard to the possibility of revoking freely given consent to undertake work or service, the Committee of Experts has considered, in connection with the freedom of workers to leave their employment, that even in cases where employment is originally the result of a freely concluded agreement, the right of workers to the free choice of employment remains inalienable. Accordingly, the effect of statutory provisions preventing termination of employment of indefinite duration (or very long duration) when notice of reasonable length is given is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Convention.
29. The Committee of Experts has emphasized the fundamental relevance and value of the prohibition of forced labour in all its forms, based on the definition contained in Convention No. 29.¹² When adopting Convention No. 29, the ILO’s constituents opted for a broad definition of the term “forced labour”, rather than enumerating a list of prohibited practices. The use of a broad definition has enabled the supervisory bodies to address traditional practices of forced labour, such as vestiges of slavery, slavery-like practices and the various forms of debt bondage, as well as trafficking in persons. Furthermore, the definition covers forced labour imposed, not only by private entities, but also by state authorities. Ratifying States are therefore required to develop a comprehensive legal and policy framework to combat forced labour in all its forms.
30. It should be noted that certain forms of compulsory work or service, reviewed below, which would otherwise have fallen under the general definition of “forced or compulsory labour”, are expressly excluded from the scope of Convention No. 29.

(a) *Compulsory military service*

31. Compulsory military service is excluded from the definition of forced labour contained in Convention No. 29 only when it is confined to “work of a purely military character” (*Article 2(2)(a)*). This condition is aimed specifically at preventing the call-up of conscripts for public works. It has its corollary in *Article 1(b)* of Convention No. 105, which prohibits the use of forced or compulsory labour “as a method of mobilising and using labour for purposes of economic development”. There are, however, specific circumstances in which non-military activity, performed within the framework of compulsory military service or as an alternative to such service, remains outside the scope of Convention No. 29. Thus, conscripts may be called up, like any other citizens, in cases of emergency. Moreover, while Convention No. 29 does not specifically mention the issue

¹² General Survey, 2012, para. 272.

of conscientious objectors, the Committee of Experts has considered that the exemption of conscientious objectors from compulsory military service, coupled with an obligation to perform an alternative service, is a privilege granted to individuals on request, in acknowledgement of freedom of conscience.¹³

(b) *Normal civic obligations*

32. Convention No. 29 exempts from the prohibition of forced or compulsory labour “any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country” (*Article 2(2)(b)*). Three kinds of “normal civic obligations” are specifically mentioned in the Convention as exceptions from its scope, namely: compulsory military service, work or service in cases of emergency and “minor communal services”. Other examples of “normal civic obligations” could include compulsory jury service and the duty to assist a person in danger. The exception of “normal civic obligations” should be understood in a very restrictive way, and must be read in the light of the other provisions of the Convention. It cannot be invoked to justify recourse to forms of compulsory service that are contrary to the letter and the spirit of the Convention.¹⁴

(c) *Compulsory labour of convicted persons*

33. Compulsory labour of convicted persons does not constitute forced or compulsory labour under Convention No. 29, provided that it is “carried out under the supervision and control of a public authority” and that such persons are not “hired to or placed at the disposal of private individuals, companies or associations” (*Article 2(2)(c)*). The two conditions set forth in *Article 2(2)(c)* are equally important and apply cumulatively: the fact that a prisoner remains at all times under the supervision and control of a public authority does not dispense the government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private individuals, companies or associations.¹⁵ In this respect, with reference to the privatization of prison labour, the Committee of Experts has observed that, if the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, by formally giving their free and informed consent to work, and that their conditions of work approximate a free labour relationship, the work of prisoners for private parties falls outside the scope of the Convention.

(d) *Cases of emergency*

34. Convention No. 29 also exempts from the definition of forced or compulsory labour “any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population” (*Article 2(2)(d)*). This exception applies in restricted circumstances in which a calamity or threatened calamity endangers the existence or well-being of the whole or part of the population. The enumeration of examples in the Convention is an indication of the restrictive character of the cases of emergency. The power to call-up labour in such circumstances should be confined to genuine cases of emergency, and the

¹³ *ibid.*, para. 275.

¹⁴ *ibid.*, para. 277.

¹⁵ *ibid.*, para. 278.

duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation.¹⁶

(e) *Minor communal services*

35. Minor communal services are excluded from the definition of forced or compulsory labour in Convention No. 29, provided that they are “performed by the members of the community in the direct interest of the said community”, and “can therefore be considered as normal civic obligations incumbent upon the members of the community”, subject to the condition “that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services” (*Article 2(2)(e)*). The above provisions determine the limits of this exception and serve to distinguish it from other forms of compulsory service which, under the terms of the Convention, have to be abolished (such as forced labour for general or local public works).¹⁷

Forms of forced labour: Forced labour or services imposed by the State, and forced labour imposed by private individuals or entities

36. In the General Surveys prepared by the Committee of Experts on the forced labour Conventions, and in the Global Reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, a broad distinction is drawn between two main forms of forced labour in the world today: forced labour imposed by the State for the purposes of production or service, or as a punishment; and forced labour imposed by private individuals and entities for the purposes of economic or commercial sexual exploitation.¹⁸ According to the 2005 and 2009 Global Reports, as well as the ILO’s Global Estimate of Forced Labour (2012), most forced labour is today exacted in the private economy, rather than directly by the State, and mainly in the informal economy.¹⁹

A. *Imposition of forced or compulsory labour by the State*

37. The Committee of Experts has noted that systematic *state practices of imposing compulsory labour on the population* have declined worldwide and practically disappeared in the great majority of countries. Exceptions are quite rare and tend to consist of legislative provisions that still remain in force, rather than vestiges of old practices. The governments concerned often indicate that these provisions have fallen into disuse and that measures are being taken to repeal them.²⁰ In one country, the Committee of Experts has been commenting for a number of years on a very serious case of longstanding and persistent violations of the Convention relating to the imposition of forced labour by the

¹⁶ *ibid.*, para. 280.

¹⁷ *ibid.*, para. 281.

¹⁸ See General Survey, 2012, Chapter 3; Global Report, 2005, para. 40; and Global Report, 2009, para. 47.

¹⁹ Global Report, 2009, para. 47.

²⁰ For example, *Kenya* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

State; however, there appear to have been some positive developments recently in that country.²¹

- 38.** However, despite the progress made in eliminating forced or compulsory labour by the State, there are still instances in which various forms of forced or compulsory labour are imposed directly by the State, either for the purposes of production or service (including various types of national service obligations, such as the use of conscripts for non-military purposes, the power to call up labour outside emergency circumstances, or restrictions on the freedom of workers to terminate their employment, in particular in the public service and in essential services), or as a punishment (for example when convicted persons are hired to or placed at the disposal of private entities). There remain cases where freedom of expression is subject to restrictions enforced by sanctions involving compulsory labour. There are also cases in which similar sanctions are applicable for various breaches of labour discipline by public servants or seafarers, or for participation in strikes.
- 39.** On a number of occasions, the Committee of Experts has drawn attention to legislative provisions concerning *compulsory civic service* or other *non-military national service activities*. In such cases, it has recalled that, with reference to national service obligations imposed outside emergency situations, only compulsory military service is excluded from the scope of the Convention, subject to the condition that it is used “for work of a purely military character” (*Article 2(2)(a)*). However, legislation authorizing the use of conscripts for non-military purposes is still in force in certain countries.²² In some cases, persons liable to military service, but who are not in practice called up for such service, may be required to discharge their national service obligations in a non-military form, such as work for development purposes in production units in factories or public undertakings.²³
- 40.** The Committee of Experts has also addressed the *restrictions on the freedom to leave employment by giving notice of reasonable length* imposed in various countries, including on career military personnel in peacetime. It has noted, in particular, that in some countries, any person employed by the government or by a public administration, establishment or body, or any authority of the public or mixed sector, who unilaterally terminates their employment (even with notice) without the consent of the employer or the authorization of the competent authority, is liable to penal sanctions. Workers in the *public service* and *essential services* are the most affected.²⁴ In certain other countries, military officers and other career members of the armed forces cannot resign their commission before their resignation is formally accepted by the competent body, which takes a decision after having examined the reasons for the resignation.²⁵

B. Forced labour imposed by private individuals or entities

- 41.** Despite the adoption of constitutional and legislative provisions prohibiting forced labour, various problems of application still exist in practice in a number of countries. For example, instances of vestiges of slavery and other slavery-like practices still survive in

²¹ Myanmar – CEACR, observations, 1999–2012; General Survey, 2012, paras 286–287.

²² For example, Algeria – CEACR, observation, 2011; and Congo – CEACR, observation, 2011.

²³ For example, Chad – CEACR, observation, 2011; and Egypt – CEACR, observation, 2011.

²⁴ For example, Bangladesh – CEACR, observation, 2009; Pakistan – CEACR, observation, 2011; and Syrian Arab Republic – CEACR, observation, 2010.

²⁵ For example, Egypt – CEACR, direct request, 2011; and Uganda – CEACR, observation, 2011.

certain countries and regions, as well as the entrapment of people through forms of debt bondage. Trafficking in persons for the purposes of sexual and labour exploitation, which may involve both adults and children, may increase in future due to growing labour mobility. Members of the most vulnerable groups (such as migrant workers, domestic workers, agricultural workers, informal sector workers, members of indigenous communities) are the worst affected. ILO research has consistently shown that the manipulation of credit and debt, either by employers or recruiting agents, is still a key factor in entrapping vulnerable workers in forced labour situations.²⁶ The Committee of Experts has requested the governments concerned to take all the necessary measures to identify, release and rehabilitate victims of the illegal exaction of forced labour (such as bonded labourers and victims of trafficking or slavery-like practices) and to punish those responsible through the strengthening of labour inspection and law enforcement machinery, and by imposing adequate penal sanctions, as required by *Article 25* of Convention No. 29.

42. The Committee of Experts has noted in recent General Surveys on forced labour that, despite the prohibition of slavery and similar practices at the international level, and the significant progress made by States in adopting legislation to eliminate *slavery-like practices*, some such practices, which may be characterized as *vestiges of slavery*, still survive today in some cases.²⁷ After examining the situation in certain countries where, despite anti-slavery legislation, conditions of slavery continue to be transmitted by birth to individuals who are compelled to work for their master without payment, the Committee of Experts has requested the governments concerned to take all the necessary measures to combat slavery and its vestiges through the adoption of national action plans or global strategies and the strengthening of law enforcement machinery, so that victims are effectively in a position to assert their rights.²⁸
43. Practices of *debt bondage*, under which labourers and their families are forced to work for an employer to pay off the debts they have incurred or inherited are still widespread in some countries and affect a significant number of people. As debt is an integral element of bonded labour, legal action is required to declare such practices unlawful and to establish penal sanctions against employers who hold their workers in bondage. Such legal action should also be accompanied by economic assistance and rehabilitation measures for bonded labourers to ensure that they do not fall back into situations of bonded labour. The Committee of Experts has requested the governments concerned to take all the necessary measures to identify, release and rehabilitate bonded labourers and to punish the perpetrators by strengthening labour inspection and law enforcement machinery, conducting a nationwide statistical survey of bonded labour and imposing adequate penal sanctions, as required by *Article 25* of the Convention.²⁹ In some other cases, the importance of strengthening the legal framework has been emphasized, for example through the adoption of legislative or other measures against persons who exploit bonded labour, and by increasing the effectiveness of the penalties imposed on perpetrators, which must be sufficiently dissuasive and strictly enforced.³⁰

²⁶ Global Report, 2009, para 40.

²⁷ General Survey, 2012, para. 293.

²⁸ *Niger* – CEACR, observation, 2011; and *Mauritania* – CEACR, observation, 2010.

²⁹ For example, *India* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2011.

³⁰ For example, *Brazil* – CEACR, observation, 2010.

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44. On numerous occasions, the Committee of Experts has expressed concern about the *vulnerable situation of migrant workers*, including migrant domestic workers, who are often subjected to abusive practices by employers, such as the retention of their passports, the non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour. The vulnerability of *migrant domestic workers* is increased by their absence of autonomy from their employers. The Committee of Experts has noted that the so-called visa “sponsorship” (or *Kafala*) system in certain countries in the Middle East may be conducive to the exaction of forced labour,³¹ and has requested the governments concerned to adopt legislative provisions specifically tailored to the difficult circumstances faced by these workers. It has requested information on all the measures taken, in both law and practice, to strengthen the protection of *migrant domestic workers* with a view to the elimination of any forced labour among these workers, including the provision of the necessary assistance to enable them to assert their rights and to denounce any abuses.³²
45. For a number of years, the Committee of Experts has been systematically examining the problem of *trafficking in persons for the purposes of sexual and labour exploitation*. In this context, it has sought information on the measures taken or envisaged to prevent, suppress and punish trafficking and to protect the victims. In a number of cases, it has followed closely the issue of *child trafficking* under Convention No. 29. However, where the country in question has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee has usually expressed the view that this problem can be examined more specifically under Convention No. 182, as the protection available is enhanced by the requirement in Convention No. 182 for ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.³³
46. The three issues examined in this report, namely the prevention of forced labour, the protection of victims and trafficking in persons, focus on forced labour imposed by private entities. Consequently, the report analyses neither the exceptions to Convention No. 29 referred to above, nor the application of Convention No. 105, which relate to state imposed practices.

Prevention of forced labour, protection of victims of forced labour and the issue of trafficking in persons in relation to the scope of Convention No. 29

A. Convention No. 29 and the prevention of forced labour

47. By ratifying the Convention, a State undertakes “to suppress the use of forced or compulsory labour in all its forms”, which implies the obligation both to refrain from using forced labour and to take measures to prohibit the imposition of any form of forced labour by third parties within its territory (*Article 1(1)* of the Convention). States therefore have to establish legal safeguards to *prevent any de facto coercion to perform work*. In addition, *Article 25* of the Convention stipulates that the “illegal exaction of forced or compulsory labour shall be punishable as a penal offence” and that it shall be “an obligation on any

³¹ For example, *Saudi Arabia* – CEACR, observation, 2010.

³² For example, *Lebanon* – CEACR, observation, 2011; and *Peru* – CEACR, observation, 2011.

³³ For example, *Haiti* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2009.

Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced". While Convention No. 29 does not contain provisions explicitly mentioning prevention and protection, a joint reading of these two provisions by the ILO supervisory bodies, which have provided guidance in these areas, means that member States have to take a series of measures aimed at preventing forced labour, effectively bringing to an end existing practices and adequately punishing the perpetrators of these practices.

48. For this purpose, the supervisory bodies first of all ask governments to ensure that they have knowledge of the scope and characteristics of the forced labour practices that exist on their territory. This involves carrying out an analysis of the situation so as to be able to target the measures to be taken to bring such practices to an end. The Committee of Experts then emphasizes the importance of adopting a national plan or strategy to combat forced labour with a view to ensuring that comprehensive and concerted action is taken by the various public agencies responsible for combating forced labour, with particular reference to labour inspection, the forces of order and the investigation services. In general terms, the governments concerned are invited to engage in awareness-raising activities concerning forced labour practices for the population as a whole, as well as for vulnerable groups of workers who are more likely to become victims of forced labour. The Committee has also emphasized that, in order to bring an end to forced labour practices, it is essential to impose effective and dissuasive penal sanctions on those responsible for such practices, in accordance with *Article 25* of the Convention. This provision therefore provides a repressive component which ultimately plays a preventive role, since the effective punishment of perpetrators encourages victims to lodge complaints and has a dissuasive effect.
49. The Committee of Experts has noted, for example, the measures taken in certain South Asian countries to prevent bonded labour, including the establishment of vigilance committees and the implementation of projects and programmes, often in collaboration with the ILO, to reduce vulnerability to bondage.³⁴ On numerous occasions, it has also noted the various measures taken to reduce the vulnerability of migrant workers, including migrant domestic workers, and to strengthen their protection against forced labour practices (improving recruitment systems for migrant workers, monitoring recruitment agencies, strengthening the legislative framework, providing training to migrant workers, etc.).³⁵

B. Convention No. 29 and the protection of victims of forced labour

50. The Committee of Experts has emphasized that, as the vulnerability of the great majority of victims of forced labour has an impact on the extent to which they are able to assert their rights, ratifying States have to make every effort to ensure that the labour inspection services, the forces of order and the judicial authorities are provided with the necessary resources to identify forced labour practices, with a view to removing victims from such

³⁴ For example, *India* – CEACR, observation, 2012.

³⁵ For example, *Indonesia* – CEACR, observation, 2012; *Kuwait* – CEACR, observation, 2012; *Lebanon* – CEACR, observation, 2012; *Malaysia* – CEACR, observation, 2012; and *Nepal* – CEACR, observation, 2012.

situations and providing them with appropriate assistance (medical or psychological care, legal assistance, rehabilitation measures).³⁶

51. The Committee has emphasized on numerous occasions that it is essential to provide *material and financial support to victims* to prevent them falling back into a situation of vulnerability in which they would be likely once again to suffer exploitation.³⁷ In this connection, the legislation in some countries envisages the establishment of support programmes and measures and the reintegration of victims, not only of trafficking, but also of other forced labour practices. Victims of forced labour, whether in the form of labour exploitation through the abuse of their vulnerability or through trafficking in persons, should, regardless of their status within the national territory, receive adequate protection so as to guarantee the full enjoyment of all their rights before the national authorities, including *labour rights* (such as wage arrears and social protection) and *compensation for material and moral damages*, as well as to ensure the punishment of the perpetrators.³⁸
52. When examining the effective enforcement of the prohibition of forced or compulsory labour under *Article 25* of Convention No. 29, the Committee of Experts has considered that, in addition to the strict enforcement of penalties against perpetrators, the State has to ensure that the victims of such practices are able to *complain* to the competent authorities, to have *access to justice* and to obtain *compensation* for the harm they have suffered.³⁹ If they receive compensation, it is easier for victims to reconstruct their lives outside the framework of dependence in which they have lived.⁴⁰ The procedures for obtaining compensation are not always easy, as they sometimes involve civil action, as well as criminal proceedings. In this respect, the Committee of Experts has noted the example of a country in which the labour courts, as a result of action by the Ministry of Labour, also require the reimbursement of wage arrears, the imposition of fines and the payment of compensation for the damage suffered by victims, as well as for the “collective moral damage” suffered by society.⁴¹ It should also be noted that the law can empower criminal courts, when finding a person guilty of exacting forced labour, to set the amount of compensation to be paid to the victim.⁴²
53. With regard to trafficking in persons, the Committee of Experts has observed that the *protection of victims of trafficking* (as well as, more generally, the protection of witnesses) may contribute to law enforcement and to the effective punishment of perpetrators, as required by *Article 25* of Convention No. 29.⁴³ In this connection, the Committee of

³⁶ General Survey, 2012, para. 326.

³⁷ *ibid.*, para. 325.

³⁸ *ibid.* Measures taken to assist victims may also include: granting temporary residence permits (for example, *Chile* – CEACR, direct request, 2012); assistance services at diplomatic missions abroad to protect workers and their rights in destination countries (for example, *Indonesia* – CEACR, observation, 2012); and the establishment of telephone helplines to provide support and judicial guidance (for example, *Portugal* – CEACR, direct request, 2009).

³⁹ General Survey, 2007, para. 139.

⁴⁰ *ibid.*, para. 324.

⁴¹ *Brazil* – CEACR, observations, 2008 and 2010.

⁴² *Mexico* – CEACR, observation, 2010.

⁴³ General Survey, 2007, paras 82–83.

Experts has recalled that the Trafficking Protocol requires States parties to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases” (Article 7). In its 2001 general observation concerning trafficking in persons, the Committee of Experts requested information on the measures adopted to encourage victims to turn to the authorities. In its subsequent General Surveys on forced labour, it has noted that many countries have already adopted provisions of this kind, allowing victims to remain in the country following detection and ensuring other victim/witness protection measures.

C. Convention No. 29 and trafficking in persons for sexual and labour exploitation

- 54.** In 2001, in its General Report and its general observation on the application of Convention No. 29, the Committee of Experts drew attention to the problem of *trafficking in persons* for forced labour purposes, which affects developing countries, countries in transition and industrialized market economy countries, as countries of origin or destination of victims, or both.⁴⁴ Since then, it has systematically examined the problem of trafficking in its comments under Convention No. 29. As noted previously, the Committee of Experts has observed that the notion of trafficking in persons for the purpose of exploitation, as defined in the Trafficking Protocol, is encompassed by the definition of forced or compulsory labour in Convention No. 29.
- 55.** An important element of the definition of trafficking in persons in the Trafficking Protocol, which brings it within the scope of Convention No. 29, is the *means of coercion* used against an individual, including the threat or use of force, abduction, fraud, deception, the abuse of power or a position of vulnerability, which definitely exclude the voluntary offer or consent by the victim. The Trafficking Protocol contains a qualifying provision that the consent of a victim of trafficking to the intended exploitation is irrelevant where any of the above means have been used. Where the victim is a child, the crime of trafficking in persons can be established irrespective of the use of means of coercion or deceit.⁴⁵
- 56.** A large number of the comments of the Committee of Experts on this subject relate to the measures taken by governments to combat trafficking. First, the Committee of Experts verifies that national legislation punishes and defines the elements that constitute trafficking in persons, for both labour and sexual exploitation, which is the case in the great majority of the countries examined. Moreover, as for other forced labour practices, it requests governments to ensure the establishment of an institutional framework to combat trafficking in persons that encompasses prevention, awareness raising, training, protection of victims and the punishment of perpetrators. The Committee of Experts has considered that measures taken for the *prevention of trafficking in persons* and the *protection of victims of trafficking* are essential for the efficient eradication of human trafficking and therefore contribute to the suppression of all forms of forced or compulsory labour, as required by Convention No. 29. It has noted with interest on numerous occasions the adoption by ratifying States of national anti-trafficking plans containing prevention and victim protection measures.⁴⁶

⁴⁴ CEACR – General Report, 2001, paras 72–81, and general observation on Convention No. 29, pp. 119–120.

⁴⁵ *ibid.*

⁴⁶ *ibid.*, para. 299.

57. The Committee of Experts has noted in its General Surveys and individual comments under Convention No. 29 that some countries have altered the definition of forced labour in their penal codes to cover acts related to trafficking in persons.⁴⁷ In other cases, anti-trafficking legislation is worded to cover the penal offence of the exaction of forced labour.⁴⁸ Some governments have expressed the view that, even in the absence of legislation specifically criminalizing forced labour, provisions which criminalize human trafficking and which contain a reference to its purpose, namely exploitation, could be applicable to protect victims of forced labour. The Committee of Experts has pointed out in this connection that the notion of forced labour, as established by Convention No. 29, is broader than that of trafficking in persons and that it is important for national jurisdictions to contain precise provisions, taking into account the principle of the strict interpretation of penal law.⁴⁹

Other relevant ILO instruments

58. In addition to the two forced labour Conventions, several other ILO instruments address the issue of forced labour either directly or indirectly:

- the *Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35)*, which calls on governments to avoid any indirect compulsion to labour;
- the *Special Youth Schemes Recommendation, 1970 (No. 136)*, which indicates that participation in special youth schemes should be voluntary;
- the *Employment Policy Convention, 1964 (No. 122)*, which refers to the promotion of full, productive and freely chosen employment;
- the *Worst Forms of Child Labour Convention, 1999 (No. 182)*, which provides that the worst forms of child labour include “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict” (*Article 3(a)*). As Convention No. 182 does not define forced labour, the definition set out in Convention No. 29 has been considered valid for the purposes of Convention No. 182;⁵⁰ and
- the *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, which prohibits the exaction of compulsory personal services and provides that the exaction of such services shall be a punishable offence (*Article 11*) and requires ratifying States to ensure that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude (*Article 20(3)(c)*).

In addition, other ILO Conventions guarantee certain rights at work or strengthen the protection of specific categories of workers, and therefore contribute indirectly to

⁴⁷ *ibid.*, para. 299.

⁴⁸ For example, a country that has not ratified Convention No. 29: *United States*, the Trafficking Victims Protection Act of 2000, as amended, section 1589 “Forced Labour”.

⁴⁹ For example, *Peru* – CEACR, observation, 2011.

⁵⁰ ILO: *Record of Proceedings*, Report of the Committee on Child Labour, No. 19, ILC, 87th Session, 1999, Geneva, para. 136.

combating forced labour. These include the Conventions on the protection of wages and working time, and those establishing a protective framework for migrant and domestic workers.⁵¹

Chapter 2. United Nations instruments

I. General instruments containing provisions on forced labour

59. The United Nations has adopted a number of human rights instruments that contain standards and principles related to forced labour. The *Universal Declaration of Human Rights* (1948) prohibits slavery and servitude (Article 4) and provides that everyone has the right to free choice of employment (Article 23(1)). The *International Covenant on Civil and Political Rights* (1966) also prohibits slavery and servitude (Article 8(1)), and specifically provides that no one “shall be required to perform forced or compulsory labour” (Article 8(3)(a)), subject to a series of exceptions (Article 8(3)(b) and (c)) that are similar to those provided for in Convention No. 29. The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) (Article 11(2)) and the *Convention on the Rights of Persons with Disabilities* (2006) (Article 27(2)) both include specific prohibitions of forced or compulsory labour.
60. The issue of slavery is specifically covered by two principal treaties: the *Slavery Convention* (1926), as amended by the 1953 Protocol, which defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (Article 1(1)), and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1956).
61. Trafficking in persons has been addressed both through international human rights treaties and through special trafficking treaties that have tended to focus on specific aspects of the problem. The *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949) consolidated a number of pre-existing treaties on the prohibition of trafficking in women and children for prostitution and other sexual purposes. The *Convention on the Elimination of All Forms of Discrimination against Women* (1979) calls for the suppression of all forms of traffic in women and exploitation of prostitution of women (Article 6), while the *Convention on the Rights of the Child* (1989), and particularly the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2000), focus on preventing the sale and trafficking of children.
62. In 2000, the General Assembly adopted the Trafficking Protocol to supplement the *United Nations Convention against Transnational Organized Crime* (“UNTOC Convention”).⁵²

⁵¹ The Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Domestic Workers Convention, 2011 (No. 189), the Protection of Wages Convention, 1949 (No. 95), the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

⁵² The UNTOC Convention and the Trafficking Protocol entered into force in September 2003 and December 2003, respectively. The UNTOC Convention is also supplemented by the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) and the Protocol against the Illicit

The Trafficking Protocol seeks to address, for the first time, “all aspects of trafficking in persons”, and as such adopts a broad definition of trafficking in persons.

63. In 2010, the General Assembly adopted a Global Plan of Action to Combat Trafficking in Persons, which calls for the universal ratification of the UNTOC Convention and the Trafficking Protocol and calls on member States to take “urgent action to prevent trafficking in persons, protect its victims and prosecute its perpetrators” (paragraph 4).⁵³

II. The provisions of the Trafficking Protocol on prevention, victim protection and labour exploitation

A. Background and scope

64. As the Trafficking Protocol supplements the UNTOC Convention, the two instruments must be interpreted together.⁵⁴ As of December 2012, 154 countries are parties to the Trafficking Protocol, all of which are also parties to the UNTOC Convention.⁵⁵
65. The UNTOC Convention and its Protocols, including the Trafficking Protocol, are principally criminal justice instruments.⁵⁶ The purpose of the UNTOC Convention is to promote cooperation to prevent and combat transnational organized crime more effectively (Article 1). The three purposes of the Trafficking Protocol are to: prevent and combat trafficking, paying particular attention to women and children; protect and assist victims of trafficking, with full respect for their human rights; and promote cooperation among States parties to meet these objectives (Article 2). The requirement to criminalize trafficking, when committed intentionally (Article 5) is “a central and mandatory obligation of all States parties to the Protocol”.⁵⁷ The Protocol’s other provisions set different levels of obligation, ranging from measures that are mandatory, those that States parties must consider applying or endeavour to apply, to those that are optional.
66. The Trafficking Protocol contains the first internationally recognized definition of trafficking in persons (Article 3):
- (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

Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (2001).

⁵³ A/RES/64/293, of 12 August 2010.

⁵⁴ Art. 34(4) of the UNTOC Convention and Art. 1(1) of the Trafficking Protocol.

⁵⁵ Art. 37(2) of the UNTOC Convention provides that no State can be a party to any of the Protocols unless it is also a party to the Convention.

⁵⁶ UNODC: *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 2004, (“UNODC Legislative Guide”), para. 61(a), which indicates that the “Convention and its Protocols are primarily criminal justice instruments”.

⁵⁷ *ibid.*, para. 36.

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;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used [...].

The definition consists of three elements: (i) an “action” of recruitment, transportation, transfer, harbouring or receipt of persons; (ii) a “means” by which the action is achieved, including the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and (iii) a “purpose” of exploitation.⁵⁸ In the case of children, an “action” committed for the purpose of exploitation is considered to constitute trafficking in persons even if none of the “means” are involved (Article 3(c)).

- 67.** The Protocol does not define “exploitation”, although it specifies certain practices that are covered by the term, including forced labour or services, slavery or practices similar to slavery and servitude. The Protocol also does not define “forced labour or services” or provide guidance as to how to distinguish between forced labour and exploitation more broadly, although the UNODC guide to the Protocol refers to ILO Conventions Nos 29 and 105.⁵⁹ The application of the Protocol to certain forms of forced labour, such as inter-generational bonded labour, is still subject to debate.

B. Provisions concerning the prevention of trafficking

- 68.** Article 9 of the Protocol lays a general obligation of prevention: “States Parties shall establish comprehensive policies, programmes and other measures: (a) To prevent and combat trafficking in persons; and (b) to protect victims of trafficking in persons, especially women and children, from revictimization” (Article 9(1)). States are required to take measures targeting the factors that make persons vulnerable to trafficking, including poverty, underdevelopment and lack of equal opportunity (Article 9(4)), as well as measures targeting the demand that fosters exploitation and leads to trafficking (Article 9(5)). Specific measures are not identified for either category. Article 9 also describes specific types of preventive measures that States parties are encouraged, but not required to pursue, such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons” (Article 9(2)) and, “as appropriate”, cooperation with non-governmental organizations and other elements of civil society (Article 9(3)). The Protocol also contains prevention-related provisions on information exchange and training (Article 10), border measures (Article 11) and security, control, legitimacy and validity of documents (Articles 12 and 13).

C. Provisions concerning the protection of victims

- 69.** Articles 6, 7 and 8 of the Protocol concern the protection of victims of trafficking. Article 6 contains the principal provisions describing victim assistance measures, which

⁵⁸ *ibid.*, paras 32 and 33. Technically, the end purpose of exploitation does not need to occur for trafficking to take place, so long as the *intent* to exploit exists. In practice, however, most cases of trafficking are not identified until exploitation occurs.

⁵⁹ UNODC Legislative Guide, p. 268 n.14.

are for the most part accompanied by qualifying language or language indicating that the measures are optional. It includes provisions on the protection of the privacy and identity of victims (Article 6(1)), their physical safety (Article 6(5)) and the provision to victims of information on relevant court proceedings and assistance to enable views to be presented and considered (Article 6(2)). States should also “consider” implementing measures to provide for the physical, psychological and social recovery of victims, including housing, counselling and information, medical, psychological and material assistance, and employment, educational and training opportunities (Article 6(3)). The Protocol does not contain special protection provisions for children, although it provides that their “special needs ... including appropriate housing, education and care” shall be taken into account (Article 6(4)).

- 70.** With regard to compensation mechanisms, each State party is required to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered” (Article 6(6)). Because the Protocol does not specify the source of compensation, a variety of different provisions could satisfy this requirement, including provisions allowing victims to sue offenders, the creation of state funds to provide compensation for certain victims or provisions allowing criminal courts to order offenders to pay compensation upon conviction.⁶⁰
- 71.** The Protocol also contains provisions addressing repatriation (Article 8) and the status of victims (Article 7). Although under no obligation to enact measures permitting victims to remain in their territory, temporarily or permanently, States parties are encouraged to “consider” such measures (Article 7(1)), while the return of victims “shall preferably be voluntary” (Article 8(2)).
- 72.** Following the adoption of the Trafficking Protocol, the Office of the United Nations High Commissioner for Human Rights developed non-binding *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002)⁶¹ to provide rights-based policy guidance on the integration of a human rights perspective into national, regional and international anti-trafficking laws and policies.

Chapter 3. Regional instruments

I. Instruments containing provisions on forced labour

- 73.** A number of regional legal instruments prohibit forced or compulsory labour, including the *European Convention on Human Rights* (1950) (Article 4), the *American Convention on Human Rights* (1969) (Article 6), the *Arab Charter on Human Rights* (2004) (Article 10) and the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (1995) (Article 4). The *African Charter on Human and Peoples’ Rights* (1981) and the *ASEAN Human Rights Declaration* (2012) do not specifically prohibit forced labour, but they both prohibit slavery, and the ASEAN Human Rights Declaration also prohibits trafficking in persons.
- 74.** Trafficking has been taken up in several regional instruments, some of which only focus on certain aspects of the issue. The *Inter-American Convention on International Traffic in*

⁶⁰ *ibid.*, para. 60.

⁶¹ E/2002/68/Add.1, of 20 May 2002.

Minors (“IAC Convention”) (1994) seeks to prevent and punish international traffic in minors, defined as persons below the age of 18, for prostitution, sexual exploitation, servitude or any other unlawful purpose. In 2002 the South Asian Association for Regional Cooperation adopted the *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* (“SAARC Convention”).

75. Two other regional instruments are broader in scope. The *Council of Europe Convention on Action Against Trafficking in Human Beings* (2005) (“European Trafficking Convention”) adopts the definition of trafficking set out in the Trafficking Protocol and requires States parties to take measures to prevent and combat human trafficking, to protect the human rights of the victims of trafficking and to promote international cooperation on action against trafficking. *EU Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims* (“EU Trafficking Directive”) ⁶² establishes certain minimum standards concerning the definition of criminal offences and sanctions and seeks to strengthen the prevention of trafficking and protection of victims (Article 1). Its definition of trafficking largely mirrors that of the Trafficking Protocol.
76. In addition to these legal instruments, governments and regional bodies in Asia, Africa, Latin America and Europe have adopted regional action plans or bilateral or multilateral memoranda of understanding addressing trafficking in persons. Several of these go beyond the requirements of the Trafficking Protocol and call for additional measures aimed at addressing the root causes of trafficking and protecting and assisting victims, as well as strengthening law enforcement and cross-border cooperation. ⁶³

II. Provisions of regional instruments on prevention and victim protection

77. The IAC Convention contains few specific provisions on prevention or protection, but requires States parties to ensure “the protection of minors in consideration of their best interests” (Article 1(a)) and the prompt repatriation of minors, bearing in mind their best interests (Article 1(c)).
78. The SAARC Convention includes several provisions addressing prevention and the protection of victims. It requires States parties to promote awareness of the problem of trafficking in women and children and its underlying causes through the media and other measures (Article VIII(8)) and to “consider taking necessary measures for the supervision of employment agencies” (Article VIII(6)). States parties are also required to provide assistance pending the repatriation of victims of cross-border trafficking, including the

⁶² The provisions of the EU Trafficking Directive must be transposed into national law by all EU Member States by 6 April 2013.

⁶³ See, for example, Economic Community of West African States (ECOWAS), *Initial Plan of Action against Trafficking in Persons* (2002–03), extended until 2011; Organization for Security and Co-operation in Europe (OSCE), *Action Plan to Combat Trafficking in Human Beings*, 2003, and *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance*, 2005; *Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region*, 2004; Association of South-East Asian nations, *Declaration Against Trafficking in Persons Particularly Women and Children*, 2004; *Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children*, 2006; Southern African Development Community, *Ten Year Strategic Plan of Action on Combating Trafficking in Persons*, 2009; Organization of American States, *Work Plan Against Trafficking in Persons in the Western Hemisphere*, 2010.

provision of legal advice and health care (Article IX(2)), to establish shelters for the rehabilitation of victims of trafficking and make suitable provisions for granting legal advice, counselling, job training and health-care facilities for victims (Article IX(3)).

79. The remainder of this chapter focuses on the European Trafficking Convention, which is broader in scope than the IAC and SAARC Conventions and covers a larger number of countries. As of December 2012, the European Trafficking Convention had been ratified or acceded to by 38 countries,⁶⁴ while the IAC Convention and SAARC Convention had been ratified by 15 and eight countries, respectively.

A. Background and scope of the European Trafficking Convention

80. The European Trafficking Convention takes the Trafficking Protocol as its starting point, while taking into account other international and regional instruments. However, it also “seeks to strengthen the protection afforded by those instruments and to raise the standards which they lay down”.⁶⁵ Accordingly, although the definition of trafficking in the European Trafficking Convention is identical to that of the Trafficking Protocol, the two instruments differ in several respects. In particular, the provisions of the European Trafficking Convention on prevention and protection of victims are more comprehensive and are mostly framed in mandatory terms, thereby exceeding the minimum standards of the Trafficking Protocol. Other differences include the requirement in the Convention that criminal offences be punishable by “effective, proportionate and dissuasive sanctions”, including prison sentences that can give rise to extradition (Article 23(1)), and the creation of an independent mechanism to monitor implementation of the Convention, known as the Group of Experts on Action against Trafficking in Human Beings (GRETA) (Article 36).

B. Provisions concerning the prevention of trafficking

81. Chapter II of the European Trafficking Convention contains various provisions addressing prevention, mostly framed in mandatory terms, although many are also worded fairly broadly. Article 5 requires States parties to coordinate their prevention measures internally (Article 5(1)) and to establish or strengthen effective policies and programmes to prevent trafficking, including through research, information, awareness-raising and education campaigns, social and economic initiatives and training programmes (Article 5(2)). The parties shall take appropriate measures to enable migration to take place legally (Article 5(4)) and adopt specific measures to reduce children’s vulnerability to trafficking (Article 5(5)). Article 6 contains provisions specifically addressing demand, which require parties to adopt or strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand, including through research, awareness-raising and targeted information campaigns. Articles 7, 8 and 9 set out measures relating to border controls and the security and legitimacy of travel or identity documents.

C. Provisions concerning the protection of victims

82. The numerous provisions in the European Trafficking Convention addressing the protection of and assistance to victims are, in general, more comprehensive and mandatory than those of the Trafficking Protocol. For instance, States parties are required to “protect

⁶⁴ As of 17 December 2012, see <http://conventions.coe.int/>.

⁶⁵ Council of Europe Convention on Action Against Trafficking in Human Beings, Explanatory Report, CM(2005)32 Addendum 2 Final, 3 May 2005 (“European Trafficking Convention Explanatory Report”), para. 6.

the private life and identity of victims” and prevent the disclosure of the identity of child victims in particular (Article 11(1) and (2)). They are required to provide basic assistance to victims of trafficking, including secure and appropriate accommodation, psychological and material assistance, access to emergency medical treatment, counselling and information regarding legal rights and services, and access to education for children, and to “take due account of the victim’s safety and protection needs” (Article 12(1) and (2)). The Convention includes a number of detailed provisions regarding the protection of child victims of trafficking that are more extensive than those of the Trafficking Protocol, including the requirement that when the age of the victim is uncertain, but there are reasons to believe the victim is a child, the victim shall be presumed to be a child and be accorded special protection measures (Article 10(3)).

- 83.** The provisions of the European Trafficking Convention on compensation are more extensive than those of the Trafficking Protocol and require parties to adopt measures “to guarantee compensation for victims” in accordance with domestic law, for instance through the establishment of a fund for victim compensation (Article 15(4)). The Convention also provides for certain ancillary rights to ensure that victims receive compensation for damages suffered, including access to information on relevant judicial and administrative proceedings from their first contact with the authorities, and the right to legal assistance and to free legal aid, consistent with internal law (Article 15(1) and (2)).
- 84.** The European Trafficking Convention imposes requirements in several areas that are not addressed by the Trafficking Protocol. It requires each party to ensure that assistance to a victim is not conditional on her or his willingness to act as a witness (Article 12(6)), to provide for “recovery and reflection period” of at least 30 days during which victims are permitted to remain in the country to escape the influence of traffickers and to take an informed decision about cooperation with the authorities (Article 13(1)), and to issue a renewable residence permit to victims in certain circumstances (Article 14(1)).⁶⁶ In particular, Article 26 of the Convention also requires parties to adopt non-punishment provisions that “provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”. The focus on the imposition of penalties, rather than criminalization, however means that States can still technically prosecute victims for offences that they have been compelled to commit.
- 85.** The provisions of the European Trafficking Convention on victim identification are also significant and reflect recognition that the protection and assistance of victims of trafficking depends upon correct identification.⁶⁷ States parties are required to put in place the necessary legal framework to identify victims, to ensure that the personnel of competent authorities working with victims are appropriately trained and qualified and to ensure that the different authorities cooperate with each other and with victim support agencies (Article 10(1) and (2)).

⁶⁶ Regarding repatriation, the Convention also requires each Party to adopt measures to establish repatriation programmes aimed at avoiding re-victimization and “make its best effort to favour the reintegration of victims”, including through “the acquisition and improvement of their professional skills” (Article 16(5)). Parties also have to make available to victims contact information of structures that can assist them in the country to which they are returned or repatriated, and child victims must not be returned to a State if “such return would not be in the best interests of the child” following a risk and security assessment (Article 16(6) and (7)).

⁶⁷ European Trafficking Convention Explanatory Report, para. 127. The Report also acknowledges that “Identifying a trafficking victim is a process which takes time” (para. 131).

Part III. Overview of law and practice in member States

Chapter 1. Law and practice in the area of prevention

86. Convention No. 29 provides the international framework for the development of legislative and other measures to combat forced or compulsory labour in all its forms, and the governments of ratifying States are therefore required to take all the necessary steps to ensure their effective application and enforcement.
87. When examining the information provided by governments on their law and practice relating to the prevention of forced labour, the Committee of Experts has emphasized on numerous occasions the importance of adopting an overall national strategy to combat forced labour with a view to ensuring that comprehensive and concerted action is taken by the various responsible public agencies, with particular reference to labour inspection, the forces of order and the investigation services. A clear national policy against forced labour provides a fundamental point of departure for action to prevent and suppress forced labour and protect its victims, with particular emphasis on identifying priority sectors and occupations, raising public awareness, developing institutional capacity and mobilizing support. A national policy and the associated programme of action should include the following elements: research and statistics to identify target groups and the main forms of forced labour; assessment of the legal framework and potential gaps; interventions relating to prosecution, prevention and protection; coordination among stakeholders and institutions; and a monitoring framework.

National policies and action plans against forced labour

88. Policies and action plans or programmes to combat forced labour have been adopted in a number of countries over the past ten years. Some of the earliest examples are in Latin America. In *Brazil*, the first action plan on “slave labour”, adopted in 2003, provided the basis for strong inter-ministerial coordination through the National Commission for the Eradication of Slave Labour (CONATRAE). Building on this experience, a second action plan, adopted in 2008, included new prevention and reintegration measures, increased the powers of the Special Mobile Inspection Group and proposed the establishment of employment agencies in the areas or origin of forced labourers. In the *Plurinational State of Bolivia*, an Inter-Departmental Council was created in 2007 to eradicate serfdom, forced labour and slavery-like conditions. In *Paraguay*, the Commission on Fundamental Rights at Work and the Prevention of Forced Labour, created in 2009, has developed an action plan against forced labour, which includes awareness-raising activities and training for labour inspectors. In *Peru*, a permanent tripartite National Commission to Combat Forced Labour was created in 2007 to coordinate policies and actions at the national and regional levels. The National Plan to Combat Forced Labour, launched in 2007, encompasses a range of measures to prevent and eliminate forced labour, including legal action to cancel the licences of enterprises involved in forced labour, research and data gathering, education, communication and awareness raising, capacity building and coordination between the various institutions.
89. Policies and action plans against bonded labour systems have been introduced in several Asian countries. In *Nepal*, since the adoption of the Bonded Labour Prohibition Act in 2002, the ILO has provided support for the implementation of programmes to rehabilitate freed *kamaiya* households. In 2009, a National Plan of Action against Bonded Labour was formulated to address all forms of bonded labour in agriculture. In *Pakistan*, the 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation

of Freed Bonded Labourers outlines a range of priority interventions, including: the training of district government officials and other stakeholders to enhance their capacity to draw up district plans addressing bonded labour; the sensitization of judicial, law enforcement and civil service officials; and pilot projects at the local level. In *India*, the ILO has worked closely with the federal Ministry of Labour and Employment and with labour departments in various states on a project to reduce vulnerability to bondage through the promotion of decent work, which focuses on specific sectors.

90. However, action plans against forced labour are less numerous than those against human trafficking, which have been adopted by many, if not most of the States that have ratified the Trafficking Protocol.
91. Regional initiatives can facilitate a common approach among neighbouring countries. For example, in Latin America, at the Fourth Summit of the Americas in November 2005, national leaders undertook to eliminate forced labour by 2010 by strengthening policies and adopting national plans of action, with ILO support. As with national action plans, regional initiatives are more numerous in the area of trafficking than forced labour. For instance, the Organization of American States (OAS) has convened regional meetings of national authorities on trafficking in persons and adopted a 2010–12 Work Plan to Combat Trafficking in Persons in the Western Hemisphere (recently extended until 2014). The OAS Member States also recently adopted conclusions and recommendations to strengthen legal and technical cooperation against trafficking in persons.⁶⁸

Prevention measures

92. Over recent years, there has been growing recognition of the importance of measures to prevent forced labour, with the objectives, in particular, of: reducing the factors that make people vulnerable to forced labour; addressing the demand for forced labour; and strengthening law enforcement responses and deterring future forced labour offences.

(i) Research and awareness raising

93. Two important and related types of prevention measures are research, including data collection, and awareness raising, both for the population as a whole and for the most vulnerable groups of workers. Research into the scope and nature of forced labour can be very effective in raising awareness. The ILO has provided support to institutions in several countries, including the *Republic of Moldova*, *Niger* and *Guatemala*, to conduct quantitative household surveys of forced labour. The data collected has contributed to raising awareness of forced labour and has helped to inform policy responses.
94. Awareness raising can take the form of media campaigns, workshops, the dissemination of educational materials, brochures and the organization of training programmes for the police, security officers, social workers and other relevant authorities. In *Brazil*, the National Campaign against Slave Labour successfully raised awareness among the public and vulnerable groups about modern-day slave labour by using a wide range of media, including videos and radio spots, banners, booklets and magazine advertisements. In *India*, a series of awareness-raising workshops on bonded labour have been conducted by the National Human Rights Commission since 2003 in association with the Ministry of Labour and state governments. In *Paraguay*, a number of awareness-raising activities were undertaken in 2009–11 by the Commission on Fundamental Rights at Work and the

⁶⁸ *Conclusions and Recommendations of REMJA IX*, Ninth Meeting of Ministers of Justice or Other Ministers or Attorneys General of the Americas, 29 November 2012, Quito, Ecuador, p. 12.

Prevention of Forced Labour, including a radio campaign and training activities for labour inspectors and employers' and workers' organizations. A sub-commission has been established in the Chaco region to disseminate information and prepare a regional action plan on fundamental rights and the prevention of forced labour. While many countries have conducted these types of awareness-raising activities, fewer have undertaken systematic data collection and research on the extent and nature of forced labour as part of an overall prevention strategy.

(ii) Measures to reduce vulnerability to forced labour

95. In many cases, prevention measures have been taken to reduce the vulnerability of specific groups that are at greater risk of forced labour. In the case of migrant workers, the measures include improving recruitment systems, monitoring recruitment agencies, strengthening the legislative framework and the provision of training. In the *Philippines*, the Philippines Overseas Employment Administration conducts seminars and distributes materials on illegal recruitment and trafficking in persons throughout the country, and also conducts orientation seminars for departing workers. In *Indonesia*, measures to improve protection against forced labour exploitation included the provision of training to migrant workers and services for migrant workers in overseas diplomatic missions. Task forces to prevent the irregular departure of migrant workers have been established in 14 border areas and the registration of prospective workers is carried out both online and in the offices of the Department of Manpower. Private recruitment agencies are monitored with a view to preventing exploitation and, to protect them against illegal financing practices, a Ministerial Decree has been issued on the placement fees payable by migrant workers. In *Jordan*, to increase the awareness of women migrant domestic workers and ensure that they know how to submit complaints in the event of violations of their rights, posters providing general guidance and hotline numbers for domestic workers have been distributed in different languages in all employment agencies. With regard to sponsorship, the Minister of Labour has issued an order requiring employers to open bank accounts for women domestic workers and to notify the Directorate of Domestic Workers when renewing their work permits or during the legal process of changing sponsors.

(iii) Role of labour inspectorates and other bodies

96. Labour administration, in cooperation with other government agencies, the social partners and civil society organizations, can in principle cover all aspects relating to the protection of victims and prosecution of perpetrators, as well as the prevention of forced labour. In certain countries, labour administrations are actively involved in preventing and combating forced labour, while in others, labour inspection and labour administration play a less central role, if any, in such efforts.

97. Labour inspectorates can make a key contribution to worksite monitoring, education and awareness raising to prevent exploitation. Because of their access to workplaces, they can provide early warning and take action before situations degenerate into forced labour. However, to discharge these functions effectively, they need to be allocated adequate human and material resources so that they can cover the whole of the national territory, including remote areas, where workers are more vulnerable to exploitation. Some countries have established labour inspection units with special responsibility for combating certain forms of forced labour, and others have created joint inspection units. In *Peru*, a Special Labour Inspection Group against Forced Labour has recently been created. In *Brazil*, the Special Mobile Inspection Group, consisting of labour inspectors, federal police officers and labour prosecutors, investigates complaints of slave labour through surprise inspections. In *Spain*, a special group was established in 2010 within the Tripartite Advisory Commission of the Labour and Social Security Inspectorate with responsibility for proposing measures and evaluating the action of the labour inspection services, particularly in relation to violations of labour legislation in the “irregular economy” and

the resulting labour exploitation, including through human trafficking networks. In *Jordan*, a joint labour inspection unit, composed of two inspectors from the Ministry of Labour and several from the Public Security Department, has, since 2012, undertaken inspections in response to complaints of potential cases of forced labour or trafficking received from labour inspectors or the police, or through the national hotline.

- 98.** In some countries, specialized bodies have been established to combat specific forms of forced labour. For example, in *India*, vigilance committees have been constituted by state governments at the district and subdivision levels under the Bonded Labour System (Abolition) Act, 1976, (BLSA) to advise district magistrates on the implementation of the Act, monitor bonded labour offences and provide for the rehabilitation of freed bonded labourers. Similar arrangements have been made in *Pakistan* under the Bonded Labour System (Abolition) Act, 1992.
- 99.** The preventive role of labour inspection in combating forced labour is particularly important in relation to private employment agencies, which are usually regulated under the Labour Code, as abusive practices by such agencies can lead to situations of forced labour.⁶⁹ Some countries have also developed specific regulations and institutions that combine labour law and criminal law enforcement. In the *United Kingdom*, a Gangmasters Licensing Authority has been established to license labour providers in agriculture, horticulture, shell fishing and associated processing and packing industries, and to ensure compliance and enforce sanctions, including criminal sanctions. In *Portugal*, the Inspectorate-General for Labour plays a prominent role in targeted inspections of temporary work agencies. For example, a large-scale operation in 2007 resulted in the closure of 195 such agencies. In *Ethiopia*, Employment Exchange Services Proclamation No. 632/2009 regulates private employment agencies, gives the competent authority certain powers of inspection and holds agencies and third parties (the enterprise or person receiving the service) jointly liable for violations.

(iv) Preventive role of penal sanctions

- 100.** Legislative provisions that make the illegal exaction of forced or compulsory labour punishable as a penal offence play an important preventive role, as they encourage victims to lodge complaints and have a dissuasive effect. Most ILO member States have enacted legislation punishing the illegal exaction of forced or compulsory labour as a penal offence. Virtually all countries have legislation imposing some form of sanctions, either for the exaction of forced labour in general, or for specific forced labour practices.⁷⁰ These provisions are usually contained in penal law, labour law or texts prohibiting a specific form of forced labour. However, in some cases, the applicable sanctions are not of the required penal nature and are not sufficiently dissuasive, such as administrative fines or very short prison sentences.⁷¹ In addition to penal sanctions, some countries have

⁶⁹ For a discussion of the links between forced labour, trafficking and abusive intermediaries, see ILO: *General Survey concerning employment instruments*, Report III (Part IB), ILC, 99th Session, Geneva, 2010, paras 362 and 363.

⁷⁰ For example, *Afghanistan* – Penal Code, s.516; *China*, Criminal Law, s.244; *India* – Penal Code, s.374; Bonded Labour System (Abolition) Act, 1976, ss.16–18; *Mexico* – Penal Code, s.365 I; *Republic of Moldova* – Criminal Code, s.168; *Pakistan* – Bonded Labour System (Abolition) Act, 1992; *Nicaragua* – Penal Code, s.315; *Romania* – Criminal Code, s.191; *Sri Lanka* – Penal Code, s.358A; *Tajikistan* – Criminal Code, s.130.1; *Thailand* – Criminal Code, ss.309–310; *Turkey* – Criminal Code, s.117; *United Kingdom* – Coroners and Justice Act, 2009, s.71.

⁷¹ The Committee of Experts has emphasized, for example, that when the sanction consists of a fine or a very short prison sentence, even though it may correspond to the highest level of penalties

introduced dissuasive economic sanctions. For instance, in *Brazil*, the 2008 Action Plan introduced effective economic sanctions against employers using forced labour, barring them from receiving loans from private or public sources and from signing contracts with public entities. In the rare cases of countries that have ratified Convention No. 29, but have not established such sanctions, the Committee of Experts requests the governments concerned to remedy the situation.

(v) Socio-economic prevention measures

101. Initiatives aimed at improving social and economic conditions can prevent forced labour by addressing its underlying structural causes, including extreme poverty. Such measures can include improved education and training, the creation of employment opportunities and the provision of social benefits. In *Brazil*, the *Bolsa Família* is a conditional cash transfer programme providing income support to poor families subject to certain conditions, such as school attendance by children. Released forced labourers have access to the programme. In *India*, the Ministry of Labour and Employment and the ILO have sought to address bonded labour through a “convergence approach”, consisting of mobilizing locally available resources to lift workers permanently out of the cycle of poverty and indebtedness and ensuring that development programmes reach the right target groups.

(vi) Measures to address demand for forced labour

102. Most countries lack comprehensive measures targeting employer and consumer demand, although some have adopted specific measures broadly targeting demand for forced labour goods and services. In *Brazil*, the Ministry of Labour and Employment maintains a public register (the “dirty list”) of individuals and legal entities convicted of exploiting workers in conditions analogous to slavery. In the *United States*, the California Transparency in Supply Chains Act, 2010, requires certain companies to disclose their efforts to address human trafficking in their supply chains, with a view to educating “consumers on how to purchase goods produced by companies that responsibly manage their supply chains”. The growing recognition that demand is linked to prevention is reflected in the recently released EU Strategy towards the Eradication of Trafficking in Human Beings 2012–16 (COM(2012) 286), which highlights the importance of understanding and reducing demand for goods and services involving victims of trafficking as a key aspect of prevention.

Chapter 2. Domestic law and practice in the area of victim protection

103. In addition to enforcing the prohibition of forced labour, the suppression of forced or compulsory labour in all its forms, as required by Convention No. 29, also involves appropriate mechanisms for the identification, release, protection and rehabilitation of victims of forced labour. Immediately following their release, victims need to receive adequate protection to ensure the enjoyment of all their rights, including labour rights (such as wage arrears and social protection) and compensation for material and moral damages. The labour inspection services, the forces of order and the judicial authorities therefore need to be provided with the necessary resources to be able to identify forced labour practices, remove victims from forced labour situations and provide them with assistance (including medical or psychological care, legal assistance and rehabilitation

established by the Labour Code, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to be dissuasive. General Survey, 2012, para. 319.

measures). Material and financial support is needed for victims to prevent them falling back into a situation of vulnerability in which they are again at risk of exploitation. The provision of assistance tailored to the specific needs of victims (men, women and children, and victims of both commercial sexual exploitation and labour exploitation) is also important for effective protection. These elements are provided through legislation in some countries, and through policy and practice in others.

Victim identification

- 104.** The identification of victims is a prerequisite for effective protection. Without early identification, victims remain trapped in forced labour, or are treated as criminals and prosecuted for offences linked to their forced labour situations. And yet, the global data suggest that most victims are never identified. UNODC data for 2007–10, focusing solely on trafficking in persons, suggest that 43,000 victims of trafficking were detected by national authorities worldwide,⁷² with lower rates of detection for victims of trafficking for forced labour than for trafficking for sexual exploitation. This may well be due to the lower visibility of trafficking for forced labour, historical factors and the incomplete coverage of legislation in certain countries.⁷³
- 105.** The mission of labour inspection to supervise the application of labour legislation and identify violations means that it has an essential role to play in the detection of forced labour and the identification of victims, particularly as the accumulation of certain violations of labour law may be an indicator of forced labour. Virtually all countries have some form of labour inspection. In some cases, labour inspection is an integral part of criminal law enforcement, with criminal sanctions being applied to offenders. The primary mission of labour inspection is to secure fair living and working conditions for workers, including compensation for any wrongs suffered. It can also apply sanctions against abusive employers, including fines or, in extreme cases, enterprise closure.
- 106.** Certain countries have established units in the labour inspectorate with special responsibility for combating certain forms of forced labour. For example, special labour inspection groups against forced labour have been set up recently in *Brazil*, *Peru* and *Spain*. Inspections by these special units not only result in the release of workers from situations of forced labour, but also provide the judicial authorities with documentation and other evidence as a basis for the prosecution of those responsible. In *India*, under the BLSA, inspection functions in the area of bonded labour have been assigned to the regular labour inspectorate, as well as to local government heads/officials and police departments.
- 107.** However, as labour inspection does not cover all the sectors in which many forced labour practices are encountered, and as such practices constitute penal offences, the police and other law enforcement bodies play an important role in identifying and combating these practices. It should be recalled that victims of forced labour are often from the most vulnerable categories of workers, who encounter greater difficulties in denouncing their situation. This is particularly true of *migrant workers*, whose regular or irregular situation on the national territory may affect their ability to turn to the competent authorities, and *domestic workers*, who are often engaged in “hidden” work and may be subject to restrictions on their freedom of movement. It is therefore important for the forces of order

⁷² UNODC Global Report on Trafficking in Persons, 2012, (“UNODC Global Report”), para. 25. The ILO would like to acknowledge the sharing by UNODC of country research gathered in preparation of its Global Report on Trafficking in Persons 2012.

⁷³ *ibid.*, para. 36.

and the investigation authorities to conduct rapid, effective and impartial investigations and, where appropriate, to initiate prosecutions against those responsible for violations.

Release, rehabilitation and other victim protection measures

108. The release and rehabilitation of victims of forced labour is addressed both through the legislation prohibiting certain forms of forced labour, which may provide for specific rehabilitation measures, and through policies and programmes/plans of action. In *India*, the implementation of the BLSA and the Centrally Sponsored Scheme (CSS) for the rehabilitation of bonded labour victims is monitored by a special group, which holds regional meetings with the participation of state governments, and which has issued detailed guidelines for the implementation of the CSS. Government data show the increased number of bonded labourers identified, released, and rehabilitated under the CSS. The vigilance committees established by state governments under the BLSA have played an important role in the release and rehabilitation of bonded labourers. In *Pakistan*, a number of initiatives have been taken under the 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers to activate the district vigilance committees set up under the Bonded Labour System (Abolition) Act, 1992, and to improve the identification and rehabilitation of bonded labourers. In *Nepal*, following the adoption of the Kamaiya Labour (Prohibition) Act, 2002, and within the framework of the Action Programme on employment creation for freed *kamaiyas* (debt labourers), vocational training programmes have been organized for liberated *kamaiyas* in various trades and a fund established to support entrepreneurship by trainees.

109. While not all countries provide for prevention and victim protection measures in their legislation, most have adopted various practical measures to ensure a certain level of victim protection. For example, national hotlines have been established in many countries, including the *United Arab Emirates* and the *Philippines*, to report cases of trafficking. Financial assistance is offered by fewer countries, but can be crucial in preventing revictimization, as can education and training measures. In *Brazil*, for example, released workers are provided with unemployment benefit for three months, are given priority coverage by the *Bolsa Família* cash transfer scheme and have access to a literacy programme. Most countries offer temporary basic victim assistance measures, such as shelter, medical treatment and counselling, and some offer more comprehensive support. In the *Plurinational State of Bolivia*, under the development plan for the Guarani people of the Chaco region, measures have been taken to secure adequate living conditions for “captive” Guaranis following their release from servitude on remote farms. With a view to protecting migrant workers against unlawful practices which infringe their basic rights, the Governments of *Indonesia* and *Malaysia* signed a Memorandum of Understanding in 2011 under which Indonesian domestic workers have the right to retain their passports while in *Malaysia*.

Law enforcement, access to justice and compensation

110. Appropriate legislation and its effective enforcement is clearly of key importance in combating forced labour. In recent years, there has been increasing awareness that law enforcement is intrinsically linked to victim protection and that legislation should address victim compensation, thereby creating both an incentive for the denunciation of forced labour and a deterrent for perpetrators.

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- 111.** The effective protection of victims of forced labour involves them being able to complain to the competent authorities, have access to justice and obtain compensation for the harm suffered.⁷⁴ Certain countries have adopted legislative provisions to overcome the difficulties encountered by victims in gaining access to justice, for example: by allowing trade unions or human rights associations to denounce violations and assist victims throughout judicial procedures; by affording victims special protection or temporary residence permits (for those in an irregular situation); or by making authorities liable to sanctions if they fail to follow up denunciations brought to their knowledge. For instance, in *Niger*, under section 270(5) of the Penal Code, associations established to combat slavery or similar practices are authorized to initiate civil actions for damages caused by violations of the penal legislation on slavery. In *Mauritania*, under Act No. 2007/48 defining, criminalizing and penalizing slave-like practices, human rights associations are empowered to denounce violations and assist victims, who benefit from free judicial proceedings. Since victims often encounter difficulties in being heard and in asserting their rights, in relation to both the police and the judicial authorities, the Act contains provisions on assistance to victims and the prosecution of authorities which fail to follow up cases of slave-like practices brought to their knowledge. Finally, a large number of countries which have adopted legislation to suppress human trafficking have included provisions to encourage the participation of victims in judicial proceedings. Many of these countries (including all EU Member States) grant reflection periods or residence permits to victims.
- 112.** Victims of forced labour and trafficking who have entered a country illegally are often deterred from seeking legal redress through fear of punishment. However, in most European countries, immigration laws do not prevent undocumented workers from having access to employment tribunals, and do not require tribunals to report irregular migrants to the authorities. In *Portugal*, the State Prosecutor for industrial tribunals does not inquire into the immigration status of workers. Similarly, in *Spain*, regardless of their immigration status, the courts recognize the right of irregular workers to seek protection and compensation from industrial tribunals for violations of basic labour rights.
- 113.** Obtaining *compensation* for the material and moral damages suffered is an important component of the rehabilitation of victims, as it facilitates the reconstruction of their lives outside the framework of dependence in which they have lived. However, procedures for obtaining compensation are often complex, and may involve civil action in addition to criminal proceedings. In *Brazil*, as a result of action by the Ministry of Labour, the labour courts, in addition to imposing fines, also require the reimbursement of wage arrears and the payment of compensation for the damage suffered by victims and for “collective moral damage”. A number of recent court decisions in Brazil have ordered record levels of collective moral damages and have led the Government to conclude that high levels of fines and compensation are very effective in undermining the financial profits obtained from slave labour. In some other countries, the law empowers criminal courts in forced labour cases to set the amount of compensation to be paid to victims. In *Mexico*, under the 2007 Act to prevent and suppress trafficking in persons, in the case of trafficking convictions, the courts also have to order compensation for the damages suffered by the victim. In *Nepal*, under the Kamaiya Labour (Prohibition) Act, 2002, a person found guilty of exploiting a debt labourer is liable to a fine and to pay compensation for the damages suffered. Moreover, under the Foreign Employment Act, 2007, migrant workers may be entitled to compensation from recruiters (agencies and individuals) through the complaints mechanism of the Department of Foreign Employment and the Foreign Employment Tribunal. All Nepalese migrants working abroad have to contribute to a welfare fund that can be used to compensate workers under certain circumstances.

⁷⁴ General Survey, 2007, para. 139.

114. According to a recent study by the Organization for Security and Co-operation in Europe (OSCE) of victim compensation in eight countries, the right to compensation is normally exercised against the trafficker or exploiter, although in some cases (including violent crime), there may also be a right to compensation from state funds. Civil claims can usually be pursued in parallel with criminal procedures, although they can also be pursued independently of a criminal case. The *United States* is the only country covered by the OSCE study where a compensation claim for the victim is mandatory in criminal trafficking cases.⁷⁵ In many other countries, the right to compensation is set out in the legislation on human trafficking. For example, in *Zambia*, under the Anti-Human Trafficking Act, 2008, a court can order a convicted person to pay appropriate compensation to a victim for: “damage to or the loss or destruction of property, including money”; “physical, psychological or other injury”; or “loss of income or support, resulting from the commission of such offence”. It can also order compensation to the State for expenses incurred in connection with the care, accommodation, transportation and repatriation of the victim. In *Indonesia*, Act No. 21/2007 on the elimination of human trafficking requires perpetrators to pay compensation for the material and immaterial losses suffered by victims.

Chapter 3. Law and practice in the area of trafficking for labour exploitation

115. In the great majority of ILO member States, the national legislation defines and punishes trafficking in persons for both labour and sexual exploitation. According to data gathered by UNODC, 134 countries have criminalized trafficking by establishing a specific offence in line with the Trafficking Protocol.⁷⁶ Since the adoption of the Protocol, there has been growing recognition that measures for the prevention of trafficking and the protection of victims are essential for its effective eradication. Many countries have therefore established an institutional framework to combat trafficking which encompasses prevention, awareness raising, the protection and rehabilitation of victims and the punishment of perpetrators.

Definition of trafficking in persons: Penal legislation and anti-trafficking laws

116. While the penal legislation of most countries that have ratified Convention No. 29 punishes the exaction of forced and compulsory labour, many countries have also adopted specific provisions to punish trafficking in persons, either by amending their criminal codes,⁷⁷ or by adopting special anti-trafficking laws,⁷⁸ often following the ratification of the Trafficking Protocol. Others are in the process of adopting such provisions.⁷⁹

⁷⁵ OSCE: *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008. See also Global Report, 2009, para. 181.

⁷⁶ UNODC Global Report, 2012, para. 14.

⁷⁷ For example, *Australia* (Criminal Code Amendment (Trafficking in Persons Offences) Act, 2005); *Austria* (Criminal Code, s.217, as amended in February 2004 to expand the definition of trafficking to include exploitation of labour); *Belarus* (Act No. 15 of 2005 to amend and supplement several codes on matters relating to the increase of responsibility for trafficking in persons and other related crimes); *Canada* (Act to Amend the Criminal Code (Trafficking in Persons) 2005 (Ch. 43, ss.279.01–279.04, 486, 487.04, 490.011(1) and 738(1)(b))); *El Salvador* (Penal Code, ss.367 and 370); *France* (Act No. 2003-239 of 18 March 2003, which introduced amendments to the Penal

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- 117.** The definition of trafficking in persons contained in the penal laws on trafficking in countries that have ratified the Trafficking Protocol are mostly inspired by the definition in the Protocol, although in some cases different approaches have been followed, particularly regarding certain aspects of trafficking and related crimes. For example, in some countries, the seizure of identity documents (without a reasonable excuse) has been identified as the preferred method of many traffickers and has been criminalized.⁸⁰ Different approaches are also adopted in national law regarding the definition of “abuse of vulnerability” as a means of coercion.⁸¹
- 118.** In the definition of trafficking, labour exploitation is often associated with particularly harsh and abusive conditions of work, or “conditions of work inconsistent with human dignity”. In *Germany*, section 233 of the Penal Code defines trafficking in persons for the purpose of forced labour by referring to “working conditions that show a *striking disparity* to the working conditions of other employees performing the same or comparable tasks”.

Code (s.225-4-1)); *Peru* (Penal Code, s.153); *Russian Federation* (Criminal Code, as amended in 2003, defining crimes related to trafficking in human beings for exploitation and providing for sanctions of imprisonment (s.217.1)); *Sri Lanka* (Penal Code (Amendment) Act, 2006, s.360C); *Turkey* (Penal Code, ss.80 and 227(3)); *Ukraine* (Act No. 3316 of 2006 to amend the Penal Code and increase responsibility for trafficking in human beings).

⁷⁸ For example, *Argentina* (Act No. 26364 on the prevention and punishment of trafficking in persons and assistance to victims, 2008); *Azerbaijan* (Law on Trafficking in Persons, 2005); *Bahrain* (Law on Combating Human Trafficking, 2008); *Bangladesh* (Anti-Trafficking Law, 2011); *Belgium* (the Suppression of Trafficking of Human Beings and Child Pornography Act, 1995); *Bulgaria* (Act on combating trafficking in human beings, 2003); *Djibouti* (Act No. 210/AN/07/5th L respecting measures to combat trafficking in persons, 2007); *Dominican Republic* (Act No. 137-03 on the smuggling of migrants and trafficking in persons, 2003); *Georgia* (Law on Combating Human Trafficking, 2006); *Ghana* (Human Trafficking Act, 2005); *Guyana* (Combating of Trafficking in Persons Act, 2005); *Indonesia* (Law No. 21/2007 on the elimination of the crime of human trafficking, 2007); *Italy* (Act No. 228 on measures against the trafficking in persons); *Jamaica* (Trafficking in Persons (Prevention, Suppression and Punishment) Act, 2007); *Mauritania* (Act No. 2003-025 on combating trafficking in persons, 2003); *Mexico* (General Act concerning the prevention, elimination and punishment of offences connected with trafficking of persons, and protection and assistance for the victims of such offences, 2012); *Nigeria* (Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003); *Pakistan* (Prevention and Control of Human Trafficking Ordinance, 2002); *Philippines* (Anti-Trafficking in Persons Act, 2003); *Tajikistan* (Act No. 47 on the fight against trafficking in persons, 2004); *Thailand* (Measures in Prevention and Suppression of Trafficking in Women and Children Act, 1997); *United States* (Victims of Trafficking and Violence Prevention Act, 2000); *Zambia* (Anti-Human Trafficking Act, 2008).

⁷⁹ For example, *Haiti* (two bills on human trafficking are under elaboration); *India* (a bill to amend the Immoral Traffic (Prevention) Act, 1956, is under consideration with a view to redefining the offence of trafficking in persons and reinforcing penal sanctions); *Kuwait* (a bill on combating trafficking in persons has been submitted to Parliament).

⁸⁰ For example, *United States* (Victims of Trafficking and Violence Prevention Act, 2000, s.112, amending section 1592 (a) of Chapter 77, Title 18, United States Code).

⁸¹ For example, *Germany* – Penal Code, s.233; *Italy* – Act No. 228 of 2003, s.600; *Luxembourg* – Penal Code, s.379bis; *Republic of Moldova* – Penal Code, s.165; *United States* – Victims of Trafficking and Violence Prevention Act, 2000, s.112, amending section 1589(2) and (3) of Chapter 77, Title 18, United States Code.

In *Belgium* and *France*, the imposition of “conditions of work inconsistent with human dignity” is a key element of the definition of trafficking in persons.⁸²

- 119.** When adopting anti-trafficking provisions, some countries have altered the definition of forced labour in their penal codes to cover acts connected with trafficking in persons. For instance, in *Italy*, the Penal Code was amended in 2003 to cover the offences of reducing or maintaining a person in slavery or servitude (section 600) and trafficking in persons in a situation of slavery or servitude (section 601). These provisions are very broad in scope and cover the exploitation of persons in general, including incitement to or the exploitation of prostitution, begging and the performance of work under conditions in which the worker is exploited or subjugated by the employer. In some other countries, anti-trafficking legislation is so broadly worded that it covers the exaction of forced labour as a penal offence.⁸³
- 120.** While the definition of trafficking in many countries covers trafficking for both labour and for sexual exploitation,⁸⁴ in a few countries it refers only to trafficking for sexual exploitation and does not cover trafficking for labour exploitation.⁸⁵ Consequently, in these countries, law enforcement efforts tend to be focused on sex trafficking, leaving victims of forced labour without adequate protection, and protection measures tend to focus on women and children trafficked for sexual exploitation.

National anti-trafficking action plans

- 121.** Action plans against trafficking in persons are considerably more numerous than those against forced labour, often reflecting the recent adoption of national legislation in this area. Many of the plans take a comprehensive approach that includes all forms of trafficking and addresses a wide range of elements. For example, in *Malaysia*, the main goals of the National Action Plan on Trafficking in Persons (2010–15) include: (i) improving the relevant legal framework; (ii) implementing integrated action among enforcement agencies; (iii) providing protection and rehabilitation services to victims in

⁸² *Belgium* (Act of 10 August 2005 to amend several provisions with a view to combating more effectively the trafficking of human beings and the practices of abusive landlords, s.433 *quinquies*, which stipulates: “It shall constitute an infraction of trafficking in human beings to commit the act of recruitment, transport, transfer, hosting and receiving a person, or to pass or transfer control of a person to a third party, with the intent of putting the person to work or permitting the person to be put into work where conditions are contrary to human dignity”); *France* (Penal Code, as amended in 2003, s.225-4-1, which stipulates: “Human trafficking shall be recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to place such person at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force such person to commit any felony or misdemeanour”).

⁸³ For example, *United States* (Trafficking Victims Protection Act, 2000, as amended in 2005 and 2008, s.1589 “Forced Labour”).

⁸⁴ For example, *Guyana* (Combating of Trafficking in Persons Act, 2005), *Liberia* (Act to Ban Trafficking in Persons, 2005, ss.1 and 2), *Nicaragua* (Penal Code, s.315), *Philippines* (Anti-Trafficking Act, 2003, ss.4 and 5), *Saudi Arabia* (Ministerial Order No. 244 of 2009, s.2), *United Arab Emirates* (Federal Act No. 51, of 2006, s.1).

⁸⁵ For example, *Brazil* (ss.231 and 231-A of the Penal Code), *China* (s.240 of the Criminal Law of 1997).

conformity with international standards; (iv) combating trafficking for labour exploitation; and (v) providing training to personnel involved in implementing the Anti-Trafficking in Persons Act. In *Pakistan*, the 2005 Action Plan for Combating Human Trafficking covers trafficking for both labour and sexual exploitation, addresses both prevention and protection, as well as prosecution, and establishes an inter-ministerial Committee on Human Trafficking headed by the Minister of the Interior. The monitoring and surveillance of recruitment agencies is the responsibility of the Ministry of Labour together with the Federal Investigation Agency. In *Egypt*, the National Plan of Action Against Human Trafficking (2011–13) provides for comprehensive measures in the areas of prevention, protection, prosecution and cooperation, including socio-economic initiatives, such as microfinance lending programmes, legal aid services to victims and capacity building for a wide range of stakeholders, including labour inspectors and consular officials. In *Spain*, following the Comprehensive Plan to Combat Trafficking in Human Beings for Sexual Exploitation (2009–12), a second plan of action was drawn up in 2010 specifically covering human trafficking for labour exploitation, and including provisions on prevention and victim protection. In the *United Kingdom*, an Action Plan on Tackling Human Trafficking, updated in 2009, addresses trafficking for forced labour and sexual exploitation, and sets out priorities and initiatives in areas including prevention, investigation, law enforcement and prosecution, and protection and assistance. In the *United Arab Emirates*, a National Committee to Combat Human Trafficking has drawn up an Action Plan (2007) covering legislation, enforcement, victim support and international cooperation. In *Ukraine*, the successive action plans since 1999 have each been improved. The present plan (2012–15) is very comprehensive, sets up a monitoring mechanism and establishes an implementation budget. While the emphasis in earlier plans was on criminal law enforcement, the most recent plan involves labour market institutions in at least half the planned activities. Similar action plans covering trafficking for both forced labour and sexual exploitation have recently been adopted in several other countries, including *Cambodia*, *El Salvador*, *Indonesia*, *Mexico*, *Nepal* and *Zambia*.⁸⁶ However, there are also examples of action plans that are narrower in scope, such as in *Sweden*,⁸⁷ which mainly focus on trafficking for sexual exploitation.

Prevention and victim protection

- 122.** Following the adoption of the Trafficking Protocol, many countries have introduced comprehensive policies, programmes and other measures for the *prevention* of trafficking (including awareness-raising campaigns and social and economic initiatives) and the *protection* of victims, as well as cooperation with employers' and workers' organizations and civil society. Such measures are essential for the effective eradication of trafficking in persons for labour and sexual exploitation, and accordingly contribute to the suppression of all forms of forced or compulsory labour, as required by Convention No. 29.
- 123.** Efficient and timely victim protection measures (including legislative or other measures allowing victims of trafficking to remain in the territory of a destination country, or

⁸⁶ *Cambodia* (National Plan of Action (2011–13) for the Suppression of Human Trafficking and Sexual Exploitation); *El Salvador* (Strategic Plan 2008–12 of the National Committee against Trafficking in Persons); *Indonesia* (National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children, 2009–14); *Mexico* (National Programme for the prevention and suppression of trafficking, 2011); *Nepal* (National Plan of Action on Trafficking in Persons, 2012); *Zambia* (National Action Plan against Human Trafficking, revised, 2011).

⁸⁷ *Sweden's* Action Plan Against Prostitution and Human Trafficking for Sexual Purposes (2008–10) did not address trafficking for labour exploitation, although a draft national action plan that would do so has been developed by the Ministry of Labour.

encouraging them to turn to the authorities) can contribute to law enforcement and the effective punishment of perpetrators. Poor protection measures discourage victims from seeking assistance from law enforcement services out of fear of mistreatment, deportation and fears for their personal safety. Other victim protection measures include the right to seek *compensation, protection of the victim's identity, privacy, physical safety and safe repatriation*. Since the adoption of the Trafficking Protocol, many countries have adopted provisions of this kind.⁸⁸

- 124.** A good example of an integrated approach to prevention and victim protection is *Indonesia* where, under Presidential Decree No. 69/2008, task forces have been established at the national, provincial and district/municipal levels to monitor the measures taken for the prevention and protection of victims of trafficking, and particularly for their rehabilitation, repatriation and social reintegration. An Integrated Service Unit has been set up to provide integrated activities and services for victims of trafficking, and each district/municipality is required to have at least two community health-care centres specially designed to prevent and respond to violence against women and children. "Special service rooms" have also been established in local police stations for the protection of victims of trafficking and the examination of witnesses.
- 125.** Another example of an integrated approach to combating trafficking in persons is offered by *Nigeria*, where the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) coordinates and serves as the focal point for anti-trafficking measures, with specialized departments dedicated to investigation, prosecution, rehabilitation and awareness raising. The NAPTIP investigation and prosecution departments, for instance, conduct capacity building and sensitization training, provide assistance to countries investigating trafficking cases involving Nigerian nationals and investigate and prosecute violations of the national anti-trafficking legislation. NAPTIP has carried out awareness-raising campaigns across the country, provides direct assistance to trafficking victims and helps to manage shelter facilities.
- 126.** In *Mexico*, the 2012 General Act on trafficking in persons establishes a comprehensive legal and institutional framework to combat trafficking and determines the competence, powers and coordination of the various actors involved in the prevention and punishment of the related offences and the protection of victims. The National Programme for the Prevention and Punishment of Trafficking in Persons (2011) has four objectives: increasing knowledge of trafficking in persons; preventing and raising awareness of the phenomenon; contributing to the effective functioning of the justice system; and providing comprehensive protection for victims. Under the General Act, victims must be provided with facilities to remain in the country for the duration of the judicial proceedings. In the event of conviction, the sentence shall include payment of compensation to victims, covering, inter alia, medical treatment, transport (including return to their place of origin), loss of income and material and moral damages. Immediate assistance programmes also

⁸⁸ For example, *Cyprus* (Protection of Witnesses Law of 2001, which provides a comprehensive scheme for the protection of victims/witnesses, including residence permits); *Estonia* (Witness Protection Law, which came into force on 21 July 2005); *Hungary* (Aliens Act 39/2001, which provides for the possibility to grant a residence permit to foreigners who cooperate with the criminal justice authorities to detect offenders of trafficking); *Italy* (Immigration Act No. 286/98, s.18, which provides for witness/victim protection); *Malaysia* (under the Anti-Trafficking in Persons Act, 2007, protection orders are issued to trafficking victims in need of protection); *Malta* (Police Act, Ch. 164, Title IV, regulating the protection of witnesses and victims, including the setting up of a witness protection programme and the granting of residence permits); *Poland* (Aliens Act of 2003, s.33, which provides for a short-term residence permit to support prosecution); *Portugal* (Statutory Act No. 244/98, s.137-B, which provides for the possibility to grant a residence permit to a foreigner who cooperates with the investigation of criminal activities).

have to be drawn up during and after the proceedings and must include training, guidance and, in the case of nationals, assistance in seeking employment.

- 127.** In *New Zealand*, the 2009 Plan of Action to Prevent People Trafficking includes training and awareness-raising measures for enforcement officers, the development of a policy to offer immigration status options to victims of trafficking and support to victims who assist with criminal justice proceedings against traffickers. The Plan of Action mainstreams human trafficking prevention and assistance into existing government initiatives and programmes, and its implementation is monitored by the Department of Labour, with the assistance of the Inter-agency Working Group on People Trafficking. In 2010, the Department of Labour launched a campaign to raise public awareness of trafficking by distributing brochures in six languages outlining possible indicators of human trafficking.
- 128.** In *Paraguay*, a Bill is under examination covering the prevention and suppression of trafficking, and the protection and reintegration of victims. Pending the adoption of the Bill, various practical measures have been taken by the Inter-institutional Forum for Preventing Trafficking in Persons and the Department for Prevention and Assistance to Victims of Trafficking, including: the establishment of a transitional centre to shelter victims of trafficking; the organization of a series of workshops to raise the awareness of migrant workers concerning the risks of discrimination, exploitation and abuse; the establishment by the Department of Statistics, Surveys and Census of a system for the compilation of data relating to trafficking; and the activities undertaken in cooperation with MERCOSUR countries.
- 129.** In *Spain*, the legislation on the rights and freedoms of foreign nationals and their integration has been amended to encourage cooperation by victims with the investigation authorities, including through the granting of a period of recovery and reflection and the possibility to live and work in the national territory under exceptional circumstances related to their association with judicial procedures or their personal situation.
- 130.** In the *United States*, comprehensive anti-trafficking measures, including prevention and victim protection, have been adopted under the Trafficking Victims Protection Act, 2000. Among other measures, the Act requires the establishment of public awareness programmes, provides the basis for an annual report on trafficking in persons, allows trafficking victims to benefit from residence and work authorization under certain circumstances and creates an inter-agency task force to coordinate federal anti-trafficking action.

Law enforcement

- 131.** The persistence of trafficking in persons, despite its prohibition by law, tends to show that difficulties are often encountered in practice in the enforcement of the law. Prosecution rates remain quite low, particularly in relation to trafficking for labour exploitation, rather than for commercial sexual exploitation. Weak law enforcement can be also attributed to insufficient victim protection mechanisms, and sometimes to a lack of awareness of trafficking among law enforcement authorities. In its comments to individual countries, the Committee of Experts has often expressed concern at the low number of prosecutions and

convictions of traffickers and has requested information on the measures taken to increase the effectiveness of law enforcement, and particularly for the prosecution of perpetrators.⁸⁹

132. In virtually all countries, labour inspection and the police both play an important role in law enforcement. Labour inspectors monitor workplaces and take measures to ensure that the conditions of work prescribed by law are respected, since the accumulation of certain violations of labour law may be an indicator of the existence of forced labour. The labour inspection services can also detect criminal conduct relating to the exploitation of labour, sexual exploitation or trafficking for the purpose of exploitation and, where appropriate, forward the matter for prosecution. An effective judicial system is another key element in the effective prosecution of traffickers and strict application of penal sanctions, as required under Convention No. 29 and the Trafficking Protocol. Most countries are taking measures to strengthen the investigation of organized crime in relation to trafficking in persons, including: the provision of adequate material and human resources to law enforcement agencies; specialized training for law enforcement officers working in immigration control, labour inspection and vice squads; and international cooperation between law enforcement agencies with a view to preventing and combating trafficking in persons.

Chapter 4. Analysis of gaps in the ILO forced labour instruments and national law and practice implementing these standards

133. This section summarizes the main gaps that have been identified in the report in the three areas of prevention, victim protection and trafficking and identifies the need to provide guidance as to measures to effectively implement the existing standards.

134. *Prevention.* The importance of prevention measures is not always recognized, despite the good practices in this area in certain countries. Many countries lack comprehensive measures targeting employer and consumer demand, and some countries do not provide adequate support for the role of labour inspection in preventing the degeneration of situations of abuse into forced labour practices. National legislative provisions concerning prevention are fragmentary and do not deal with the subject in a systematic manner. For example, certain legislative provisions (mainly ministerial decrees) dealing with specific aspects of illegal migration endeavour to reduce the vulnerability of migrant workers, for example by improving recruitment systems, monitoring recruitment agencies, strengthening the legislative framework or providing training to migrant workers. Other legislative provisions deal with the organization of the labour inspection services and the supervision of private recruitment agencies.

135. *Victim protection.* The identification of victims remains a major challenge globally, thereby emphasizing the need for strengthened labour administration and inspection systems to supplement the criminal justice response. In terms of victim assistance measures, most countries provide basic assistance, such as shelter and medical treatment, although fewer offer a comprehensive package of services to all victims, such as financial assistance. While most countries have adopted legislation criminalizing the illegal exaction of forced labour, not all also provide in their national law for specific preventive and protective measures. Instead, such measures, where they exist, are often set out in practice in national action plans/programmes, and are generally linked to trafficking in persons, rather than all forms of forced labour.

⁸⁹ For example, *Cambodia* – CEACR, observation, 2012; *Indonesia* – CEACR, observation, 2012; *Jamaica* – CEACR, observation, 2012; *Mexico* – CEACR, observation, 2012; *Nepal* – CEACR, observation, 2012; and *Zambia* – CEACR, observation, 2012.

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- 136.** The review of law and practice shows that there is growing recognition that legislation should address compensation, which is an important component in the rehabilitation of the victims. However, procedures for obtaining compensation are complex, and generally involve civil action in addition to criminal proceedings. The right to compensation tends to be explicitly laid down only in legislation on trafficking in persons.
- 137.** *Trafficking in persons: Prevention, victim protection and law enforcement.* In most countries, the national legislation defines and punishes trafficking in persons. Yet efforts to prevent, identify and prosecute cases of trafficking for labour exploitation still lag behind those to combat trafficking for sexual exploitation, suggesting broader issues of application and enforcement. The emphasis of the Trafficking Protocol on a criminal justice approach has been important in combating trafficking, but has also meant that in some countries the complementary role of labour administration is not clearly recognized.
- 138.** Under *Convention No. 29*, member States are required to take a series of measures to prevent forced labour, bring an end to existing forced labour practices and adequately punish the perpetrators of such practices (*Articles 1(1) and 25*). First, States have to establish legal safeguards to *prevent any de facto coercion to perform work*. Secondly, victims of forced labour, whether in the form of labour exploitation through the abuse of their vulnerability or through trafficking in persons, should, regardless of their status within the national territory, receive adequate *protection* to guarantee the full enjoyment of all of their rights, including labour rights (such as wage arrears and social protection) and *compensation for material and moral damages*, while the law enforcement authorities have to ensure the punishment of the perpetrators. Thirdly, since trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour in *Article 2(1)* of the Convention, member States are required to take measures for the *prevention of trafficking in persons*, the *protection of victims of trafficking* and punishment of perpetrators. Such measures are essential for the *effective eradication of trafficking* in persons and therefore contribute to the suppression of all forms of forced or compulsory labour, as required by the Convention.
- 139.** With a view to giving new impetus to the fight against forced labour and effectively bringing an end to forced labour practices, it would be useful to include in a new instrument detailed provisions on prevention and victim protection, as well as the prosecution and punishment of perpetrators. Moreover, as the vulnerability of the great majority of victims of forced labour affects the extent to which they are able to assert their rights, States need to make every effort to ensure that the labour inspection services, the police and the judicial authorities are provided with the necessary resources to be able to identify forced labour practices, bring such practices to an end, prosecute those responsible, impose administrative, penal and financial sanctions commensurate with the seriousness of the violation, and ensure that the victims are compensated for the damages suffered.
- 140.** This report has highlighted the need to ensure that the standards on forced or compulsory labour can be effectively implemented by member States in particular with regards to prevention, victim protection, and compensation concerning all forms of forced or compulsory labour (which would include trafficking in persons for labour exploitation). In this regard, consideration could be given to the adoption of a new Convention or a Protocol to Convention No. 29 which would establish the basic principles and measures for the implementation of Convention No. 29. The basic principles and measures of implementation would be stated in general terms in the new Convention or the Protocol and would be complemented by detailed provisions that could be contained in a Recommendation adopted at the same time. The new Convention or the Protocol itself would establish an obligation on member States to give due consideration to implementing the basic principles and measures in the manner set out in the Recommendation. This obligation to give due consideration with respect to the details of implementation is an

approach followed in the recent *Maritime Labour Convention, 2006*. Ratifying Members would be free to decide to implement their obligations under the new Convention or Protocol in a way that is different from the guidance set out in the Recommendation provided that they had duly considered such guidance and were prepared to explain why, after tripartite consultation, they had decided to implement their obligations in a different way.

141. *The possible new instruments could promote an integrated approach to prevention, victim protection and trafficking in persons (with emphasis on trafficking for labour exploitation), address implementation gaps and strengthen enforcement, including labour inspection. This could be supported by detailed guidance concerning the various measures to be taken in these three areas.*

142. *It would therefore seem appropriate for such new ILO instruments to contain provisions:*

- *outlining general principles of prevention (not only for trafficking in persons) and the institutional or organizational framework for the adoption of prevention measures;*
- *calling for an integrated approach to rehabilitation and other victim protection measures, including compensation for victims (not only for trafficking in persons), and establishing guidelines for an appropriate institutional or organizational framework for that purpose;*
- *adopting a comprehensive and integrated approach covering all forms of trafficking and establishing guidelines for prevention and victim protection, and for the prosecution and punishment of perpetrators; and*
- *calling for the development of cooperation with employers' and workers' organizations and non-governmental organizations (NGOs) engaged in protecting human rights and combating trafficking in persons, in recognition of the vital role played by the social partners and NGOs in preventing and combating trafficking in persons for labour and sexual exploitation.*

Part IV. Points for discussion

143. The points for discussion below are designed to cover all forms of forced labour as defined in Convention No. 29, including trafficking for labour exploitation.

Discussion point 1: Trafficking in persons

144. *What is the relationship between forced labour and trafficking in persons? What regulatory gaps, if any, exist regarding trafficking in persons, and is there a value added in the ILO addressing these gaps by means of standard setting?*

Discussion point 2: Prevention of forced labour

145. *What regulatory gaps, if any, exist regarding prevention of forced labour which may be filled by new instrument(s)? If such gaps exist, should such new instrument(s) include inter alia:*

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- *awareness-raising activities that might take the form of media campaigns, workshops, dissemination of educational materials, brochures, creation of a task force, organization of training programmes for the police, security officers, social workers and other relevant authorities?*
 - *steps to reinforce the role of labour inspectorates in the prevention activities (by carrying out worksite monitoring, participating in education and awareness raising for the prevention of exploitation and by monitoring the activities of private employment agencies)?*
 - *guidance to address the demand that gives rise to forced labour (for example, by discouraging employer and consumer demand)?*

Discussion point 3: Protection of forced labour victims

146. *What regulatory gaps, if any, exist regarding the effective protection of forced labour victims which may be filled by new instrument(s)? If such gaps exist, should this protection aim at guaranteeing, inter alia:*

- *the full enjoyment of their rights, including labour rights (such as wage arrears and social protection)?*
- *material and financial support in order to prevent them falling back into a situation of vulnerability?*
- *appropriate direct assistance including medical or psychological care, legal assistance and rehabilitation measures?*

Discussion point 4: Compensation of forced labour victims

147. *What regulatory gaps, if any, exist regarding the effective compensation of forced labour victims which may be filled by new instrument(s)? If such gaps exist, should the new instrument(s) contain provisions addressing compensation for material and moral damages suffered? If yes, should the new instrument(s) provide guidance regarding:*

- *legislative and other measures to ensure that victims have the right to compensation from perpetrators?*
- *the establishment of state compensation schemes, such as the use of state funds for the compensation of victims?*

Discussion point 5: Enforcement

148. *Should a potential new instrument(s) contain provisions aiming at strengthening law enforcement measures? If yes, should these measures include, inter alia:*

- *cooperation and coordination among labour inspectorate and other law enforcement bodies, including the judiciary, while safeguarding the independence of the labour inspectorate?*

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- *strengthening the labour inspectorate through the provision of adequate resources and appropriate training for labour inspectors, law enforcement officials, public prosecutors, members of the judiciary?*
 - *simplification of legal and administrative procedures?*

Discussion point 6: Policy coherence and coordination and international cooperation

149. *Should a potential new instrument(s) include the adoption of action plans against forced labour?*
150. *Should a potential new instrument(s) contain provisions relating to cooperation, as well as policy coherence and coordination at the national, regional and international levels? For example, should international cooperation include: mobilizing resources for national and international programmes for the elimination of forced labour; judicial and technical assistance; and exchanging information?*
151. *Should a potential new instrument(s) provide that the relevant policy measures should be designed and implemented in consultation with the employers' and workers' organizations?*

Discussion point 7: Value added of new ILO instrument(s)

152. *Would there be any added value with the adoption of new instrument(s) to fill the gaps identified in paragraphs 133 to 142 of the report?*
153. *Would there be the need for the adoption of other complementary measures to strengthen the fight against forced labour, including trafficking in persons?*

Appendix

Ratifications of the Forced Labour Convention, 1930 (No. 29)

Date of entry into force: 1 May 1932

177 ratifications

Country	Date
Albania	25 June 1957
Algeria	19 October 1962
Angola	4 June 1976
Antigua and Barbuda	2 February 1983
Argentina	14 March 1950
Armenia	17 December 2004
Australia	2 January 1932
Austria	7 June 1960
Azerbaijan	19 May 1992
Bahamas	25 May 1976
Bahrain	11 June 1981
Bangladesh	22 June 1972
Barbados	8 May 1967
Belarus	21 August 1956
Belgium	20 January 1944
Belize	15 December 1983
Benin	12 December 1960
Bolivia, Plurinational State of	31 May 2005
Bosnia and Herzegovina	2 June 1993
Botswana	5 June 1997
Brazil	25 April 1957
Bulgaria	22 September 1932
Burkina Faso	21 November 1960
Burundi	11 March 1963
Cambodia	24 February 1969
Cameroon	7 June 1960
Canada	13 June 2011
Cape Verde	3 April 1979
Central African Republic	27 October 1960
Chad	10 November 1960
Chile	31 May 1933
Colombia	4 March 1969
Comoros	23 October 1978

Country	Date
Congo	10 November 1960
Costa Rica	2 June 1960
Croatia	8 October 1991
Cuba	20 July 1953
Cyprus	23 September 1960
Czech Republic	1 January 1993
Côte d'Ivoire	21 November 1960
Democratic Republic of the Congo	20 September 1960
Denmark	11 February 1932
Djibouti	3 August 1978
Dominica	28 February 1983
Dominican Republic	5 December 1956
Ecuador	6 July 1954
Egypt	29 November 1955
El Salvador	15 June 1995
Equatorial Guinea	13 August 2001
Eritrea	22 February 2000
Estonia	7 February 1996
Ethiopia	2 September 2003
Fiji	19 April 1974
Finland	13 January 1936
France	24 June 1937
Gabon	14 October 1960
Gambia	4 September 2000
Georgia	22 June 1993
Germany	13 June 1956
Ghana	20 May 1957
Greece	13 June 1952
Grenada	9 July 1979
Guatemala	13 June 1989
Guinea	21 January 1959
Guinea-Bissau	21 February 1977
Guyana	8 June 1966
Haiti	4 March 1958
Honduras	21 February 1957
Hungary	8 June 1956
Iceland	17 February 1958
India	30 November 1954
Indonesia	12 June 1950
Iran, Islamic Republic of	10 June 1957
Iraq	27 November 1962

Country	Date
Ireland	2 March 1931
Israel	7 June 1955
Italy	18 June 1934
Jamaica	26 December 1962
Japan	21 November 1932
Jordan	6 June 1966
Kazakhstan	18 May 2001
Kenya	13 January 1964
Kiribati	3 February 2000
Kuwait	23 September 1968
Kyrgyzstan	31 March 1992
Lao People's Democratic Republic	23 January 1964
Latvia	2 June 2006
Lebanon	1 June 1977
Lesotho	31 October 1966
Liberia	1 May 1931
Libya	13 June 1961
Lithuania	26 September 1994
Luxembourg	24 July 1964
Madagascar	1 November 1960
Malawi	19 November 1999
Malaysia	11 November 1957
Maldives	4 January 2013
Mali	22 September 1960
Malta	4 January 1965
Mauritania	20 June 1961
Mauritius	2 December 1969
Mexico	12 May 1934
Moldova, Republic of	23 March 2000
Mongolia	15 March 2005
Montenegro	3 June 2006
Morocco	20 May 1957
Mozambique	16 June 2003
Myanmar	4 March 1955
Namibia	15 November 2000
Nepal	3 January 2002
Netherlands	31 March 1933
New Zealand	29 March 1938
Nicaragua	12 April 1934
Niger	27 February 1961
Nigeria	17 October 1960

Country	Date
Norway	1 July 1932
Oman	30 October 1998
Pakistan	23 December 1957
Panama	16 May 1966
Papua New Guinea	1 May 1976
Paraguay	28 August 1967
Peru	1 February 1960
Philippines	15 July 2005
Poland	30 July 1958
Portugal	26 June 1956
Qatar	12 March 1998
Romania	28 May 1957
Russian Federation	23 June 1956
Rwanda	23 May 2001
Saint Kitts and Nevis	12 October 2000
Saint Lucia	14 May 1980
Saint Vincent and the Grenadines	21 October 1998
Samoa	30 June 2008
San Marino	1 February 1995
Sao Tome and Principe	4 May 2005
Saudi Arabia	15 June 1978
Senegal	4 November 1960
Serbia	24 November 2000
Seychelles	6 February 1978
Sierra Leone	13 June 1961
Singapore	25 October 1965
Slovakia	1 January 1993
Slovenia	29 May 1992
Solomon Islands	06 August 1985
Somalia	18 November 1960
South Africa	5 March 1997
South Sudan	29 April 2012
Spain	29 August 1932
Sri Lanka	5 April 1950
Sudan	18 June 1957
Suriname	15 June 1976
Swaziland	26 April 1978
Sweden	22 December 1931
Switzerland	23 May 1940
Syrian Arab Republic	26 July 1960
Tajikistan	26 November 1993

Country	Date
Tanzania, United Republic of	30 January 1962
Thailand	26 February 1969
The former Yugoslav Republic of Macedonia	17 November 1991
Timor-Leste	16 June 2009
Togo	7 June 1960
Trinidad and Tobago	24 May 1963
Tunisia	17 December 1962
Turkey	30 October 1998
Turkmenistan	15 May 1997
Uganda	4 June 1963
Ukraine	10 August 1956
United Arab Emirates	27 May 1982
United Kingdom	3 June 1931
Uruguay	6 September 1995
Uzbekistan	13 July 1992
Vanuatu	28 August 2006
Venezuela, Bolivarian Republic of	20 November 1944
Viet Nam	5 March 2007
Yemen	14 April 1969
Zambia	2 December 1964
Zimbabwe	27 August 1998

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

Date of entry into force: 17 January 1959

174 ratifications

Denounced: 2

Country	Date
Afghanistan	16 May 1963
Albania	27 February 1997
Algeria	12 June 1969
Angola	4 June 1976
Antigua and Barbuda	2 February 1983
Argentina	18 January 1960
Armenia	17 December 2004
Australia	7 June 1960
Austria	5 March 1958
Azerbaijan	9 August 2000
Bahamas	25 May 1976

Country	Date
Bahrain	14 July 1998
Bangladesh	22 June 1972
Barbados	8 May 1967
Belarus	25 September 1995
Belgium	23 January 1961
Belize	15 December 1983
Benin	22 May 1961
Bolivia, Plurinational State of	11 June 1990
Bosnia and Herzegovina	15 November 2000
Botswana	5 June 1997
Brazil	18 June 1965
Bulgaria	23 March 1999
Burkina Faso	25 August 1997
Burundi	11 March 1963
Cambodia	23 August 1999
Cameroon	3 September 1962
Canada	14 July 1959
Cape Verde	3 April 1979
Central African Republic	9 June 1964
Chad	8 June 1961
Chile	1 February 1999
Colombia	7 June 1963
Comoros	23 October 1978
Congo	26 November 1999
Costa Rica	4 May 1959
Croatia	5 March 1997
Cuba	2 June 1958
Cyprus	23 September 1960
Czech Republic	6 August 1996
Côte d'Ivoire	5 May 1961
Democratic Republic of the Congo	20 June 2001
Denmark	17 January 1958
Djibouti	3 August 1978
Dominica	28 February 1983
Dominican Republic	23 June 1958
Ecuador	5 February 1962
Egypt	23 October 1958
El Salvador	18 November 1958
Equatorial Guinea	13 August 2001
Eritrea	22 February 2000
Estonia	7 February 1996

Country	Date
Ethiopia	24 March 1999
Fiji	19 April 1974
Finland	27 May 1960
France	18 December 1969
Gabon	29 May 1961
Gambia	4 September 2000
Georgia	23 September 1996
Germany	22 June 1959
Ghana	15 December 1958
Greece	30 March 1962
Grenada	9 July 1979
Guatemala	9 December 1959
Guinea	11 July 1961
Guinea-Bissau	21 February 1977
Guyana	8 June 1966
Haiti	4 March 1958
Honduras	4 August 1958
Hungary	4 January 1994
Iceland	29 November 1960
India	18 May 2000
Indonesia	7 June 1999
Iran, Islamic Republic of	13 April 1959
Iraq	15 June 1959
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Libya	13 June 1961
Lithuania	26 September 1994
Luxembourg	24 July 1964
Madagascar	6 June 2007

Country	Date
Malawi	19 November 1999
Maldives	4 January 2013
Mali	28 May 1962
Malta	4 January 1965
Mauritania	3 April 1997
Mauritius	2 December 1969
Mexico	1 June 1959
Moldova, Republic of	10 March 1993
Mongolia	15 March 2005
Montenegro	3 June 2006
Morocco	1 December 1966
Mozambique	6 June 1977
Namibia	15 November 2000
Nepal	30 August 2007
Netherlands	18 February 1959
New Zealand	14 June 1968
Nicaragua	31 October 1967
Niger	23 March 1962
Nigeria	17 October 1960
Norway	14 April 1958
Oman	21 July 2005
Pakistan	15 February 1960
Panama	16 May 1966
Papua New Guinea	1 May 1976
Paraguay	16 May 1968
Peru	6 December 1960
Philippines	17 November 1960
Poland	30 July 1958
Portugal	23 November 1959
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Saudi Arabia	15 June 1978
Senegal	28 July 1961

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Slovenia	24 June 1997
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Tanzania, United Republic of	30 January 1962
Thailand	2 December 1969
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Turkey	29 March 1961
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United Arab Emirates	24 February 1997
United Kingdom	30 December 1957
United States	25 September 1991
Uruguay	22 November 1968
Uzbekistan	15 December 1997
Vanuatu	28 August 2006
Venezuela, Bolivarian Republic of	16 November 1964
Yemen	14 April 1969
Zambia	22 February 1965
Zimbabwe	27 August 1998
