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Office
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Report IV (1)

Strengthening action to end forced labour



**International
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Conference**

103rd Session 2014

ATTENTION

This report contains a questionnaire which, in accordance with article 38 of the Standing Orders of the International Labour Conference, calls for a reply from your Government, after consultation with the most representative organizations of employers and workers. The replies to this questionnaire must reach the Office no later than 31 December 2013.

International Labour Conference, 103rd Session, 2014

Report IV(1)

Strengthening action to end forced labour

Fourth item on the agenda

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Chapter 1

Introduction

1. Forced labour, contemporary forms of slavery and human trafficking are the subject of widespread international attention and concern. In adopting its first forced labour instrument, the Forced Labour Convention (No. 29), in 1930, the International Labour Conference (ILC) called upon member States to suppress the use of forced labour within the shortest possible period, and to criminalize the offence. Yet, over 80 years later, and despite almost universal ratification of the Convention, the practice still exists, albeit in different forms to those that provoked such concern in the early twentieth century. The liberalization of trade and heightened global competition, challenges to the governance of domestic labour markets and international labour migration, and long-standing patterns of discrimination and social exclusion, are among the many factors underpinning current day forced labour. Many countries have adopted laws and other measures to combat forced labour and related practices, some dating back many years, while others are more recent. But the persistence of these violations on an alarming scale provides incontrovertible evidence of the existence, globally, of significant implementation gaps.

2. According to the most recent ILO estimates at least 20.9 million people are victims of forced labour globally.¹ While the Asia and the Pacific region has the highest absolute number of victims, at 11.7 million, all world regions, and probably all countries, are affected. The estimated prevalence of forced labour, measured as the number of victims per 1,000 inhabitants, ranges from 1.5 per 1,000 in the developed economies and the European Union (EU), to approximately four per 1,000 in Central and South Eastern Europe and the Commonwealth of Independent States (CIS), and in Africa.² Turning to the sex and age profile of victims, women and girls are more affected (11.4 million), but men and boys are not far behind (9.5 million victims). One quarter (5.5 million) of all victims are children aged under 18.

3. While hard data on trends over time are lacking, country-based research shows that, alongside a decline in certain traditional forms of forced labour, new practices have emerged. Forced labour imposed by State authorities remains a concern in certain countries, but its scale nowadays is dwarfed by the use of forced labour at the hands of private individuals and enterprises operating outside the rule of law. The ILO estimates that 90 per cent of forced labour today occurs in the “private economy”. Three-quarters of this is in productive activities such as agriculture, domestic work, construction, fisheries and manufacturing, and the remainder involves commercial sexual exploitation. While labour mobility brings benefits to many workers and the economies to which they contribute, it is also an important risk factor in forced labour. Some 44 per cent of

¹ ILO (2012): *ILO global estimate of forced labour: Results and methodology*, Geneva.

² Appendix I presents the ILO’s estimates of forced labour by region.

victims (9.1 million) have migrated prior to their exploitation (15 per cent internally and 29 per cent across borders).

4. Forced labour is broadly defined by Convention No. 29 as any work or service exacted from a person against his or her free will, and under the menace of a penalty.³ While forced labour takes on various forms in practice, it displays many common features: perpetrators prey on vulnerable people who are unorganized and unable to defend and protect themselves; the means of coercion used may be overt in the form of physical restrictions or violence, but are often more subtle, involving deception and threats; and manipulation of wages, advance payments and debts for illegal job-related costs is widespread. Unclear or disguised employment relationships, particularly in the informal economy, represent a particular risk factor. Gaps in national legislation and law enforcement, and in coordination between countries, facilitate the crime.

5. The perpetrators of forced labour generate vast illegal profits, while their victims lose out financially through low or unpaid wages and inflated charges for food, shelter or recruitment, in addition to the devastating physical and emotional costs that they bear.⁴ Recent research shows that forced labour also has far broader social and economic consequences in terms of impeding economic development and perpetuating poverty.⁵ In short, forced labour works to the serious detriment of the exploited individuals and communities, and of the majority of law-abiding employers and enterprises who face unfair competition from those who operate outside the law.

6. Yet, despite these massive challenges, there are some grounds for optimism. The past decade has seen an upsurge in action to combat trafficking in persons, particularly following the entry into force in 2003 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁶ This instrument, for the first time, makes an explicit link between human trafficking and forced labour. Many States have since enacted legislation and adopted national action plans against human trafficking. Other actors, including employers' and workers' organizations and civil society groups more generally, have become involved in different ways. Although the focus was initially on combating trafficking for sexual exploitation, trafficking for forced labour has come increasingly to the forefront.

7. However, the emphasis in many of these efforts has been on increasing the detection of the crime and the prosecution of perpetrators, while preventive action and victim protection have been accorded lower priority. Moreover, there have been far fewer prosecutions of trafficking for labour than for sexual exploitation, even though the evidence indicates that there are many more victims of the former crime.

8. The relationship between forced labour, slavery and human trafficking remains the subject of ongoing debate. The present report focuses on "forced labour" as its central concept, in line with the ILO's mandate. "Trafficking in persons" is viewed as a closely

³ Definitions of forced labour and related concepts are considered in detail in Chapter 2.

⁴ The ILO has estimated the "opportunity cost" of forced labour at US\$21 billion annually, as the income foregone by workers through being in forced labour rather than a free employment relationship. ILC: *The cost of coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), 98th Session, Geneva, 2009, paras 145–150.

⁵ D. Acemoglu, C. García-Jimeno, and J.A. Robinson (2012): *Finding Eldorado: Slavery and long-run development in Colombia*, National Bureau of Economic Research, Working Paper 18177, Cambridge, Massachusetts.

⁶ The Trafficking Protocol supplements the United Nations Convention against Transnational Organized Crime, 2000.

related, but not identical phenomenon. There are forms of forced labour that may not be considered as trafficking in persons, such as forced prison labour and some instances of bonded labour. Similarly, there are forms of trafficking in persons, including for organ removal or for forced marriage or adoption, that are not necessarily forced labour (although the latter two practices could constitute forced labour if the intent is to exploit the labour of the woman or child). Nevertheless, there is a significant overlap between the two concepts, in so far as most trafficking in persons results in forced labour or sexual exploitation. Other closely related concepts, defined elsewhere in international law, include slavery and slavery-like practices, debt bondage, serfdom and servitude.

9. Convention No. 29 and the Abolition of Forced Labour Convention, 1957 (No. 105), are among the ILO's most widely ratified instruments.⁷ The elimination of all forms of forced labour is one of four fundamental principles and rights at work covered by the ILO Declaration on Fundamental Principles and Rights at Work, 1998, which all Members undertake "to respect, to promote and to realize, in good faith". The comments of the ILO supervisory bodies over many years, together with experience gained through technical cooperation with member States, provide important insights into the essential elements of a comprehensive and effective response to forced labour which addresses prevention, prosecution and victim protection within the broader framework of promoting decent work. Forced labour does not exist in a vacuum. It is an extreme manifestation of gaps and failures in a wide range of policies, institutions and enforcement mechanisms. It therefore has to be addressed in an integrated and coherent way if forced labour and all related practices are to be eliminated for good. While the prime responsibility in this respect lies with State institutions, the social partners also have a crucial role to play in mobilizing employers and workers worldwide to achieve this goal. Greater involvement of strong labour market institutions, including labour inspectorates, is a prerequisite for upholding labour rights at the workplace and preventing the occurrence of violations that may lead to forced labour.

10. Against this backdrop, in 2012 the ILC held its first recurrent discussion on fundamental principles and rights at work. The conclusions of this discussion include a framework for action for the effective and universal respect, promotion and realization of fundamental principles and rights at work, 2012–16.⁸ The framework calls on the 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".⁹ At its 316th Session in November 2012, the Governing Body decided to convene a meeting of experts on forced labour and trafficking for labour exploitation (hereinafter, the "February 2013 Meeting of Experts") to provide recommendations to its 317th Session regarding possible standards-related action in June 2014.¹⁰

⁷ Appendix II provides figures for the ratifications of key relevant ILO Conventions and other international instruments.

⁸ ILO: Resolution concerning the recurrent discussion on fundamental principles and rights at work, International Labour Conference, 101st Session, Geneva, 2012, paras 8–31.

⁹ *ibid.*, para. 22(c).

¹⁰ GB.316/INS/15/4, para. 3.

11. The Meeting of Experts was held in Geneva from 11 to 15 February 2013, with the participation of 23 Government, Employer and Worker experts, as well as several observers.^{11, 12} It concluded that there was “an added value in the adoption of supplementary measures to address the significant implementation gaps remaining in order to effectively eradicate forced labour in all its forms”. It reached consensus that these gaps “should be addressed through standard setting to advance prevention, protection and compensation measures”. It considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach consensus on this issue. It did not retain the option of a new Convention.

12. The 317th Session of the Governing Body (March 2013) examined proposals for the agenda of the 103rd Session of the ILC and beyond. It selected the item on supplementing Convention No. 29 “to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour” as a standard-setting, single-discussion item for the 103rd Session (2014) of the ILC.¹³

13. This summary report on law and practice has been prepared by the Office in accordance with article 38(1) of the Standing Orders of the ILC regarding the preparatory stages of a single-discussion procedure. It draws on the report prepared for the February 2013 Meeting of Experts, along with other sources of information, including the comments to individual member States and the General Surveys of the ILO Committee of Experts on the Application of Conventions and Recommendations (the “CEACR” or “Committee of Experts”) concerning the forced labour Conventions, ILO reports and research, documents of other international organizations, national laws and official sources. For the purpose of the preparation of the report, a database was developed by the Office compiling information on 133 member States concerning, inter alia: legislation, policies and action plans; institutional structures; law enforcement; and prevention, protection and compensation measures.¹⁴ It should be emphasized that the present report is not intended to be comprehensive in its coverage of national law and practice concerning forced labour, but rather presents a limited number of examples to illustrate key points and current practice.

¹¹ The observers represented the International Organisation of Employers (IOE), International Trade Union Confederation (ITUC), Council of Europe, International Organization for Migration (IOM), Office of the High Commissioner for Human Rights (OHCHR), United Nations Office on Drugs and Crime (UNODC), Anti-Slavery International and the Global Alliance Against Traffic in Women (GAATW). There were also seven Government observers.

¹² See tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation (Geneva, 11–15 February 2013), *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)* (TMELE/2013); the *Final report* (TMELE/2013/7); and the *Conclusions adopted by the Meeting* (TMELE/2013/6). The conclusions are reproduced in full in Appendix III to this report.

¹³ GB.317/INS/2(Rev.) and Record of Decisions, 25 March 2013. The Governing Body also selected the agenda item on facilitating transitions from the informal to the formal economy (standard-setting, double discussion) for the same session.

¹⁴ The database was compiled over the period October 2012 to April 2013. Information was not found on all issues in all the countries covered. Where numbers of countries are cited in this report, they therefore represent a minimum number. It was not always possible to verify whether the provisions contained in national law are implemented in practice, although every effort was made to validate the data where possible by cross-checking.

14. The remainder of this report is structured as follows. Chapter 2 sets out the international legal and policy context, including regional policy and coordination frameworks. The subsequent chapters address national policy and institutional frameworks (Chapter 3), prevention (Chapter 4), protection (Chapter 5), compensation and access to justice (Chapter 6) and enforcement (Chapter 7). Each chapter starts with an overview of the international legal framework, including the comments of the Committee of Experts, then examines national law and practice, including selected examples, and concludes with observations on implementation gaps and opportunities. The final chapter draws some overall conclusions and suggests elements for possible inclusion in new standard(s) to supplement Convention No. 29.

15. In accordance with article 38 of the Standing Orders of the ILC, the Office has drawn up a questionnaire with a view to the preparation of the new instrument(s), which is included at the end of this report. Attention is drawn to article 38(1) of the Standing Orders, which calls on governments “to consult the most representative organizations of employers and workers before finalizing their replies”. Governments are also requested to indicate the organizations that have been consulted. In accordance with the programme of reduced intervals for reports approved by the Governing Body, the deadline for the receipt by the Office of replies to the questionnaire is 31 December 2013.¹⁵

¹⁵ GB.317/INS/2(Rev.), Appendix III.

Chapter 2

International legal and policy context

16. The prohibition of forced or compulsory labour in all its forms is considered to be an established norm of customary international law. The fundamental ILO Conventions on the subject, Conventions Nos 29 and 105, as well as the Worst Forms of Child Labour Convention, 1999 (No. 182), which covers forced labour of children aged less than 18, are the most widely ratified ILO instruments.¹ In addition to these Conventions, a number of international and regional instruments and initiatives address forced labour, as well as slavery, institutions and practices similar to slavery and trafficking in persons.

The ILO legal framework for the elimination of forced labour

The forced labour Conventions

17. Convention No. 29 was adopted in 1930, when forced labour was perceived largely as a practice used by colonial administrations and in certain independent states. While taking special account of these practices, the ILC decided that the Convention should be of general application. Convention No. 105, adopted in 1957, is specifically aimed at the abolition of the compulsory mobilization and use of labour by the State for economic development purposes, as well as of forced labour as a means of political coercion or as punishment for the infringement of labour discipline.²

18. The basic obligation for a State which ratifies Convention No. 29 is “to suppress the use of forced or compulsory labour in all its forms” (Article 1(1)). This implies an obligation for the State both to abstain and to act – it must neither exact forced labour itself, nor tolerate its exaction by others. States parties to the Convention 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).

19. A series of transitional provisions set forth in Article 1(2) and (3) and Articles 3 to 24 of Convention No. 29 are deemed no longer applicable. Convention No. 29 provides that “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

¹ Appendix II contains a table showing the ratifications of these ILO Conventions, as well as of other key international instruments.

² For further information on the history and provisions of the ILO’s forced labour Conventions, see *Eradication of forced labour*, Report III (Part 1B), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the *Abolition of Forced Labour Convention*, 1957 (No. 105), ILC, 96th Session, 2007, and *Giving globalization a human face*, Report III (Part 1B), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, ILC, 101st Session, 2012 (hereinafter, the General Surveys of the Committee of Experts are referred to simply as, for example, the “2007 General Survey”).

guarantees hereinafter provided” (Article 1(2)). However, the ILO supervisory bodies have since considered that the use of forced or compulsory labour may no longer be justified by invoking these transitional provisions.³ In March 2010, the 307th Session of the Governing Body approved a revised report form under article 22 of the Constitution concerning Convention No. 29, which notes that information will no longer be requested under the transitional provisions as they are no longer applicable, reflecting the Governing Body’s view that the transitional period no longer applies.

20. The Convention defines forced 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” (Article 2(1)). “All work or service” refers to all types of work, service and employment, in any activity, industry or sector, including in the informal economy. The “menace of any penalty” covers a wide range of penalties, including both penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological threats or the non-payment of wages. A penalty may also take the form of a loss of rights or privileges. The terms “offered voluntarily” refer to the free and informed consent of workers to enter into an employment relationship and their freedom to leave their employment at any time. This freedom may be denied not only by an act of the authorities, such as a statutory instrument, but also by an employer or recruiter, for example through false promises made in order to induce a worker to take a job which he or she would not otherwise have accepted.

21. Convention No. 29 provides for certain exceptions from the definition of forced labour for: (a) compulsory military service for work of a purely military character; (b) normal civic obligations; (c) compulsory labour of convicted persons, carried out under the supervision and control of a public authority and provided that the persons are not hired to or placed at the disposal of private individuals, companies or associations; (d) cases of emergency, including war and calamities, such as fire, flood or famine; and (e) minor communal services performed by the members of the community in the direct interest of the community (Article 2(2)(a)–(e)).

22. When adopting the Convention, the ILO’s constituents opted for a broad definition of the term “forced labour”, rather than enumerating a list of prohibited practices. The Convention does not contain any provisions limiting its scope to certain categories of workers and is designed to protect the entire population. The Convention thus applies to *all possible forms of forced labour*, including slavery and slavery-like practices, debt bondage and trafficking in persons, and to *all workers in both the public and private sectors*. The ILO Committee of Experts has emphasized that States which ratify Convention No. 29 must develop a comprehensive legal and policy framework to suppress forced labour in all its forms.

23. Convention No. 105 supplements Convention No. 29 and calls for the “immediate and complete abolition of forced or compulsory labour” in five specific cases: “(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 mobilizing and using labour for the 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” (Article 1(a)–(e)).

³ See the 2007 General Survey, para. 10.

Other relevant ILO instruments

24. In 1998, the ILC adopted the ILO Declaration on Fundamental Principles and Rights at Work, under which all member States are committed to respect, promote and realize four categories of principles and rights, whether or not they have ratified the associated Conventions. These are: freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos 87 and 98); the elimination of forced labour (Conventions Nos 29 and 105); the abolition of child labour (Conventions Nos 138 and 182); and the elimination of discrimination in respect of employment and occupation (Conventions Nos 100 and 111).

25. The ILO Declaration on Social Justice for a Fair Globalization, adopted by the ILC in 2008, emphasizes the “inseparable, interrelated and mutually supportive” nature of the four strategic objectives of the ILO, namely: employment; social protection; social dialogue; and fundamental principles and rights at work, as both rights and enabling conditions necessary for the full realization of the four strategic objectives.

26. Several ILO standards explicitly prohibit forced labour or related practices among specific categories of vulnerable workers. They are:

- ❑ the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which calls for measures to suppress clandestine movements of migrants in abusive conditions (Article 3) and provides that one of the purposes of those measures is to enable the prosecution of labour trafficking (Article 5);⁴
- ❑ the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which prohibits the exaction of compulsory personal services (Article 11) and requires ratifying States to ensure that indigenous peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude (Article 20(3)(c));
- ❑ the Worst Forms of Child Labour Convention, 1999 (No. 182), which prohibits “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 worst forms of child labour against which members have to take immediate and effective measures to secure their prohibition and elimination; and
- ❑ the Domestic Workers Convention, 2011 (No. 189), which, in relation to domestic workers, calls for measures to respect, promote and realize the fundamental principles and rights at work, including the elimination of all forms of forced or compulsory labour (Article 3(2)).

27. Forced labour is often characterized by several simultaneous violations of labour law.⁵ Prevention of forced labour therefore requires effective enforcement of a range of ILO standards which create a protective legal framework against exploitation. In addition to the fundamental Conventions enumerated above, these include:

- ❑ the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), and the Protection of Wages Convention, 1949 (No. 95);

⁴ See also the Migration for Employment Convention (Revised), 1949 (No. 97).

⁵ See the 2012 General Survey, para. 321. This theme is further discussed in Chapters 4 and 7.

- ❑ the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which require Members to maintain a system of labour inspection;
- ❑ the Employment Policy Convention, 1964 (No. 122), which calls for the promotion of full, productive and freely chosen employment;
- ❑ the Private Employment Agencies Convention, 1997 (No. 181), which provides that agencies shall not charge any fees to workers (Article 7(1)) and that adequate procedures be established for the investigation of complaints, alleged abuses and fraudulent practices (Article 10); and
- ❑ the Employment Relationship Recommendation, 2006 (No. 198), which proposes that Members should formulate and apply a national policy of protection for workers in an employment relationship (Paragraphs 1–8).

Other relevant international and regional instruments

International instruments addressing forced labour, slavery and trafficking in persons

28. The United Nations (UN) has adopted a number of human rights instruments containing 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)). These rights are further elaborated in other UN instruments, including the International Covenant on Civil and Political Rights (1966) (Article 8) and the International Covenant on Economic, Social and Cultural Rights (1966) (Article 6(1)). Prohibitions of forced labour are also included in 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)).

29. The issue of slavery is covered by two principal treaties: the Slavery Convention (1926), 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) (the “Supplementary Slavery Convention”), which outlaws specified slavery-like practices, including debt bondage, serfdom, servile forms of marriage and the exploitation of children.

30. Trafficking in persons is addressed by a wide range of instruments. A series of international trafficking treaties adopted between 1904 and 1949 focus on the prohibition of trafficking in women and children for prostitution and other sexual purposes.⁶ Several human rights instruments also draw attention to the sale and trafficking of women and children.⁷

⁶ In 1949, several of these trafficking treaties were consolidated into the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950).

⁷ See, for example, the Convention on the Elimination of All Forms of Discrimination against Women (1979) (Art. 6), the Convention on the Rights of the Child (1989) (Art. 35) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) (Art. 1).

31. In 2000, the UN General Assembly adopted the Protocol to prevent, suppress and punish trafficking in persons, especially women and children (the “Trafficking Protocol”), supplementing the UN Convention against Transnational Organized Crime (the “UNTOC Convention”). The purposes of the Trafficking Protocol are: to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist victims; and to promote cooperation among States parties to meet these objectives (Article 2). It seeks to address “all aspects of trafficking in persons”, and as such adopts a broad definition of trafficking in persons consisting of three elements (Article 3(a)):

- (i) an “act” of recruitment, transportation, transfer, harbouring or receipt of persons;
- (ii) a “means”, namely the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or abuse of 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, that includes “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”.

32. In the case of children, an “act” committed for the “purpose” of exploitation is considered to constitute trafficking in persons even if none of the specified means is used. In all cases, the consent of a victim of trafficking to the intended exploitation is irrelevant where any of the specified means has been used (Article 3(b) and (c)).

33. The UNTOC Convention and its Protocols⁸ are principally criminal justice instruments. The Trafficking Protocol’s provisions create different levels of obligation, ranging from those that are mandatory, those that States should consider or endeavour to apply, to those that are entirely optional. However, the requirement to criminalize trafficking, set forth in Article 5, is a central and mandatory obligation of all States parties.⁹

34. Following the adoption of the Trafficking Protocol, OHCHR developed non-binding Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) (the “OHCHR Recommended Principles and Guidelines”), which provide guidance on how to integrate a human rights perspective into all anti-trafficking efforts.¹⁰

⁸ Other than the Trafficking Protocol, the UNTOC Convention is supplemented by the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (2001).

⁹ UNODC (2004): *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*, para. 36. The Guide also notes that neither transnationality nor the involvement of an organized criminal group should be included as elements of domestic offences of trafficking in persons, para. 45(a)–(b).

¹⁰ E/2002/68/Add.1.

The relationship between the forced labour Conventions and other international instruments

35. Historically, international action against severe forms of exploitation was directed towards the fight against slavery, resulting in the adoption of a number of bilateral and multilateral Conventions prohibiting such practices, including the 1926 and 1956 Slavery Conventions. In parallel, heightened international concern about forced labour practices led to the adoption of the two ILO forced labour Conventions in 1930 and 1957, respectively. Given the close historical relationship between slavery and forced labour, institutional action against forced labour has been seen as an extension of earlier measures aimed to suppress slavery.¹¹

36. More recently, international attention and action has focused on human trafficking. The adoption of the Trafficking Protocol in 2000 reflected growing concerns about transnational organized crime and the related phenomena of the smuggling of migrants and trafficking in persons.

37. In considering the relationship between the Trafficking Protocol and Convention No. 29, the ILO Committee of Experts has noted that the notion of exploitation of labour in the Protocol's definition of trafficking allows for a link to be established between the two instruments. It has also observed that the "means" that comprise an element of the definition of trafficking – including the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability – exclude the voluntary offer or consent of the victim.¹² The Committee of Experts has examined trafficking and forced labour of children under Convention No. 182 since that instrument entered into force in 2000. Since 2001, it has systematically examined the issue of trafficking in its comments under Convention No. 29 and has requested information on the measures taken by governments to prevent, suppress and punish trafficking in persons.¹³

Regional instruments related to forced labour

38. A number of regional treaties, including in Europe, the Americas, Africa, the Commonwealth of Independent States and the Arab States, contain prohibitions of slavery, forced or compulsory labour and trafficking in persons.¹⁴ Non-binding instruments, such as the MERCOSUR Social and Labour Declaration (1998), the Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) of the Association of Southeast Asian Nations (ASEAN) and the ASEAN Human Rights Declaration (2012) provide further normative guidance.

39. Several regional legal instruments focus specifically on trafficking in persons, including the Inter-American Convention on International Traffic in Minors (1994) and the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)

¹¹ See the 1968 General Survey, paras 4 and 5.

¹² See the 2012 General Survey, para. 297.

¹³ See Report of the Committee of Experts, 2001, general observation on Convention No. 29 (the comments of the Committee of Experts are available on the NORMLEX website).

¹⁴ See, for example, the European Convention on Human Rights (1950) (Art. 4), the European Social Charter (1961) and European Social Charter (Revised) (1996) (Art. 1(2)), the American Convention on Human Rights (1969) (Art. 6), the African Charter on Human and Peoples' Rights (1981) (Art. 5), the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (1995) (Art. 4) and the Arab Charter on Human Rights (2004) (Art. 10).

(the “SAARC Convention”). Two other regional legal instruments are broader in scope. The Council of Europe Convention on Action against Trafficking in Human Beings (2005) (the “European Trafficking Convention”) expressly seeks to strengthen the protection afforded by other anti-trafficking instruments and “to raise the standards which they lay down”.¹⁵ Its provisions on prevention and the protection of victims are accordingly more comprehensive than those of the Trafficking Protocol, and are mostly framed in mandatory terms.¹⁶ The EU Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (the “EU Trafficking Directive”) also seeks to strengthen prevention and victim protection measures (Article 1). Both instruments adopt a definition of trafficking that largely mirrors that of the Trafficking Protocol.

International and regional policy and cooperation frameworks

40. The February 2013 Meeting of Experts emphasized the importance of cooperation at the national, regional and international levels and within the multilateral system, while noting that significant implementation gaps remain.

41. Several ILO instruments include specific provisions on international cooperation and assistance. For example, Convention No. 182 requires members to assist one another in giving effect to the Convention through enhanced international cooperation and/or assistance, including support for development, poverty eradication and universal education (Article 8).¹⁷ The Committee of Experts has suggested measures that countries could take, such as participation in international or regional associations, investing in technical assistance and drawing up regional and bilateral memoranda of understanding.¹⁸

42. One of the three stated purposes of the Trafficking Protocol is to promote international cooperation (Article 2(c)). It calls for cooperation between the law enforcement, immigration and border control agencies of States parties (Articles 10(1) and 11(6)). Other regional trafficking instruments similarly emphasize the importance of international cooperation.¹⁹

43. In 2010, the UN General Assembly adopted a Global Plan of Action to Combat Trafficking in Persons, which calls on member States to take urgent action against trafficking in persons, including measures for the prevention of trafficking in persons, protection and assistance to victims and the prosecution of crimes of trafficking in persons.²⁰ It also calls for stronger partnerships, enhanced cooperation among international organizations and government authorities, civil society, the private sector, the media and workers’ and employers’ organizations.

¹⁵ Council of Europe (2005): *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report*, Council of Europe Treaty Series No. 197, para. 6 of the Explanatory Report.

¹⁶ Other differences include the requirement in the European Trafficking Convention for criminal offences to be punishable by “effective, proportionate and dissuasive sanctions”, including prison sentences that can give rise to extradition (Art. 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) (Art. 36).

¹⁷ The Domestic Workers Convention, 2011 (No. 189), contains a similar provision requiring cooperation between Members (Art. 8(3)).

¹⁸ See, for example, the 2012 General Survey, paras 610–625.

¹⁹ See, for example, the SAARC Convention (Arts II and VI–VIII) and the European Trafficking Convention (Chapter VI).

²⁰ United Nations Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293), para. 4.

44. There are numerous subregional, regional and cross-regional mechanisms and initiatives on human trafficking.²¹ In Asia, the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), established in 2004, is governed by six national task forces. Its current subregional plan of action includes goals in five areas: policy and cooperation; legal frameworks, law enforcement and justice; protection, recovery and reintegration; preventive measures and vulnerability reduction; and monitoring, evaluation and anti-human trafficking data systems. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, initiated in 2002, is a voluntary regional and multilateral process involving over 40 countries and several international agencies. Although its main focus is on combating irregular migration through coordinated law enforcement, the root causes of the problem are increasingly being taken into consideration.

45. In Africa, the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children, was adopted by the EU and African States in November 2006. It reflects a broad commitment to cooperation by European and African States for the identification, assistance, protection and repatriation of victims, information sharing, and prevention and prosecution efforts. There are also subregional initiatives and action plans led by the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Southern African Development Community (SADC).

46. The EU, the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe all facilitate processes of regional cooperation. Following the adoption of the Trafficking Directive in 2011, the European Commission adopted the EU Strategy towards the Eradication of Trafficking in Human Beings (2012–16), which includes concrete measures to ensure the effective implementation of anti-trafficking legislation and facilitate cooperation between EU Member States and other countries.

47. In the Americas, MERCOSUR and the Organization of American States (OAS) have adopted action plans against trafficking in persons. At the Fourth Summit of the Americas, in 2005, the Heads of State made a commitment to eradicate forced labour.

48. In 2010, the Arab Initiative for building national capacities to combat human trafficking was launched in Doha, Qatar, in collaboration with the Arab League.

Conclusion: Implementation gaps and opportunities

49. The prohibition of forced labour and related practices is clearly established in international law, and the definition of forced labour in Convention No. 29 remains entirely relevant today. The forced labour Conventions have together played an important role in the global fight against these violations of human and labour rights, along with other international instruments.

50. Nonetheless, serious implementation gaps exist in practice, as identified by the February 2013 Meeting of Experts. Subsequent chapters of this report will examine specific implementation gaps in relation to the provisions of Convention No. 29 and other international instruments.

²¹ See also the 2010 report of the United Nations Special Rapporteur on Trafficking in Persons, especially women and children (A/HRC/14/32).

51. With respect to international and regional coordination and cooperation, most of the recently established mechanisms address human trafficking. These have contributed to the harmonization of laws between countries and to increased cross-border cooperation, which is often focused on criminal law enforcement.

52. A broader approach to international cooperation could address all forms of forced labour, cover a more comprehensive set of objectives and interventions and involve a wider range of stakeholders. In particular, it could incorporate a stronger focus on measures to prevent forced labour, including through labour market-based approaches, and provide for the participation of labour market institutions in international coordination mechanisms. A new instrument could include specific standards and guidance on enhanced international coordination, cooperation and technical assistance for the effective elimination of forced labour.

Chapter 3

National policy and institutional frameworks

International legal framework

53. Ending forced labour demands multifaceted responses which cut across ministerial boundaries, as well as close cooperation with the social partners and a wide range of civil society actors. Labour market institutions have a vital role to play, as universal access to decent work lies at the heart of any long-term solution. A clear national legal and policy framework should set out an integrated approach that addresses all forms of forced labour, all aspects of the action required for its elimination and the means for effective coordination between the many stakeholders.

54. Convention No. 29 provides no specific guidance on national policies and institutional frameworks for the elimination of forced labour. In contrast, Convention No. 182 requires Members to “design and implement programmes of action to eliminate as a priority the worst forms of child labour” in consultation with “relevant government institutions and employers’ and workers’ organizations, taking into consideration the views of other concerned groups as appropriate” (Article 6). They are also required to “establish or designate appropriate mechanisms to monitor the implementation” of the provisions giving effect to the Convention (Article 5). The accompanying Recommendation No. 190 provides specific guidance on the compilation of statistics (Paragraph 5).

55. Under the Trafficking Protocol, States parties are required to establish “comprehensive policies, programmes and other measures” to prevent and combat trafficking and to protect victims, especially women and children, from revictimization (Article 9(1)). The OHCHR Recommended Principles and Guidelines affirm the importance of national plans of action and broad consultation with stakeholders (Guideline 1) and of research and evaluation (Guideline 3).

56. The European Trafficking Convention requires each party to “take measures to establish or strengthen national coordination between the various bodies responsible for preventing and combating trafficking in human beings” and to “establish and/or strengthen effective policies and programmes to prevent trafficking” (Article 5(1) and (2)). It also calls on the parties to “consider appointing national rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements” (Article 29(4)).

57. The ILO Committee of Experts has drawn the attention of many governments to the importance of adopting an overall national strategy to combat forced labour with a view to ensuring comprehensive and concerted action by the responsible public agencies,

with particular reference to labour inspection.¹ A clear national policy provides a 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.

58. The February 2013 Meeting of Experts emphasized the importance of allocating adequate resources for the effective implementation of measures concerning prevention, victim protection, compensation and enforcement. It concluded that policy coherence needs to be reinforced with respect to forced labour, including trafficking for forced labour. It also highlighted the usefulness of social dialogue, the involvement of the social partners and the adoption of results-oriented national action plans.

National law and practice

National policies and action plans

59. A national policy and the associated programme of action against forced labour and related practices should include, as a minimum: research and statistics to identify target groups and the main forms of forced labour; analysis of the legal framework and any gaps; interventions relating to prevention, protection and prosecution; coordination among stakeholders and institutions; and a monitoring and evaluation framework.

60. National policies and action plans to combat forced labour and/or human trafficking have been adopted in the majority of countries reviewed for the purpose of the present report. 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 to Eradicate 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 of origin of forced labourers. In Peru, the implementation of the second National Plan to Combat Forced Labour, adopted in 2013, is coordinated by an inter-ministerial National Commission to Combat Forced Labour, in which employers’ and workers’ organizations participate.

61. Policies and action plans against bonded labour systems have also been introduced in several Asian countries. 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: surveys to establish the extent of bonded labour; the sensitization of judicial law enforcement, labour and district officials; vocational training of families in bondage; and the creation of legal aid cells. In Nepal, a revised National Plan of Action against Bonded (Child) Labour, adopted in 2009, includes measures such as law enforcement, awareness raising and advocacy, education, and income and employment generation.

62. However, action plans against forced labour are less numerous than those against human trafficking, which have been adopted by most States following ratification of the Trafficking Protocol. These action plans usually contain specific sections on prosecution, victim protection and prevention. In some countries, Ministries of Labour have been

¹ See, for example, the following observations on the application of Convention No. 29: Niger – CEACR, observation, 2011; Mauritania – CEACR, observation, 2010; Argentina – CEACR, observation, 2010; Mexico – CEACR, observation, 2010; Zambia – CEACR, observation, 2011. The comments of the Committee of Experts (CEACR) are available on the ILO standards website (NORMLEX).

actively involved in the design of the action plans and labour market measures are well integrated into the overall strategy. For example, Jordan adopted a national strategy for combating trafficking in 2010 (currently being updated) with several provisions on labour-related measures. In the Ukraine, the national action plan against trafficking in persons, 2012–15, includes a range of labour market-based prevention and protection measures.

63. The United Kingdom Action Plan on Tackling Human Trafficking was adopted in 2007 following a broad consultation process with the various stakeholders. Similarly, the Thai Prime Minister chaired meetings with labour and civil society organizations to coordinate anti-trafficking efforts in 2010, leading to the adoption of the National Policy and Strategy on Human Trafficking (2011–16). Such consultation processes can help to ensure the implementation of effective multidisciplinary responses.

64. Most action plans, however, whether they address forced labour, trafficking or slavery-like practices, lack monitoring and evaluation mechanisms. Another general weakness is the lack of specific budgetary allocations for their implementation.

National coordination mechanisms

65. A majority of countries have established national coordination mechanisms against forced labour and/or trafficking, such as national commissions, inter-ministerial task forces or national councils.² These coordination mechanisms are sometimes set up by law or a decree issued at the highest executive level. In other cases, coordination is more ad hoc, led by a specific ministry or another executive body. Experience has shown that a formal coordination mechanism, with the mandate to ensure the implementation of national policies and plans, is more likely to yield positive results. National commissions should also undertake or ensure regular monitoring and reporting on the progress and impact of implementation.

66. Most national commissions or similar coordination bodies have been established since the entry into force of the Trafficking Protocol. They tend to focus on trafficking in persons, and sometimes exclusively on the trafficking of women and children for sexual exploitation. In some countries, parallel structures have emerged addressing trafficking in persons and forced or bonded labour, respectively. One example is Peru, where the Standing Multi-sectoral Working Group on Trafficking in Persons was established by Presidential Decree No. 002-2004-IN in February 2004, while the National Commission to Combat Forced Labour was set up in January 2007 under the leadership of the Minister of Labour and Employment Promotion. In Pakistan, implementation of the national action plan on bonded labour (2001) is the responsibility of a national committee chaired by the Minister of Labour, Manpower and Overseas Pakistanis,³ while the Strategy against Trafficking, adopted in 2005 and recently updated, is overseen by an Inter-Ministerial Committee on Human Trafficking headed by the Minister of the Interior.

67. In 2013, the Government of Mauritania established a National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (ANLSESILP) to expand existing programmes for the identification of former slaves and the provision of alternative livelihoods.

² The database of 133 countries compiled for this report shows that 80 countries have a national plan of action and 86 have a national coordination body, while 40 use other measures to promote cooperation.

³ This function has recently been decentralized to provincial governments.

68. The involvement of civil society organizations in national coordination mechanisms has proven useful, as they can play a key role in awareness raising, victim assistance and prevention measures. Collaboration with non-governmental organizations (NGOs) is now standard practice in many countries, although the extent of their involvement varies considerably. Very few countries systematically involve employers' and workers' organizations in their national coordination mechanisms. Moreover, social dialogue commissions do not tend to address forced labour and trafficking issues. However, there are some notable examples of action against forced labour taken by or involving employers' and workers' organizations. In Ireland, for example, the Anti-Human Trafficking Unit under the Ministry of Justice and Equality has set up working groups on specific issues, some with trade union participation.

69. The important contribution that employers and workers can make to combating forced labour is highlighted in later chapters. While such involvement is highly desirable, with the exception of Convention No. 182, none of the existing international instruments addressing forced labour, slavery and trafficking makes explicit reference to the role of workers' and employers' organizations in preventing and combating forced labour and related practices.

Research, reporting and monitoring

70. Research, including gender- and age-disaggregated statistics on the prevalence of forced labour, is vital for sound policy design, implementation and monitoring. In most countries, the knowledge base of the scale and forms of forced labour is still weak, fragmented and not based on the use of replicable methodologies. As forced labour issues are difficult to investigate through standard national statistical surveys, this is not surprising. Growing awareness of forced labour and human trafficking, however, has led to enhanced research efforts on these topics in recent years, sometimes with the support of the ILO or other international organizations. For example, in Niger, the ILO supported the implementation of a national survey on forced labour of adults and children by the national statistical institute. Similar surveys, although not always national in scope, have been undertaken in several other countries, including the Republic of Moldova and Nepal.⁴

71. Most national action plans include a specific section on research and data collection, which often focuses on the number and profile of identified victims. While such information is important, it does not reveal the true scale of the problem. Almost 50 of the countries reviewed for this report have an institutionalized mechanism for data collection, primarily on trafficking. One example is the Portuguese "observatory", which compiles data from various enforcement agencies and NGOs. Similar systems are now in place in many other EU Member States. In Brazil, mobile inspection teams record the number of rescued forced labourers and their socio-economic status, in order to monitor the impact of public policies on prevention and reintegration.

72. A common problem in national data collection systems and surveys is the lack of harmonized definitions and indicators of forced labour, trafficking and related practices. Another widespread problem is the lack of a designated body to take responsibility for data collection and analysis. As forced labour and trafficking are not covered by regular household and labour force surveys, national bureaux of statistics generally require capacity strengthening if they are to implement periodic surveys on these issues. It may also prove effective to appoint an independent national rapporteur. National rapporteurs

⁴ ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children*, Geneva, 2012.

on human trafficking were first introduced in the EU,⁵ and later promoted across OSCE Member States.⁶ The EU Trafficking Directive requires Member States to establish a national rapporteur or equivalent mechanism with responsibility for collecting and compiling data, assessing the national measures taken to combat trafficking and reporting on progress (Article 19). While the transposition of the Directive is still in progress in some countries, comprehensive national reports have already been issued, for example by the Belgian, Dutch and Finnish rapporteurs.

73. In some other countries, reports are published by a national commission or a specific ministry. For example, the National Committee to Combat Human Trafficking of the United Arab Emirates publishes annual reports on its website on progress in implementing the national action plan. In the United States, the William Wilberforce Trafficking Victims Protection Reauthorization Act, 2008, establishes extensive reporting and monitoring requirements, both within the country and abroad.

Conclusion: Implementation gaps and opportunities

74. While national planning, institutional coordination and reporting are being improved over time, in the majority of countries these efforts focus specifically on human trafficking, with other forced labour issues being dealt with either separately or not at all. There could be added value, in some instances, in addressing *all* forms of forced labour and trafficking through a single-policy framework and coordination body, thereby promoting greater coherence in national responses. Such an arrangement would probably require a decision at the highest executive level to assign clear responsibilities to the various government departments.

75. Although national action plans have been established in many countries, very few involve the social partners in either coordination bodies or the implementation of specific activities. Greater involvement of the social partners in the coordination, design, implementation and monitoring of national action plans could address some of the gaps identified later in this report, particularly in relation to labour market-based measures. Another implementation gap concerns data collection. Current efforts in this regard are often fragmented and lack institutional support. Without reliable national statistics on forced labour, governments struggle to design targeted policy measures and monitor and evaluate their impact.

76. A new international instrument(s) could highlight the importance of national policy coherence and coordination to ensure greater impact of the measures taken against forced labour and related practices. It could also provide specific standards and guidance on the involvement of the social partners in such measures. Finally, it could include guidance on data collection, including the harmonization of indicators of forced labour.

⁵ See Council of the European Union Resolution 2003/C 260/3 on initiatives to combat trafficking in human beings, in particular women, and the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, of 26 Apr. 1997.

⁶ OSCE Brussels Ministerial Decision No. 14/06 on enhancing efforts to combat trafficking in human beings, including for labour exploitation, through a comprehensive and proactive approach.

Chapter 4

Prevention

International legal framework

77. Effective prevention strategies attack the root causes rather than the symptoms of forced labour and are widely recognized as being crucial for its sustainable elimination. Without effective prevention, investment in other critical areas, such as victim identification, protection and law enforcement, cannot fully solve the problem, as new victims may simply replace those who are released. Prevention therefore has to be an integral part of any strategy to combat forced labour and related practices.

78. In the early international legal instruments against forced labour and slavery-like practices, the requirement for States to take preventive measures is implicit rather than explicit. The obligation under Convention No. 29 to suppress the use of forced labour implies the necessity for preventive action, and the imposition of penal sanctions acts as a powerful deterrent to perpetrators.¹ The same implication arises under Article 1 of the 1956 Supplementary Slavery Convention, which requires States parties to “take all practicable and necessary legislative and other measures to bring about ... the complete abolition or abandonment” of the slavery-like practices outlawed by the instrument. In contrast, more recent international and regional instruments against trafficking in persons include explicit prevention provisions, whether mandatory or non-binding. Similarly, Convention No. 182 requires States to implement effective measures to prevent the engagement of children in forced labour (Article 7(2)(a)).

79. The prevention measures proposed in anti-trafficking instruments can broadly be divided into two categories. The first aims to reduce the risk of vulnerable individuals or groups becoming victims, while the second targets a reduction in the so-called “demand” for certain products and services that are liable to foster the exploitation of people, whether for sexual or other purposes.

80. The Trafficking Protocol, in Part III on “Prevention, cooperation and other measures”, sets out a general obligation that States parties “shall establish comprehensive policies, programmes and other measures” to prevent and combat trafficking in persons and protect against revictimization” (Article 9(1)(a) and (b)). Cooperation with civil society and other relevant organizations shall be included “as appropriate” (Article 9(3)).²

¹ As noted in Chapter 2, the obligation to suppress the use of forced labour implies an obligation for the State to both abstain and to act. Recent policy and legal developments reflect growing acceptance that States have a duty to protect against non-State human rights abuses within their territory and/or jurisdiction. See, for example, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (A/HRC/17/31); and European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, judgment of 7 Jan. 2010.

² Other Articles in Part III of the Trafficking Protocol contain provisions on information exchange and training, border measures and security of travel or identity documents.

81. With regard to preventive measures aimed at reducing vulnerability, the Trafficking Protocol provides that States parties “shall endeavour” to undertake measures such as research, information and mass media campaigns and social and economic initiatives (Article 9(2)). It further requires them to “take or strengthen measures” to alleviate factors such as poverty, underdevelopment and lack of equal opportunity, that make people vulnerable to trafficking (Article 9(4)).

82. With reference to demand reduction measures, the Trafficking Protocol includes mandatory language that States parties “shall adopt or strengthen legislative or other measures ... to discourage the demand that fosters all forms of exploitation of persons ... that leads to trafficking”. These measures may include “educational, social or cultural measures”, including through bilateral and multilateral cooperation (Article 9(5)). More specific suggestions made subsequently to States parties include: measures to regulate, register and license private recruitment agencies; raise the awareness of employers to ensure their supply chains are free of trafficking in persons; enforce labour standards and regulations through labour inspections and other relevant means; protect the rights of migrant workers; and discourage the use of the services of victims of trafficking.³

83. Various regional instruments provide for specific and sometimes mandatory, prevention measures. Article 5 of the European Trafficking Convention includes six provisions on prevention, including one requiring the promotion of a human rights-based approach and another on specific measures to reduce the vulnerability of children to trafficking. Under Article 6 on “demand”, educational programmes for boys and girls “which stress the unacceptable nature of discrimination based on sex” are among the measures required. Article 19 requires States parties to consider taking measures to criminalize the knowing use of the services of a victim of trafficking.

84. The SAARC Convention calls on States to consider taking measures for the supervision of employment agencies in order to prevent trafficking “under the guise of recruitment” (Article VIII(6)) and suggests that States focus their preventive and development efforts on known source areas.

85. One new aspect covered by the OHCHR Recommended Principles and Guidelines is that States shall exercise due diligence in eradicating public sector involvement or complicity in trafficking (Principle 6). The measures suggested in Guideline 7 on prevention include informing potential migrants about the risks, including of exploitation and debt bondage, and the avenues available for “legal, non-exploitative migration”. States may also consider “modifying policies that may compel people to resort to irregular and vulnerable labour migration”, including by examining the effect on women of repressive or discriminatory laws. Other measures include basic education, skills training and literacy for traditionally disadvantaged groups, improving children’s access to education and ensuring the provision to all persons of legal documentation for birth, citizenship and marriage.

³ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, “Activities of the Working Group on Trafficking in Persons”, report submitted by the Chair of the Working Group, fifth session, 18–22 October 2010 (CTOC/COP/2010/6), para. 66.

86. The ILO Committee of Experts has highlighted particular preventive measures in its comments to member States, including awareness-raising activities for the general public and measures for specific vulnerable groups, such as migrant, domestic and informal economy workers and indigenous peoples.⁴ It has also emphasized the dissuasive effect on potential offenders of penal sanctions for the exaction of forced labour.

87. In addition to Convention No. 29, many other ILO standards contribute to the prevention of forced labour.⁵ Taken together, these instruments provide a legal framework which guarantees a range of key labour rights, thereby preventing conditions that may lead to the emergence of forced labour, trafficking and slavery-like practices. Key among these rights is freedom of association and recognition of the right to collective bargaining. If vulnerable workers are organized, they are better able to assert their rights and resist possible coercion and exploitation than if they act alone, in isolation and without the support of their peers. The Protection of Wages Convention, 1949 (No. 95), contains a number of important provisions in this respect, such as those regulating allowances in kind (Article 4), wage deductions (Articles 8 and 9) and the regular payment of wages (Article 12). The Employment Relationship Recommendation, 2006 (No. 198), identifies the need for national policy to include measures, inter alia, to combat disguised employment relationships and notes that situations can arise “where contractual arrangements have the effect of depriving workers of the protection they are due” (Paragraph 4(b)).

88. The February 2013 Meeting of Experts emphasized that prevention should be systematically considered by national authorities and social partners. It highlighted the preventive role of labour administration and inspection, and the need for better coordination with other law enforcement agencies and relevant authorities. It called for reinforced efforts for awareness raising among vulnerable groups, and for data collection, knowledge sharing and research to inform the design of prevention measures. Finally, it emphasized the need to address “the trade in goods or services that could be tainted by forced labour”.

National law and practice

89. While broad consensus exists on the vital importance of prevention within an overall strategy to eliminate forced labour, limited attention and resources are often devoted to this aspect in practice. The most commonly adopted prevention measures are awareness-raising campaigns and training and sensitization of law enforcement officers.⁶ These activities tend to focus on human trafficking, rather than broader forced labour concerns.

⁴ See, for example, under Convention No. 29: Argentina – CEACR, observation, 2012, on strengthening labour inspection to combat trafficking; Indonesia – CEACR, observation, 2012, on regulating the recruitment of migrant workers; Myanmar – CEACR, observation, 2013, on awareness-raising activities; Pakistan – CEACR, observation, 2012, on measures to address the causes of debt bondage; Thailand – CEACR, observation, 2012, on the protection of migrant fishers. Under Convention No. 169: India – CEACR, observation, 2012, on measures to benefit tribal peoples, including education, training and employment; Paraguay – CEACR, observation, 2012, on measures to prevent forced labour of indigenous peoples.

⁵ See Chapter 2 for information on other relevant ILO instruments.

⁶ The database of 133 countries compiled for this report shows that 100 countries conduct awareness-raising campaigns for the general public and 64 target vulnerable groups, while 101 undertake training and sensitization for law enforcement officers.

90. As prevention measures need to address the root causes of forced labour and related practices, these causes should be examined in greater detail.

91. The first area of causality concerns the “vulnerability” of workers to forced labour. Specific population groups tend to be more at risk than others, including migrant workers, indigenous and tribal peoples and the low skilled. While gender may exacerbate this risk, especially in relation to forced sexual exploitation and forced domestic work, it is important to recall that both sexes, and people of all ages, are affected by forced labour. Factors that increase vulnerability to forced labour include discrimination and social exclusion, the lack or loss of assets (including land) and of local jobs or alternative livelihoods, and inadequate skills or access to formal credit and social protection systems, which may be related to gender or indigenous status. The absence of reliable information sources, for example regarding regular migration channels and the legitimacy of recruitment agents, means that many migrant workers are exposed to unnecessary risk. Multiple forms of dependency on employers (including for housing, food and work permits) increase worker vulnerability, for instance in the case of domestic workers. Where people are physically and socially isolated, and are not organized or represented collectively, personal vulnerability is exacerbated. Specific factors affecting children include the practice of sending them to live with relatives in urban centres, the lack of local schools and low educational expectations for girls. The corresponding prevention responses can be broadly classified as “awareness, social and economic empowerment” targeted at the most vulnerable population groups and areas.

92. The second area of causality concerns the environment in which forced labour practices occur, especially in terms of the perpetrators. Poor law enforcement, leading to impunity for forced labour and related violations, is a major underlying causal factor. If the use of forced labour is perceived as “low risk”, a minority of unscrupulous employers may consider it a risk worth taking to gain an unfair profit. Other causal factors include: excessive pressure on employers to cut costs, especially in labour-intensive industries, or unrealistic production deadlines or targets imposed by buyers; corruption and poor governance; gaps in knowledge among employers of labour law, or practical impediments to its application; the enforcement challenges presented by long and complex supply chains involving multiple subcontractors or spanning several locations or countries, and by the burgeoning informal economy; and inadequate regulation of private employment agencies or brokers who recruit and sometimes employ workers. The absence of written contracts of employment, especially in informal enterprises, and disguised employment relationships, are also of concern. Causal factors linked to long-standing practices, such as the payment of wage advances or societal attitudes (including discrimination on various grounds) are particularly challenging.

93. A lack of effective coordination and collaboration between stakeholders also creates an environment in which forced labour can emerge or go undetected. Weaknesses in coordination, for example, between different parts of government, between government and civil society or between the areas or countries of origin and destination of migrant workers, create gaps in enforcement and regulation. The prevention measures called for broadly concern the “strengthened application of law, coordination and cooperation”.

94. A third area of causality concerns the traders, retailers, users and consumers of the products or services that may have been produced, delivered or otherwise tainted by forced labour practices. While the nature of “demand” for such goods or services is complex and subject to debate, lack of information means that people are usually not

able to make informed choices about what they buy, use or consume.⁷ Consumer-based prevention responses aim to increase transparency, information and public awareness about the conditions under which particular goods and services are produced. The potential to alter consumer purchasing behaviour creates a market-based incentive for companies throughout supply chains to operate in full respect of national and international labour (and other) standards.

95. The causes of forced labour and trafficking are multiple, complex and interrelated, and prevention strategies that address only a single or a very limited range of causes will therefore be limited in their effectiveness and impact. While most countries have undertaken some prevention initiatives, few of these initiatives have been subject to rigorous assessment and evaluation, meaning that the lessons of experience cannot be used to inform the design of future strategies.

National legal frameworks on prevention

96. In general terms, the existence of strong legislation outlawing forced labour itself plays an important preventive role, as it enables victims to lodge complaints and has a strongly dissuasive effect on potential offenders. However, in cases where the sanctions are not of the required penal nature and are not proportionate to the severity of the offence (such as a fine or very short prison sentence), or where the law is not properly enforced, the deterrent effect is much reduced.

97. Relatively few countries include explicit provisions on the prevention of forced labour in their national laws. The bonded labour legislation in several South Asian countries, for example, includes no reference to prevention. Such measures are more often included in national action plans or similar operational frameworks, particularly concerning trafficking in persons.

98. The United States Victims of Trafficking and Violence Protection Act of 2000 and the subsequent reauthorization acts include provisions on “economic alternatives to prevent and deter trafficking” focusing on activities to be conducted outside the United States in the countries of origin of trafficked workers. The Act calls for international initiatives “to enhance economic opportunity for potential victims of trafficking”, such as microcredit, skills training, and programmes to keep children in school and to promote women’s participation in economic decision-making (section 106).

99. Other examples of anti-trafficking laws with prevention provisions include those enacted since the adoption of the Trafficking Protocol. In Zambia, for example, the Anti-Human Trafficking Act, 2008, provides for public awareness programmes to: inform persons at risk of, inter alia, recruitment techniques used by traffickers, forms of abuse, and agencies that provide assistance; educate victims on their rights; and discourage demand that fosters the exploitation of victims, especially women and children. The Law on Combating Human Trafficking, 2006, in Georgia contains comprehensive provisions on prevention, including through programmes to reduce poverty, underdevelopment, unemployment and unequal access to opportunities, and to eliminate all forms of discrimination.

⁷ The term “demand” in the context of forced labour and trafficking is commonly used to apply to a range of actors and interests, including employers, recruiters, corporations and end consumers/users of goods and services. The aim of “reducing demand”, originally associated with trafficking for sexual exploitation, is more problematic in respect of other (non-sexual) forms of forced labour, where consumer demand is generally for *cheap* goods and services. If labour exploitation has occurred in the production process, it is a “hidden cost” of which consumers are unaware when they purchase or use the goods or services.

Awareness and social and economic empowerment

100. In practice, the most widespread prevention activity is *awareness raising*. The majority of campaigns aim to raise awareness of trafficking in persons among the general public or particular vulnerable groups. In Burkina Faso, for example, the Ministry of Social Action has distributed information flyers in local languages, hosted lectures, film discussions and theatre forums on child labour and trafficking, while an “information caravan” has reached people in border regions and along major migration routes. Several countries have focused awareness efforts on the transport networks used by migrant workers, such as the campaign in China targeting young women migrants at bus and train stations, and in Argentina, where public service announcements on trafficking are shown on long-distance buses. Border crossings and airports are key points where migrants can be reached with information, and many countries have developed brief brochures and similar materials to distribute to workers when they are travelling. Cyprus has distributed multilingual information materials at airports and border crossings, as has the United Arab Emirates at its two international airports, while Lebanon has made booklets on domestic workers’ rights and obligations available at the airport. The Philippine Overseas Employment Administration (POEA) conducts extensive orientation and pre-employment seminars for departing migrants, as do many other countries of origin in Asia. The Government of Myanmar has deployed a labour attaché and officers to five newly-established centres in Thailand to provide assistance to migrant workers. It has also undertaken campaigns to raise awareness of the prohibition of forced labour within Myanmar, including through the distribution of information materials in local languages in ethnic minority regions.

101. Some awareness and education efforts target schools. In Anhui Province, China, the Department of Education has distributed a textbook to over 9 million students on life skills, including information on trafficking risks and protection. Primary school textbooks in Ethiopia include instruction on the prevention of child labour and trafficking. The Government of Azerbaijan has disseminated tens of thousands of anti-trafficking booklets, pocket cards, posters and DVDs to teachers and students. In Senegal, where forced child begging is a concern, the Ministry of the Family has conducted programmes to sensitize religious leaders to the fact that Islam does not sanction this practice, while the Ministries of the Family and of Education have worked jointly to open modern *daaras* (Koranic schools) in which children receive both standard and Koranic education.

102. Social and economic empowerment initiatives can increase individual and community resilience to forced labour and trafficking. While broad progress depends on integrated policies for development and poverty reduction, targeted action can benefit specific vulnerable groups, for example through education and skills training, employment opportunities and social protection. Brazil is running a pilot project for the promotion of employment in rural areas designed to eliminate the role of informal intermediaries (*gatos*), who are often the first link in the slave labour chain. The Government of India is employing a “convergence-based approach” to enable migrant brick kiln workers to receive various household entitlements and benefits which, as inter-state migrants, they were previously denied. The aim is to break the cycle of poverty and indebtedness which can lead to bondage.⁸ Several central and state government orders have been promulgated to allow migrant families access to child development programmes, subsidized food, health and life insurance, mother tongue

⁸ This approach to reducing vulnerability to bonded labour includes simultaneous interventions to engage employers, labour recruiters and trade unions in action and dialogue.

education, health camps, mobile legal aid, housing and other benefits. Similarly, Pakistan is piloting the registration of brick kiln workers in the Punjab Employees Social Security Institution, and a Government-funded project in Punjab province is providing kiln workers with zero interest micro-loans for income generation and other purposes. The provision of alternative affordable sources of credit, including in areas of origin of migrant workers, can help to reduce the dependence of workers on employers and moneylenders for loans, and thus their vulnerability to debt bondage. However, experience shows that careful consideration has to be given to microfinance product design and delivery mechanisms.⁹

103. In the Republic of Moldova, regional multidisciplinary teams are coordinating a human rights-based approach to protecting both victims and potential victims of trafficking, including families in extreme economic hardship, single mothers, persons with disabilities and children whose parents are working abroad. The support provided includes health care, legal advice and psychological and material support. Albania reports small-scale prevention efforts targeting children, such as birth registration and tackling school drop-out rates, as well as access to employment and vocational training for women, the unemployed and the Roma.

104. Trade union or other support for the organization of vulnerable workers, particularly in the informal economy, can educate and empower them to secure improvements in their conditions. Trade unions in many countries have sought to support the organization of domestic workers. For example, the national trade union federation in the Hong Kong Special Administrative Region, China, has cooperated with the International Domestic Workers' NetWork to organize domestic migrant workers from Indonesia, while the trade union of domestic workers in the Philippines (SUMAPI) played a crucial role in the adoption of new legislation to protect their labour rights. Workers' organizations have developed interregional agreements to protect the rights of migrant workers. Bilateral cooperation agreements have been concluded, for example, between trade union centres in Nepal and Sri Lanka (countries of origin) and their counterparts in countries of destination, including Bahrain and Kuwait. Trade unions have also established complaints procedures for migrant workers.

Strengthened application of the law, coordination and cooperation

105. When effectively enforced, legislation in a range of labour-related areas contributes to the prevention of forced labour and trafficking. Expanding the coverage of labour law to include vulnerable groups is therefore important. Jordan amended its Labour Law in 2008 to repeal the provision excluding domestic workers and issued new regulations respecting domestic workers in 2009 specifying the obligations of employers and workers, containing provisions on working hours, paid leave and working conditions, and requiring the opening of bank accounts for workers. In the Philippines, the Domestic Workers Act, 2013, regulates the wages, working hours and leave benefits of domestic workers, and requires employers to register them. It also specifies procedures for the rescue of abused domestic workers.

⁹ S. Premchander, et al. (forthcoming, 2013): *Prevention and elimination of bonded labour: The potential and limits of microfinance-led approaches*, ILO, Geneva.

106. Other areas of legislation address more specific causal factors.¹⁰ Legislation can, for example, regulate the employment relationship in order to avoid excessive control by the employer and dependency of the worker. The Government of Bahrain took steps in 2009 to reform the *kafala* sponsorship system, including giving migrant workers the freedom to change employer without the consent of the original employer, and requiring the Labour Market Regulatory Authority to facilitate such moves. However, a legal requirement introduced in 2011 obliges workers to remain for at least one year with their first employer before they can move.

107. Legislation regulating the private recruitment industry also has a critical role to play in tackling abuses in the recruitment process itself (such as charging fees to workers, fraudulent documentation, deception about the nature or terms of the job) and at the place of employment (including contract substitution, non-payment of wages, fraudulent wage deductions). Many Arab States have outlawed the charging of fees to workers by recruitment agencies. In Kuwait, for example, the standard contract requires any person sponsoring a domestic worker to pay the worker's travel costs and the associated fees of the recruitment agency, and a ministerial order of 2010 prohibits agencies from receiving any remuneration from domestic workers. In Viet Nam, the law against human trafficking, 2011, requires recruitment agencies to sign written employment contracts with workers, which must be registered with the local labour administration office. In Ethiopia, an important provision of the Employment Exchange Services Proclamation No. 632/2009, which prohibits the charging of fees to workers, is that the contract of employment between an agency and a worker shall respect Ethiopian laws and be no less favourable than the terms applying to workers doing the same job in the destination country.

108. The formulation and implementation of equitable and effective policies governing international labour migration is also crucial.¹¹ While recognizing the sovereign right of all nations to determine their migration policy, it is however acknowledged that unduly restrictive or complex policies, in both countries of origin and of destination, can drive prospective migrants and employers alike to seek to circumvent regulations, potentially fuelling irregular migration, trafficking and forced labour. Argentina, for example, has adopted an open policy for immigration from MERCOSUR and associated States. The 2004 Migration Act ensures access for immigrants and their families, even when undocumented, to the same conditions of protection, shelter and rights enjoyed by nationals, particularly for social services, public goods, health, education, justice, labour, employment and social security. In addition, the *Patria Grande* programme led to the regularization of over 1 million migrants between 2004 and 2011. Simplifying procedures and making information widely available on regular migration channels, job vacancies abroad and how to access them can also be powerful tools in preventing abuses.

109. At the workplace, labour inspectorates have a key role to play in preventing forced labour and trafficking, but in many instances they lack adequate human and financial resources and training to play this role to the full. Labour inspectors are ideally placed,

¹⁰ The Committee of Experts has highlighted a number of such areas, including: restrictions on the freedom to leave employment by giving notice of reasonable length; the absence of autonomy of migrant domestic workers from their employers under the *kafala* system of sponsorship in the Middle East; and weaknesses in the regulation and monitoring of the private recruitment of migrant workers. It has requested governments to take measures to address these issues.

¹¹ The ILO Multilateral Framework on Labour Migration, 2006, sets out non-binding principles and guidelines for a rights-based approach to labour migration, including means for international cooperation, the protection of migrant workers and the prevention of abusive migration practices.

in view of their access to the workplace, to identify early warning signs of situations which may degenerate into forced labour if corrective action is not taken. They can raise awareness and provide education and advice to employers to prevent this from occurring.¹² In Spain, for example, a special group in the Tripartite Advisory Commission of the Labour and Social Security Inspectorate is responsible 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.

110. In addition to penal sanctions, some countries have introduced economic sanctions aimed at deterring and preventing individuals and enterprises from using forced labour. For instance, Brazil’s second National Plan to Eradicate Slave Labour, adopted in 2008, provides for measures to bar entities found using slave labour (following due administrative process) from receiving loans from private or public sources and from signing contracts with public entities.

111. In the United States, the California Transparency in Supply Chains Act, 2010, an innovative legal measure aimed at companies, requires large manufacturers and retail sellers to disclose their efforts to eradicate slavery and human trafficking from their supply chains. The Act contributes to the state policy to educate consumers “on how to purchase goods produced by companies that responsibly manage their supply chains” (section 2(j)). Another recent measure in the United States is Executive Order 13627, issued in 2012, aimed at preventing trafficking in federal contracts, which requires the revision of federal procurement guidelines to include prohibitions on misleading or fraudulent recruitment practices, the charging of recruitment fees and the destruction or confiscation of personal identity documents. It also requires certain federal contractors and subcontractors performing services abroad to maintain compliance plans to prevent human trafficking.

112. The Human Rights Council has established a working group on the issue of human rights and transnational corporations and other business enterprises to promote the implementation of the *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*.¹³ The Framework makes clear the duty of the State to protect against human rights abuses by third parties, including business, the corporate responsibility to respect human rights and the shared responsibility to provide effective remedies to victims when violations occur.¹⁴ Many companies worldwide have adopted voluntary compliance initiatives which vary widely, but normally incorporate fundamental principles and rights at work, and sometimes other labour rights and environmental standards. While examination of such initiatives is beyond the scope of the present report, it should be noted that reservations have been expressed from a number of perspectives. Corporate social responsibility does not replace the obligation upon all actors to respect national legislation and cannot be a substitute for properly resourced and implemented statutory enforcement mechanisms.

¹² The Committee of Experts has emphasized that the accumulation of certain violations of labour law may be an indicator of forced labour. Taken together, these violations constitute the criminal offence of “forced labour”. See the 2012 General Survey, para. 321. Labour inspectors, in preventive action, can detect and act upon individual violations before the situation is able to deteriorate further into one of forced labour. In extreme cases, they can order enterprise closure. Labour inspection is addressed in greater detail in Chapter 7.

¹³ A/HRC/17/4.

¹⁴ The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the ILO Governing Body in 1977, as amended in 2000 and 2006, contains relevant guidance, including on wages, benefits and conditions of work (paras 33–35), and industrial relations, including grievance procedures (paras 41–59).

113. Employers and their representative organizations have engaged in action to prevent forced labour and related practices. While awareness and education programmes mostly tend to target workers, it is clear that employers can also benefit from such programmes to increase their knowledge of prevailing laws and methods of compliance.¹⁵ One innovative example of action by employers is the “National Pact for the Eradication of Slave Labour” instigated by major companies in Brazil in 2005. The Pact commits signatories to various actions, and principally to stop doing business in their value chains with entities which are publicly listed as having subjected workers to slavery-like conditions.¹⁶ Other measures include the formalization of employment relations by producers and suppliers, and support for the social reintegration of workers rescued from slavery-like situations.

114. Another example is in the recruitment industry, where many associations of private recruitment agencies have adopted guidelines or voluntary codes based on the principles embodied in Convention No. 181. The International Confederation of Private Employment Agencies (CIETT) has adopted a code of conduct based on ten principles, including that its members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for services directly related to their placement. In Viet Nam, the Association of Manpower Supply (VAMAS) adopted a code of conduct in 2010 governing agencies that send workers for overseas employment, and has since introduced a system to rate its members according to their compliance with the code.

115. The crucial importance of effective coordination, both within and between countries, in all action against forced labour and trafficking has already been highlighted.¹⁷ One quite widespread measure to prevent trafficking and the exploitation of migrant workers is the conclusion of bilateral memoranda of understanding between countries of origin and of destination. The Employment Permit System (EPS) of the Republic of Korea operates exclusively through public employment agencies. It provides for memoranda of understanding with various other Asian countries of origin, and guarantees foreign migrants the same pay, benefits and labour rights as Korean workers. A 2013 labour agreement between the Governments of the Philippines and Saudi Arabia covers the recruitment and employment of Filipino domestic workers, including provisions on wages and working conditions, the establishment of a helpline and dispute resolution procedures, and the facilitation of exit visas.

116. Cooperation is also required within countries between the various departments responsible for different aspects of prevention,¹⁸ and also between the areas of origin and destination of internal migrant workers. In India, for example, two memoranda of understanding signed between certain states of origin and destination and the federal Ministry of Labour and Employment set out clear roles and responsibilities for the protection of inter-State migrant workers, and provide the basis for the implementation of state-based action plans and inter-State cooperation.

¹⁵ The ILO has produced information materials on forced labour for employers, which have been widely disseminated. See ILO (2008): *Combating forced labour: A handbook for employers and business* (revised edition forthcoming).

¹⁶ Further information on the public register in Brazil (the “dirty list”) is provided in Chapter 7.

¹⁷ See Chapter 3 for a discussion of national inter-ministerial and multi-agency coordination bodies.

¹⁸ A first such Memorandum of Understanding was signed between Odisha, Andhra Pradesh and the federal Ministry of Labour and Employment (MoLE) in 2012, and a second between the states of Uttar Pradesh, Jharkhand, Bihar and Chhattisgarh and the MoLE in early 2013.

Consumer-based measures

117. Consumer-based approaches involve ethical labelling and other measures, including advertising and public/consumer awareness campaigns, designed to encourage the purchase of products that are “free from exploitation”. The mass media have an important role to play in this respect, and there are increasing instances of major broadcasters and national and international print and online media taking up the theme of slavery with a view to educating the public and exposing instances of malpractice.

118. One example of an integrated approach to improving the working conditions of farm labourers, including consumer-based measures, is the Fair Food Program initiated by the Coalition of Immokalee Workers, a community-based organization in Florida, United States. The programme has secured a wage increase for the mainly immigrant tomato pickers, supported by a price premium paid by corporate purchasers of Florida tomatoes, and the implementation of a human rights-based code of conduct throughout the Florida tomato industry. Civil society groups have exerted pressure on retailers to purchase tomatoes exclusively through the Program.

119. Commercial sexual exploitation has been the subject of a large number of campaigns aimed at discouraging demand for sexual services that could fuel trafficking. Examples include Bulgaria, where the use of the services of trafficking victims has been criminalized and an information campaign has been targeted at users of sexual services. Georgia has also amended its Criminal Code to criminalize the knowing use of the services of a victim of human trafficking (Article 143(3)). The authorities are now using public service announcements and television programmes to alert potential users of such services, whether for sexual or labour purposes.

120. Among the very few examples of initiatives targeting demand outside the sex industry, the Government of the Netherlands has undertaken an extensive campaign to raise awareness of the risks of labour exploitation, including the widespread distribution of a leaflet in 14 languages containing information on signs of labour exploitation and the rights of victims. In Portugal, the Government has promoted an awareness campaign in a northern town to prevent the exploitation of immigrant Romanian farm workers.

Conclusion: Implementation gaps and opportunities

121. There are many examples of preventive action at the national level against forced labour and human trafficking. However, truly integrated approaches to prevention targeting the full range of causal factors are generally lacking. The picture is rather one of partial responses addressing individual aspects of worker vulnerability, or of “demand”. The potential of labour administration and inspection systems in the field of prevention is generally underutilized. Moreover, inadequate attention is given to the vital role of employers, business and trade unions in preventing forced labour and trafficking. A further implementation gap concerns the absence of rigorous monitoring and impact assessment of the various preventive measures taken.

122. Nonetheless, many of the examples of action are fairly recent, indicating that preventive measures against forced labour are receiving increased attention. Measures are also starting to be extended beyond awareness raising for vulnerable workers to include more novel approaches addressing broader causal factors, such as perpetrator impunity, inadequate legislative protection, gaps in coordination and consumer behaviour.

123. This analysis shows that prevention strategies need to address, through a coherent policy framework, a wide range of systemic and structural issues which together create an environment in which forced labour and related practices arise and persist. The objective of the prevention and elimination of forced labour thus needs to be incorporated in different strands of government policy (including employment, social protection, poverty reduction, migration and industrial relations), in addition to being the subject of specific national laws, policies or action plans.

124. There is therefore an opportunity in a new instrument(s) to provide member States and the social partners with standards and specific guidance on measures that can be included in a comprehensive prevention strategy against forced labour. This could include measures to reduce the vulnerability of workers to forced labour and also address other important areas through an integrated approach that tackles the range of factors that may contribute to the occurrence of forced labour.

Chapter 5

Protection

International legal framework

125. *Protection*, in the context of the present report, refers to direct assistance measures, legal protections and long-term social and economic support for victims of forced labour. Comprehensive protection measures enable victims to recover from the material and psychological effects of their subjection to forced labour, prevent their re-victimization and encourage their willing participation in legal proceedings against their exploiters. Such measures can create a virtuous cycle of better victim identification, fewer cases of re-victimization, higher rates of prosecution and hence fewer cases of forced labour. An absence of robust protection discourages victims from seeking assistance from the authorities, often out of fear for their personal safety and that of family members. An international consensus has emerged around the need for a “rights-based” and a “victim-centred” approach to protection.

126. Convention No. 29 does not contain explicit provisions addressing the protection of victims of forced labour. However, the ILO Committee of Experts has emphasized that this requirement is implicit, as protection measures are essential to prevent former victims from falling back into a situation of vulnerability in which they might again be exploited.¹ For instance, the Committee of Experts has noted that the prohibition of bonded labour should be accompanied by economic assistance measures to ensure that released labourers do not fall back into bondage.² It has also emphasized that all victims of forced labour, regardless of their status within the national territory, should receive adequate protection in order to guarantee the full enjoyment of their rights.³ Convention No. 182 requires States to take effective measures to provide direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration, and to ensure their access to free basic education (Article 7).

127. Part II of the Trafficking Protocol contains provisions on victim protection, which are mostly non-mandatory or accompanied by qualifying language. For instance, it requires each State party to protect the privacy and identity of victims in “appropriate cases and to the extent possible under its domestic law”. Other qualified provisions include that victims should receive information on relevant court and administrative proceedings and assistance to enable their views to be presented and considered during criminal proceedings against offenders; that the physical safety of victims should be

¹ See 2012 General Survey, para. 325, and 2007 General Survey, para. 83.

² 2007 General Survey, para. 71.

³ 2012 General Survey, para. 325. 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 provision of shelter, food, clothing, counselling, medical services and security (for example, Zambia – CEACR, observation, 2013).

protected; and that repatriation of victims should be facilitated with due regard for their safety and without undue delay, preferably on a voluntary basis. Regarding victim support, the Protocol requires States parties to “consider” implementing measures for the physical, psychological and social recovery of victims, including through the provision of housing, counselling and information, medical, psychological and material assistance, and employment, education and training opportunities. States are also required to “consider” measures that permit victims to remain in their territory, temporarily or permanently, in appropriate cases. The Protocol does not offer guidance regarding specific protection measures for children, although their special needs have to be taken into account (Articles 6, 7 and 8).

128. Regional trafficking instruments generally impose more specific and binding requirements regarding the protection of victims.⁴ Non-binding international instruments, such as the OHCHR Recommended Principles and Guidelines and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the “Basic Principles of Justice for Victims of Crime”), adopted in 1985, provide detailed guidance regarding victim protection.

129. The core principles outlined in these regional and non-binding instruments include the timely identification of victims as a necessary first step, as failure to identify victims is likely to result in further denial of their rights and expose them to continued exploitation.⁵ Immediate protection and material, medical, psychological and social assistance should be provided to victims.⁶ They should not be prosecuted or punished for offences committed as a direct consequence of their situation as trafficked persons,⁷ and consideration should be given to the special needs of children and migrant workers. Protection measures for children should take into account their best interests and include presumption of age, appointment of a guardian and provision of education.⁸ Measures for migrant workers could include residence and work permits, reflection and recovery periods and the facilitation of safe, and preferably voluntary, repatriation.⁹ Victims,

⁴ See, in particular, the European Trafficking Convention and the EU Trafficking Directive. The SAARC Convention imposes several obligations on States for the protection and assistance of women and children trafficked into prostitution, including establishing shelters for victim rehabilitation and providing legal advice, counselling, job training and health care (Art. IX(2) and (3)).

⁵ The European Trafficking Convention requires States parties to put a legal framework in place to identify victims and to ensure that trained personnel are involved in the process (Art. 10). See also the OHCHR Recommended Principles and Guidelines, Guideline 2.

⁶ See, for example, the *Basic Principles of Justice for Victims of Crime*, para. 14.

⁷ In the context of trafficking, the OHCHR Recommended Principles and Guidelines indicate that: “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons” (Principle 7). See also the European Trafficking Convention (Art. 26) and the EU Trafficking Directive (Art. 8). The existing international and regional instruments provide only for non-punishment with respect to victims of trafficking, whereas the principle should also apply to victims of forced labour who may not have been subject to trafficking in persons, as defined in the Trafficking Protocol.

⁸ For instance, the Inter-American Convention on International Traffic in Minors requires States parties to undertake to “ensure the protection of minors in consideration of their best interests” (Art. 1(a)), and the European Trafficking Convention specifies that when the age of the victim is uncertain, but there are reasons to believe that he or she is a child, the victim shall be presumed to be a child and be accorded special protection measures (Art. 10(3)).

⁹ For example, the European Trafficking Convention requires States parties to provide for a recovery and reflection period of at least 30 days (Art. 13).

including children, should be consulted on their protection needs,¹⁰ and assistance should not be conditional on cooperation by the victim with the authorities.¹¹

130. The February 2013 Meeting of Experts emphasized that appropriate measures are required to protect all victims and suspected victims of forced labour, whether or not they have been trafficked, and that victim identification needs to be improved. It also observed that strong victim protection measures can have a positive impact on prosecution.

National law and practice

Victim identification

131. The accurate and timely identification of victims is a prerequisite for their protection, without which they remain trapped in exploitation, or may be treated as criminals, rather than victims, and be prosecuted, deported or imprisoned for offences committed as a result of their forced labour situation. Many factors make victim identification challenging. For example, employers are likely to conceal workers in illegal or irregular situations, victims are often afraid of being discovered and deported, and workplaces may be in remote or hidden locations. Even once potential victims are found and are willing to talk, sensitive probing is required to fully understand their situation and determine whether they are suffering from direct or indirect coercion or abuse.

132. Global data suggest that most victims of forced labour are not identified. UNODC data on trafficking in persons, for example, indicate that only 43,000 victims of trafficking were detected worldwide between 2007 and 2010, and only around one third of these were victims of trafficking for labour exploitation.¹² Relative to the ILO's global estimate of 20.9 million victims of forced labour, this clearly represents only a small fraction.

133. Various actors may be the first to make contact with victims, including police, labour inspectors, trade unions, health workers, embassy staff and NGOs. The involvement of these actors in the identification and subsequent referral of victims to protection services differs between countries. The labour inspectorate can play an important role in identification, and some countries, such as Brazil, Peru and Spain, have established special labour inspection groups against forced labour.¹³ Under the bonded labour laws in India and Pakistan, district magistrates and district vigilance committees have the main responsibility for detecting bonded labourers and ensuring their effective rehabilitation.

¹⁰ The European Trafficking Convention calls for assistance and support measures to be provided on a consensual and informed basis (Art. 12(7)); see also the EU Trafficking Directive, Art. 21. The Convention on the Rights of the Child (1989) requires States parties to assure that children who are capable of forming their own views should be able to express those views freely, and that their views should be taken into account (Art. 12).

¹¹ See UNODC Legislative Guide, para. 62; OHCHR Recommended Principles and Guidelines, Principle 8; European Trafficking Convention, Art. 12(6).

¹² UNODC (2012): *Global report on trafficking in persons*, Vienna, p. 25.

¹³ The role of labour inspectors is discussed further in Chapter 7.

134. Hotlines can also serve as a useful first point of contact, and hotline operators can refer victims to providers of assistance. Hotlines exist in most countries reviewed for the purpose of this report, either operated by the government or by NGOs. However, many hotlines are not available round the clock, and most do not offer interpretation, making it difficult for victims to use them. Moreover, many specifically target female victims of trafficking or violence, reducing the likelihood of other victims being able to access the service.

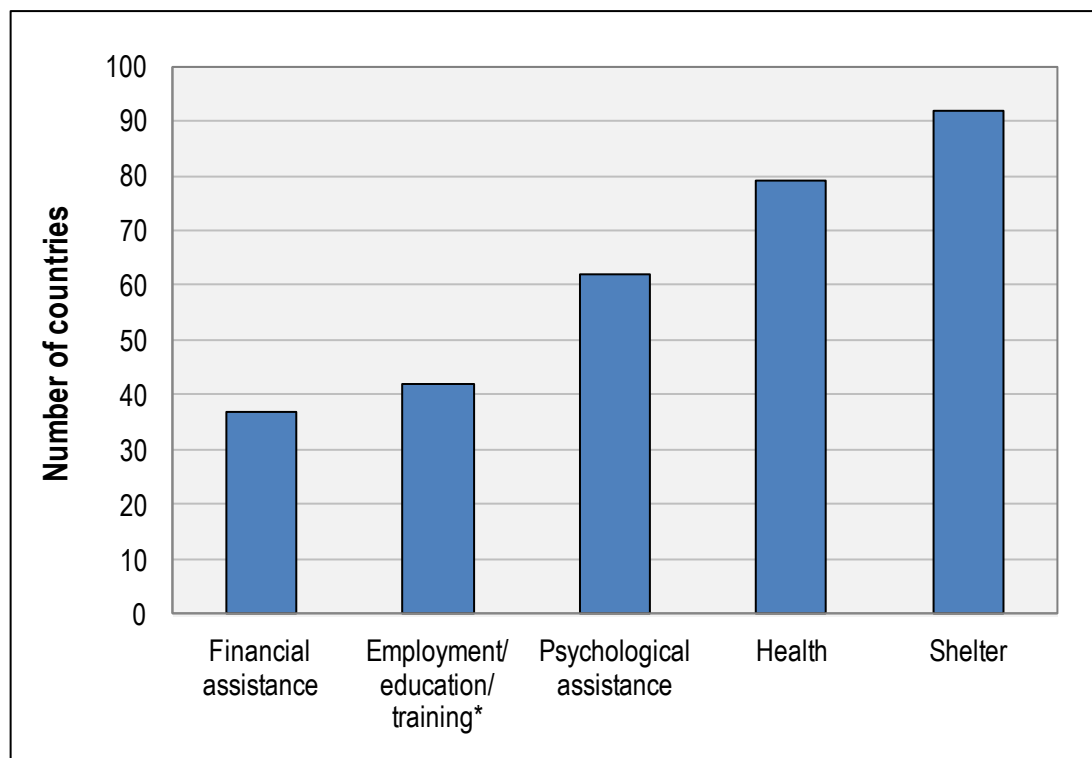
135. Law enforcement personnel, including labour inspectors, trade unions, civil society organizations and other concerned actors require training and guidance to enable them to assess whether an individual worker or group is in a forced labour situation. A number of countries, such as Belgium and the United States, have developed and disseminated lists of indicators to assist front-line personnel in making this assessment.¹⁴ Once victims are identified, they need to be referred to organizations which provide targeted assistance. Some countries have set up national referral mechanisms (NRMs) which facilitate victim access to protection services and have developed cooperation between State and non-State actors. First developed in the European context, NRMs have since been established in other regions. In Brazil, families and individuals whose rights have been violated, including through forced labour, are referred to the Specialized Social Assistance Referral Centre (CREAS), which provides a range of social services and benefits. In Croatia and the Republic of Moldova, the NRMs rely on multidisciplinary mobile teams, composed of law enforcement officials, NGOs and care providers to assist in the identification of victims of trafficking. The EU Trafficking Strategy, 2012–16, promotes transnational referral mechanisms to facilitate the identification, referral and provision of assistance to victims across borders. Such systems have been piloted in South Eastern Europe.

Direct assistance measures

136. Not all countries include specific protection measures in national law. Such measures are more commonly set out in national action plans/programmes, and generally cover people identified as victims of trafficking. Direct assistance is delivered in different ways, such as by public authorities, or through NGOs supported by public funds or private donations.

¹⁴ Indicators are signs which point to the possible existence of forced labour and/or trafficking. The United States Department of Homeland Security, for example, has developed human trafficking indicators in the form of a checklist of questions, such as whether the person is in possession of their identity and travel documents, can freely contact friends or family, has been recruited for one purpose and forced to engage in a different job or been threatened with deportation. The ILO has developed and disseminated a pamphlet on indicators of forced labour.

Direct assistance measures for victims



* Most of the countries provide education for child victims of trafficking, and few offer these services to adults.

Source: ILO database.

137. A majority of the countries reviewed for this report provide basic assistance, such as temporary shelter and medical treatment, and many require their law enforcement personnel to inform victims about their rights, options and obligations in a language that they can understand. Relatively few offer a comprehensive package of assistance, including psychological counselling or employment-related services to ensure the long-term reintegration of victims, such as through material assistance (in cash or kind) or employment, education or vocational training. When such services are offered, they are directed primarily at child victims.

138. In Brazil, workers released from forced labour are provided with unemployment benefits (the official minimum wage) for three months, and are given access to the *Bolsa Escola* cash transfer scheme and a literacy programme. In Mato Grosso, the Ministry of Labour assists in the economic reintegration of rescued or potential victims through the provision of vocational training and partnerships with local business. In the Plurinational State of Bolivia, measures are taken to provide adequate living conditions for Guarani people following their release from servitude on remote farms in the Chaco region, including in some instances through land distribution. In Nepal, vocational training and related programmes have been organized to enable liberated *kamaiyas* (bonded labourers) to set up micro-enterprises and other income-generating activities. In India, each identified and released victim of bonded labour is entitled to receive a rehabilitation grant of 20,000 Indian rupees (approximately US\$363) under the centrally sponsored scheme, the cost of which is shared between the federal and state governments.

139. Where assistance measures are targeted at victims of trafficking, they are often available only for women and (girl) children, which may well be appropriate given their special need for protection. Although most national regulations on victim assistance are

not limited to women and children, in practice very few such services are offered to adult men. Boys also tend to have less access to specialized services than girls. Generally, shelters are only provided for victims of trafficking for sexual exploitation. As other assistance is often provided through these shelters, this can have a knock-on effect, restricting the access of other victims of forced labour to assistance. There are some exceptions. For example, Israel, the Netherlands and Thailand have created separate shelter facilities for adult men victims of trafficking, while Ukraine allows men access to some services provided through its shelters for women. Other countries, including Armenia, Croatia, Czech Republic, Denmark, Lithuania and Romania, offer ad hoc accommodation to adult male victims of trafficking, but without the same range of assistance measures provided in shelters for women.

Security and privacy measures

140. Around half the countries reviewed have witness protection programmes or other measures to protect personal identity and physical safety, primarily for victims of trafficking. Some offer all three types of protection, but few explicitly cover non-trafficked victims of forced labour. Protection of identity is the most common measure, followed by physical protection. Some countries, such as Bulgaria, Cyprus, Estonia and the Philippines, have laws establishing witness protection programmes for trafficking victims. However, the evidence suggests that very few victims actually use such programmes in practice, and that many victims are insufficiently informed of their entitlement to security and safety mechanisms.

141. Specific protections to keep victims and witnesses safe during trials are important. Some countries, such as Burkina Faso and Thailand, exempt victims from having to appear in court in person. Others allow video testimony (including Azerbaijan and Israel), or even written testimony (Malaysia and Slovenia). The anti-trafficking laws in other countries, such as Ireland, Kenya and Thailand, make the disclosure of information which may reveal the identity of a victim an offence. Closed hearings are another option to protect victims and are available, for example, in Ireland and Viet Nam.

142. Family members of victims may also require protection, although this is rarely provided. Portugal includes any endangered person in its witness protection programme, thus covering relatives and other persons in close contact with witnesses. Victim and witness security and safety measures are often available only before and during the trial, but only in certain cases after the trial. In Austria and Thailand, for example, the law provides for protection not only post-trial, but also upon the return of victims to their country of residence.

Non-prosecution and non-punishment of status-related offences

143. Victims of forced labour and trafficking should not be detained, prosecuted or punished for offences caused by or directly linked to their victimization.¹⁵ Exemption from prosecution encourages victims to cooperate with law enforcement authorities, thereby contributing to the effective prosecution of perpetrators. The legal systems of most States recognize the principle of “duress”, under which individuals can assert as a defence that they were compelled to commit the offence in question. A duress defence may not prevent prosecution in the first instance, but can lead to acquittal or a reduced

¹⁵ In this regard, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings has emphasized that the scope of application of non-punishment provisions should not be limited to providing for immunity of trafficked persons from conviction, but also from prosecution and detention. OSCE (2013): *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (SEC.GAL/73/13).

sentence. Some countries have specific non-criminalization clauses. Where such provisions do exist, they often apply only to immigration offences committed by victims of trafficking. State practice is far from consistent, even in Europe, where the non-punishment provision of the European Trafficking Convention applies.

144. Forced labour can involve a wide range of offences committed involuntarily by victims. In addition to immigration offences, such as irregular entry, residence or work, they may also include making false statements, theft, prostitution or begging (where these activities are criminalized), drug smuggling, drug harvesting and other illegal activities. In recognition of this, under their trafficking laws, some countries, including Argentina, Azerbaijan, Guinea-Bissau, Liberia, Nigeria, Poland and the United States have adopted an open-ended, non-exclusive list of offences committed by trafficked persons that are exempt from punishment. For instance, section 37 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, in Nigeria provides that where “the circumstances so justify, trafficked persons shall not be detained, imprisoned or prosecuted for offences related to being a victim of trafficking, including non-possession of valid travel stay or use of a false travel or other document”.

Special protection for children

145. Children under the age of 18 account for one quarter of all victims of forced labour and need special protection measures. All the measures outlined in this chapter need to take into account the specific vulnerability of children and their best interest. NRMs and other relevant guidelines should contain provisions on child-sensitive conduct. For example, in Trinidad and Tobago, the Trafficking in Persons Act, 2011, requires the Counter-Trafficking Unit to base assistance on the “child’s best interest” and to consult the Children’s Authority in order to offer child-specific protection measures, including the provision of mental and physical medical care tailored to the child’s needs (Article 44). In other countries, child-specific provisions include keeping interviews to a minimum, using child-sensitive interview techniques and, where necessary, appointing a guardian.

146. Presumption of a child’s minor status is crucial in cases where there is doubt about the child’s age and identity documents are lacking. In these cases, States may use psychological or developmental assessments to estimate the child’s age. Where certain protection measures, such as the right to remain in the country, are available to child victims only, inaccurate estimates may violate the child’s right to access such measures. In recognition of the difficulty of accurately estimating the age of children, certain countries, such as Finland and the United States, accept the lowest estimate when age determination procedures provide a range of possible ages.

147. Children are entitled to the same assistance as adult victims of forced labour, although it needs to be adapted to their needs. For example, child-specific shelter facilities are provided in Indonesia, Senegal and the Netherlands. Shelters may also offer access to temporary education for child victims, such as in Zambia. In other countries, including Bulgaria and Denmark, children can attend local schools.

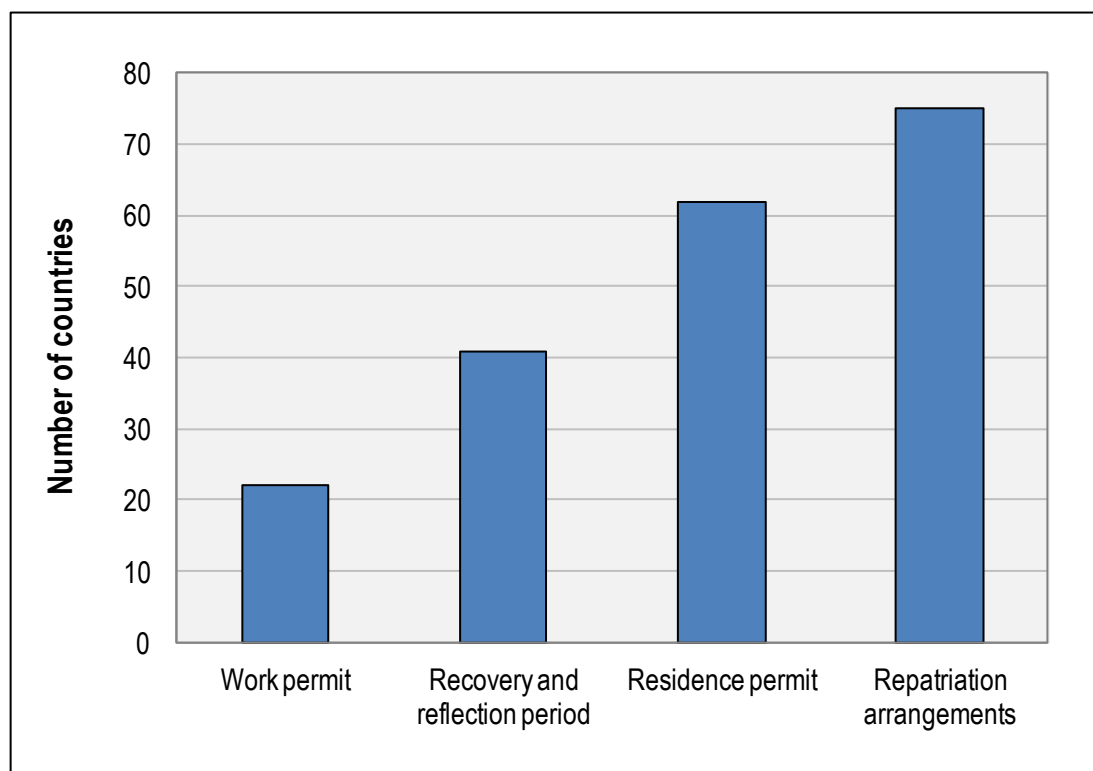
148. Migrant child victims of forced labour require special safeguards, especially if they are unaccompanied and/or have irregular migration status. Italy, for example, effectively grants residence permits to all child victims until they reach 18 years of age. Consideration of the child’s best interests and preferences may mean that child victims of trafficking are rehabilitated at destination if, for instance, the situation at home contributed to their being trafficked. In Sweden, for example, the social services investigate whether unaccompanied children should be reunited with their parents or remain with legal guardians in Sweden.

149. In the case of the repatriation of child victims to their country of residence, cross-border cooperation is particularly important to ensure their well-being. One example is the cooperation between the United Arab Emirates and Qatar with Bangladesh, Pakistan, Mauritania and Sudan to repatriate boys trafficked as camel jockeys. Individual assessments enabled the boys to be successfully reintegrated into their communities and community care committees monitored the existence of a supportive social environment.¹⁶

Special protection for migrant workers

150. Nearly half of all forced labour victims have migrated, either internationally or within their country, prior to their exploitation. Migrant workers face particular difficulties in gaining access to justice and victim services, especially those with irregular migration status, but also those on temporary stay visas. Internal migrants may also have trouble gaining access to social services if eligibility is dependent on residency in the place of origin.

Special protection provisions for migrant victims



Source: ILO database.

151. About half of the countries reviewed for the present report provide temporary or long-term residence permits to allow victims of trafficking, and to a lesser extent victims of forced labour, to remain in the country (examples include Burkina Faso, Chile and Lesotho). A minority of countries, mostly in the EU, allow recovery and reflection periods for victims. However, very few, including Austria, Costa Rica, Kenya and Portugal, provide work authorization to foreign victims, thus enabling them to contribute to their own economic recovery. The T-visa provided for victims of trafficking in the

¹⁶ ILO: *Tricked and trapped: Human trafficking in the Middle East*, Geneva, 2013, p. 114.

United States is valid for four years, during which the visa holders can also work legally in the country.

152. A large majority of countries, however, provide for repatriation of foreign victims. While assisted repatriation can be an integral part of victim protection, it should ideally be voluntary. However, when the victim is offered no real alternative to repatriation, voluntariness is difficult to determine. In Guinea-Bissau, section 28(1) of Act No. 12/2011 on trafficking provides that the victim's safety, as well as the absence of a risk of re-trafficking, needs to be assured prior to repatriation. In Zambia, the Anti-Human Trafficking Act, 2008, requires authorities to give due consideration to the existence of suitable care arrangements for child victims in the country of origin before they can be returned. Immigration relief tends to be available only to people identified as victims of trafficking, although an exception is Italy, which offers such relief to all victims of exploitation under section 18 of Legislative Decree No. 286/1998 on immigration.

153. Most countries make the granting of residence permits conditional upon the victim's cooperation with law enforcement. Some, such as Canada, Croatia, Israel and Portugal, also provide such permits based on the victim's personal circumstances, vulnerability, safety or other considerations.

154. The countries of origin or usual residence of victims may also take additional measures to protect and assist citizens or residents in a situation of forced labour abroad. Countries such as Argentina, Croatia, Indonesia and Qatar offer such protection to their citizens who have become victims of forced labour abroad. The services provided may include information and assistance for repatriation, legal advice on recovering unpaid wages or direct assistance measures, including shelters.

Consultation with victims and non-conditionality

155. A victim-centred approach requires victims of forced labour to be consulted about their protection needs and preferences. This applies equally to adults and children, with special attention being given to migrant victims when their immigration relief options are being assessed.

156. However, there are many instances where women and child victims of trafficking are obliged to move into shelters, against their free will, and in some cases cannot leave without permission or unchaperoned. In some instances, victims may have their identity documents retained for security by shelter staff. Article 11(5) of the EU Trafficking Directive requires assistance and support services to "be provided on a consensual and informed basis". Section 28(4) of Act No. 12/2011 on trafficking in Guinea-Bissau requires consultation with victims regarding family re-unification and repatriation, while in Viet Nam the 2012 Decree on grounds for victim identification and protection of victims and their relatives establishes the right of victims to refuse protection measures.

157. Many countries recognize that child victims should be consulted on their protection needs and preferences. In South Africa, Chapter 2 of the Children's Act No. 38 of 2005 provides for the participation of children "of sufficient age and maturity" in any decisions affecting them (section 10). For such participation to be effective, children need appropriate and accessible information. In Bulgaria, for example, the Child Protection Act provides for the right of children to be informed and consulted (Article 13), which is implemented in practice by the social workers of the child protection units of the agency for social assistance, who inform children of their rights and the possibilities for support and protection.

158. A victim-centred approach recognizes that victims may not wish, or are too traumatized, to cooperate with the authorities. States increasingly recognize the right of victims to protection, irrespective of such cooperation. The EU Trafficking Directive requires Member States to take necessary measures to ensure that assistance and support for victims are not made conditional on their willingness to cooperate in the criminal investigation, prosecution or trial (Article 11(3)). In Cyprus, for example, identified victims of trafficking enjoy a number of rights to protection (for example to information and assistance), whether or not they are willing to be witnesses in criminal proceedings or to cooperate with the prosecuting authorities.

Conclusion: Implementation gaps and opportunities

159. The aim of protection is to remove victims from exploitation and enable their recovery from the material and psychological effects of their subjection to forced labour. It also serves to prevent their re-victimization and encourage their cooperation with the authorities. Protection has to start with timely and accurate victim identification. Despite persistent weaknesses, efforts are now being made to improve identification processes, notably through multi-stakeholder approaches. The role of labour inspectors in such efforts needs further strengthening. Direct assistance measures for victims exist in most countries, but they tend to prioritize immediate needs over the longer-term need for training and employment. While short-term protection is crucial to the well-being of victims, only long-term recovery measures can prevent their re-victimization and enable them to rebuild their lives.

160. Adequate security and privacy measures for victims are crucial to encourage their participation in legal proceedings against their exploiters, and hence to increase the number of successful prosecutions. Some countries recognize that such measures should extend beyond the duration of court proceedings and that they should also cover witnesses and family members of the victim. Non-punishment provisions are another important means of encouraging victim cooperation and should be comprehensive in scope. In practice, these provisions are currently often limited to immigration offences, and to persons identified as victims of trafficking, rather than victims of forced labour.

161. The law and practice of member States has improved with regard to the provision of special measures for child victims, but such measures still need to be applied more consistently. In contrast, there are significant gaps in protection provisions for migrant workers, with few countries offering the regularization of migration status and assistance in gaining access to the labour market for victims who wish to remain in their country of destination. The human rights-based and victim-centred approach requires more consistent application, including consultation with and the provision of information to victims so that they can make informed decisions on how they wish to proceed.

162. All victims of forced labour do not enjoy equal access to protection measures. While identified victims of trafficking have a statutory right to protection in many countries, this is not necessarily the case for all victims of forced labour. Moreover, victims of trafficking for labour exploitation, adult men and, to a lesser extent, boys also experience difficulty in accessing protection. While protection responses need to be differentiated according to the specific needs and priorities of the different types of victims, it is important in breaking the cycle of victimization to ensure the right of *all* victims to protection and assistance.

163. A new instrument could strengthen the protection of all victims of forced labour by setting out specific standards and guidance on this issue. It could also provide specific guidance on victim-centred approaches that address the longer-term recovery needs of victims, including through vocational training, access to jobs and other labour market-based measures.

Chapter 6

Compensation and access to justice

International legal framework

164. *Compensation* in this report refers to payment made to a person to compensate him or her for injury, loss or harm sustained through forced labour.¹ It includes both material damages (such as medical costs, unpaid wages, legal fees and loss of earnings and earning potential) and moral damages (such as pain and emotional distress).² *Access to justice* refers to the ability of people to seek and obtain a remedy through formal or informal legal institutions, and in conformity with human rights standards.

165. Compensation can be instrumental for the rehabilitation and full recovery of victims, and for preventing their re-victimization. Ordering perpetrators to pay compensation can also serve important preventive and punitive functions. Yet, in practice, few victims of forced labour receive adequate compensation because of their de jure or de facto exclusion from mechanisms of justice. Various legal and other obstacles prevent victims from accessing remedies, which need to be understood and corrected.

166. Several international instruments recognize the right to an effective remedy for victims of human rights violations, including the Universal Declaration of Human Rights (Articles 8 and 10), the International Covenant on Civil and Political Rights (Article 2(3)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Article 83), the International Convention on the Elimination of all Forms of Racial Discrimination (Article 6) and the Convention on the Rights of Persons with Disabilities (Article 13). Numerous regional human rights treaties contain similar provisions. The Declaration of Basic Principles of Justice for Victims of Crime (paragraphs 4–13) affirms that victims have the right to restitution from those responsible, to access mechanisms of justice and to obtain redress through expeditious, fair, inexpensive and accessible procedures. Specific measures to facilitate access to justice include the provision of information and assistance to victims during legal proceedings, and allowing their views and concerns to be heard and

¹ Although this chapter focuses on the specific remedy of compensation, the importance of other types of remedy, including restitution and rehabilitation, is acknowledged. For instance, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the “Principles and Guidelines on the Right to a Remedy and Reparation”), adopted by the General Assembly in 2005, refer to the remedies of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The remedy of rehabilitation is discussed in Chapter 5.

² Principle 20 of the Principles and Guidelines on the Right to a Remedy and Reparation describes several areas of damages for which compensation should be provided: (a) physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damage; (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

considered at appropriate stages of the relevant proceedings. Other suggested measures include the establishment of informal mechanisms for dispute resolution and of national funds for victim compensation to be used when the offender is unable to pay.³

167. Neither the UNTOC Convention nor the Trafficking Protocol refers to the right to a remedy, although both require States parties to provide access to compensation. The UNTOC Convention requires the establishment of appropriate procedures to provide access to compensation and restitution (Article 25(2)) while, under the Trafficking Protocol, victims of human trafficking should have “the possibility” of obtaining compensation under domestic law (Article 6(6)). The UNTOC Convention also establishes a link between confiscation and compensation, requiring States parties to give priority consideration to returning confiscated proceeds of crime to a requesting State Party for victim compensation (Article 14(2)). Neither instrument provides for a substantive right to compensation, focusing instead on the creation of legal mechanisms to obtain compensation.⁴ However, the obligation of States to provide effective and appropriate remedies to victims of trafficking has been recognized by numerous international bodies and in various policy instruments.⁵

168. While Convention No. 29 contains no explicit provisions on access to justice and effective remedy, the ILO Committee of Experts has observed that states must ensure that victims of forced labour can complain to the competent authorities, have access to justice and obtain compensation for the harm they have suffered.⁶ In its comments under Convention No. 29, it has requested governments to take measures to ensure that victims fully enjoy all their rights before national authorities and receive compensation for material and moral damages suffered. However, the Committee of Experts has noted that procedures for obtaining compensation, which may involve civil action in addition to criminal proceedings, “are not always easy for victims” in practice.⁷

169. Other ILO instruments include provisions relevant to compensation. For example, the standards to protect migrant workers and guide migration policy aim to ensure that migrant workers enjoy equal treatment to nationals with respect to remuneration, legal proceedings and other matters, and that they can complain to a competent body

³ The Principles and Guidelines on the Right to a Remedy and Reparation describe the remedies to which victims are entitled under international law, namely: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparative mechanisms (Principle 11).

⁴ In contrast, the European Trafficking Convention (Art. 15(3) and (4)) requires States parties to provide in their domestic law for the right of victims to compensation from perpetrators and to adopt legislative or other measures “to *guarantee* compensation for victims” (emphasis added), including through the possible establishment of a special fund. See also the Council of Europe European Convention on the Compensation of Victims of Violent Crimes (1983).

⁵ See, for example, the OHCHR Recommended Principles and Guidelines (Principles 16 and 17 and Guideline 9) and the Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010), p. 229 and notes 591–593. In 2012, the United Nations Human Rights Council adopted a Resolution on access to effective remedies for trafficked persons and their right to an effective remedy for human rights violations (A/HRC/RES/20/1). The OHCHR Guiding Principles on Business and Human Rights discuss the procedural and substantive aspects of access to remedies for business-related human rights abuses (Principles 25–31).

⁶ See, for example, Nepal – CEACR, observation, 2013, on measures to grant migrant workers access to justice and to other complaint and compensation schemes; Mauritania – CEACR, observation, 2013, on mechanisms of victim compensation for personal and material damages; Argentina – CEACR, observation, 2012, on measures to provide legal assistance to victims so that they can assert their rights and be compensated for material and general damages.

⁷ 2012 General Survey, para. 324.

regarding disputes.⁸ The Domestic Workers Convention, 2011 (No. 189), requires States to ensure that all domestic workers have effective access to courts, tribunals or other dispute resolution mechanisms “under conditions that are not less favourable than those available to workers generally”. States also have to establish “effective and accessible complaint mechanisms and means of ensuring compliance” with national laws on the protection of domestic workers (Articles 16 and 17). The accompanying Recommendation proposes measures to ensure that domestic workers have access to information on complaint mechanisms and legal remedies.⁹

170. The February 2013 Meeting of Experts emphasized the need to facilitate the access of victims to justice, including through simplified legal and administrative procedures, where appropriate. It called on governments to explore the feasibility of different compensation mechanisms, such as setting up a State fund or strengthening provisions to recover compensation from offenders. It added that labour-related provisions, such as the payment of wage arrears, were “often neglected while they should be part of a comprehensive and systematic approach to victim protection”.

National law and practice

Compensation mechanisms

171. Various judicial and administrative compensation options for forced labour victims have been identified in over half of the countries reviewed for this report. In general, however, information on such mechanisms is difficult to obtain.¹⁰ One important distinction between available mechanisms is the source of the compensation, whether from the State or the perpetrator. The types of legal proceedings also vary and can include criminal proceedings, civil proceedings, labour or employment courts or tribunals, State compensation funds or some combination of these.¹¹

Compensation by offenders

172. In virtually all the 71 countries where compensation mechanisms have been identified, it is possible for forced labour victims to obtain compensation from perpetrators. In countries such as Ireland and Kenya, the law empowers criminal courts to order compensation to be paid to victims and to set the amount of the compensation following conviction. In Nepal, under the Bonded Labour (Prohibition) Act, 2002, a person found guilty of exploiting a bonded labourer must pay twice the minimum wage for each day of employment as compensation. In some countries, such as Liberia, Mexico and the United States, a compensation order is mandatory upon criminal conviction for trafficking in persons. In Mexico, under the General Act of 2012 to prevent, punish and eradicate trafficking in persons, a convicted defendant is required to pay the victim complete reparations, including the profits gained through the

⁸ The Migration for Employment Convention (Revised), 1949 (No. 97), Art. 6(1)(a) and (d); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Art. 9(1) and (2); and the Migrant Workers Recommendation, 1975 (No. 151), Paras 8(3) and (4) and 34(1) and (2).

⁹ The Domestic Workers Recommendation, 2011 (No. 201), Para. 21(1)(f).

¹⁰ In addition to country-specific sources, this chapter draws upon research conducted by the OSCE and the COMP.ACT project. See OSCE (2008): *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw; and COMP.ACT (2012): *Findings and results of the European action for compensation for trafficked persons*.

¹¹ In the United Kingdom, for instance, a forced labour victim could have four possible ways to obtain compensation, depending on the circumstances of his or her case: the State-run Criminal Injuries Compensation Scheme; an employment tribunal; separate civil litigation or through criminal prosecution of the perpetrator.

commission of the crime, as well as compensation for lost opportunities, employment, education and social benefits.

173. In a number of countries, including Cambodia, France, Germany, Russian Federation and Ukraine, civil claims can be filed on behalf of the victim as part of the criminal prosecution or following its successful resolution. Many countries also provide for the possibility for victims to pursue stand-alone civil suits against perpetrators, although such suits appear to be relatively rare in practice due to the associated costs, complexity and length of the legal procedures involved, and the lack of legal precedent.

174. A third route for compensation is through labour or employment courts or tribunals. Such claims can be pursued instead of criminal and civil claims, or in addition to them, and may include both material and moral damages. In some countries, labour court procedures are simpler than other mechanisms, and the burden of proof is lower. A further advantage is that the labour inspectorate or administration can generally initiate the action to obtain compensation from employers, thus removing this responsibility from the workers. In Brazil, labour inspectors can compensate workers immediately, using fines levied on the spot from the employer; between 1995 and 2012, compensation payments totalled over US\$37 million. Labour prosecutors can also pursue compensation for workers through civil actions brought against employers. In Nepal, under the Foreign Employment Act, 2007, migrant workers can pursue compensation from recruiters (agencies and individuals) through the complaints mechanism of the Department of Foreign Employment and the Foreign Employment Tribunal.

175. In several countries, irregular migrant workers experience difficulty in accessing labour law remedies, either due to their exclusion in law or for other reasons, such as fear of punishment. A further complicating factor arises for workers hired through a contractor or private employment agency if the employment relationship is not clearly defined. EU Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals requires Member States to establish mechanisms to ensure that migrant workers in an irregular situation can pursue a claim against their employer for outstanding remuneration, including after their return home (Article 6(2)(a)). Contractors and subcontractors may also be liable for outstanding remuneration and other financial sanctions in certain cases (Article 8). In some countries, such as Portugal and Spain, workers in an irregular situation can seek protection and compensation for violations of their labour rights through employment tribunals.

176. In many 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, victims are entitled to appropriate compensation from the perpetrator (including for loss of property, injury or income) and the courts can order payment of compensation to the State for the costs of care, accommodation and repatriation of victims (Part VI). In Indonesia, Act No. 21/2007 on the elimination of human trafficking requires perpetrators to pay compensation for the material and non-material losses suffered by victims.

177. Whatever the type of legal proceeding, a compensation order does not guarantee either a sufficient amount of compensation or its actual payment. It is not uncommon for extremely low sums to be awarded that are not proportionate to the magnitude of the harm suffered. In many cases, compensation orders are never enforced, as the perpetrators deliberately dispose of or hide their assets, or are unable to pay. Legal confiscation of assets can help to secure the payment of compensation. For example, in Germany, the criminal prosecution authorities can temporarily secure the assets of perpetrators, and victims then have a three-month period in which to file their claims. In

the United States, the courts can order the forfeiture of any property used to facilitate a trafficking offence, or that is derived from its proceeds, and procedures exist to award forfeited assets to victims. However, asset tracing, seizure and confiscation law is complex and can be difficult to implement in practice. Alternative dispute resolution mechanisms, mediation or other out-of-court settlement procedures offer additional means of securing payment of compensation, while avoiding lengthy court proceedings. Trade unions and NGOs can help to negotiate these types of settlements.¹²

Compensation through State-administered funds

178. In a minority of countries, victims of forced labour and trafficking can seek compensation through State-administered schemes.¹³ In Europe, State compensation is generally provided through funds for victims of violent crime (for example, in Austria, Belgium, Czech Republic, Germany, Luxembourg, Netherlands and Slovakia).¹⁴ State compensation funds have several advantages, including guaranteed payment to victims, the avoidance of lengthy court proceedings and the fact that the perpetrator does not necessarily have to be identified or involved. But such funds also tend to impose restrictive eligibility criteria, such as their availability only to nationals and lawfully resident foreigners, or to victims who have suffered physical violence, and may therefore exclude many other victims. In some instances, the ceiling on damages awarded from State funds is lower than under other compensation mechanisms. For example, moral damages may be excluded.

179. In Georgia, under the 2006 Law on Combating Trafficking in Human Beings, a State fund for victims of trafficking complements other available compensation mechanisms. Victims have the right to pursue compensation from their traffickers for moral, physical or material damages under both the civil and criminal codes. In cases where it proves impossible to obtain compensation through such means, victims receive a one-off payment of 1,000 Georgian lari (approximately US\$612) from a State fund.

Access to justice and the provision of ancillary rights

180. While many countries provide in law for the possibility of obtaining compensation, the practical difficulties associated with the process mean that most victims are unable to gain access to this remedy in practice. Many victims are unaware of their rights, or are unable to obtain or afford legal assistance. These difficulties may be compounded by language or social barriers in the case of migrant workers who are far from home.

181. Certain countries have adopted legislative provisions which seek to overcome the obstacles hampering access to justice by victims, for example by allowing trade unions or human rights associations to assist victims throughout judicial procedures, providing free legal assistance or imposing sanctions on authorities if they fail to follow up cases brought to their attention. Trade unions have played an important role in some instances in providing legal assistance to forced labour victims. In Germany, for example, a trade union obtained wage arrears on behalf of a trafficked Serbian metal worker after he had returned home.¹⁵ Human rights associations can also assist. In both Niger and

¹² See, for example, OSCE (2008): *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, p. 32.

¹³ See Chapter 5 for a discussion of financial assistance measures linked to rehabilitation schemes.

¹⁴ The Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims requires Member States to ensure that their national rules provide for the existence of a scheme for compensation to victims of violent intentional crimes committed in their respective territories (Art. 12).

¹⁵ ITUC (2011): *Never work alone: Trade unions and NGOs joining forces to combat forced labour and trafficking in Europe*, pp. 31 and 32.

Mauritania, associations established to combat slavery or similar practices are authorized to denounce cases and initiate civil actions for damages. In Mauritania, the law also provides for the punishment of authorities which fail to follow up cases brought to their knowledge.

182. In Kenya, trafficking victims who initiate civil damage suits are exempted from paying court fees. In the Philippines, free legal services and information about claiming compensation (in a language that the victim understands) are mandatory under the Anti-Trafficking in Persons Act, 2003. EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime requires Member States to ensure that victims of crime are immediately offered information about how and under what conditions they can access compensation (Article 4(1)(e)) and are provided with advice and support on accessing national compensation schemes for criminal injuries (Article 9(1)(a)). As discussed in Chapter 5, many countries offer temporary or long-term residence permits to victims, which enable them to participate in judicial or administrative proceedings.

183. Some countries have integrated victim compensation into broader institutional and policy initiatives. In Bulgaria, for instance, the operating procedures of the national referral mechanism specify that victims must be informed about the legal possibilities for compensation and receive practical support during the official application procedure.

Conclusion: Implementation gaps and opportunities

184. The ability of forced labour victims to obtain compensation for the harms suffered is linked to broader issues concerning access to justice and the right to an effective remedy. The mere existence of judicial or other mechanisms, while necessary, is not sufficient to guarantee that victims receive appropriate remedies in practice, including commensurate compensation. Other supplementary support measures are vital as victims are often in an extremely precarious and vulnerable situation far from their homes, without social support networks and unable to speak the local language. However, in most countries, such assistance is not generally available, and the majority of identified forced labour and trafficking victims, both women and men, fail to obtain adequate compensation.

185. Ancillary measures may include the provision of information in the victim's mother tongue and free legal assistance. The simplification of legal procedures, or the establishment of alternative informal mechanisms, can also be helpful, as can empowering NGOs or trade unions to initiate and pursue cases on behalf of victims. For cross-border migrant workers, in particular, special measures may be required to ensure that they are able to access available remedies on an equitable basis, and to enable them to remain in the destination country at least for the duration of the court proceedings.

186. The right to an effective remedy also implies that alternative measures should be considered in cases where compensation cannot be obtained from offenders, such as the establishment of State-administered compensation funds financed from confiscated assets and other sources. Labour law remedies, including those allowing labour inspectors or prosecutors to secure compensation on behalf of victims, can also be integral to comprehensive compensation regimes.

187. New standards could contain measures to ensure that all victims of forced labour benefit from appropriate and accessible justice and compensation mechanisms.

Chapter 7

Enforcement

International legal framework

188. Despite the virtually universal prohibition of forced labour, most victims remain undetected and unassisted, while their exploiters go unpunished. A robust law enforcement response is therefore essential, both to protect the human rights of victims and to punish the perpetrators, as well as to deter other would-be offenders from contemplating the crime.

189. The principle that forced labour and trafficking in persons should be criminalized and punished is recognized in various international and regional instruments. Article 25 of Convention No. 29 requires the prohibition of forced labour to be made effective through the imposition of penalties that are really adequate and strictly enforced. In this regard, the ILO Committee of Experts has noted that sanctions consisting of a fine or very short prison sentence do not reflect the seriousness of the offence and are not dissuasive. In such cases, it has requested the governments concerned to remedy the situation.¹ The Committee of Experts has emphasized the need to strengthen law enforcement and has frequently requested information on the measures taken by member States in this regard.² Convention No. 182 requires States to “take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention” (Article 7(1)).

190. The Trafficking Protocol requires States parties to criminalize trafficking, and the UNTOC Convention calls for sanctions to take into account the gravity of the offence (Article 11(1)).³ The Trafficking Protocol also includes provisions concerning the criminalization of directing, organizing, attempting to commit or participating as an accomplice in a trafficking offence (Article 5(2)). Regional instruments contain similar provisions on criminalization, as well as provisions on the investigation and prosecution of trafficking offences.⁴ Both the UNTOC Convention (Article 10) and the European Trafficking Convention (Article 22) also require States to provide for the liability of legal persons, such as companies and associations. Other elements that are emphasized

¹ 2012 General Survey, para. 319. See also, for example, Morocco – CEACR, observation, 2012; Democratic Republic of Congo – CEACR, observation, 2011.

² See, for example, Cambodia – CEACR, observation, 2013; Indonesia – CEACR, observation, 2013; Jamaica – CEACR, observation, 2013; Paraguay – CEACR, observation, 2013; Spain – CEACR, observation, 2013.

³ The OHCHR Recommended Principles and Guidelines provide that “States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors” (Principle 13). See also Guideline 2.

⁴ See the SAARC Convention, Arts III–VII; European Trafficking Convention, Chapters IV and V.

include the need for training and adequate resources for law enforcement,⁵ specialized authorities and coordination units,⁶ strengthened border and document control measures,⁷ and international cooperation.⁸

191. Other provisions address the circumstances under which a State can exercise jurisdiction over criminal offences. Article 15 of the UNTOC Convention requires each State party to establish jurisdiction over offences committed within its territory, on board a vessel flying its flag or on board an aircraft registered under its laws. Each State Party “may” also exercise jurisdiction over a trafficking offence committed outside its territorial jurisdiction when the offence is committed against or by a national.⁹

192. While acknowledging the essential role of police authorities in combating forced labour, the ILO Committee of Experts has emphasized the importance of labour inspection in view of its mandate to supervise and identify violations of labour law that are linked to forced labour practices. It has requested governments to ensure that these services are allocated sufficient resources to be able to carry out their functions. In particular, the Committee of Experts has noted that “they should be able to travel rapidly, effectively and safely over the whole of the national territory, including in remote areas where workers are more likely to be exploited”.¹⁰

193. The Labour Inspection Convention, 1947 (No. 81), defines the functions of labour inspection systems as: enforcing legal provisions on conditions of work and the protection of workers; providing technical advice to employers and workers; and alerting the competent authority to abuses not specifically covered by existing legal provisions (Article 3(1)). The labour inspectorate therefore plays a preventive, advisory and enforcement role. Convention No. 81 calls for cooperation and collaboration between labour inspection and other concerned public and private institutions, and with employers and workers or their organizations (Article 5).

194. The Framework for Action adopted by the International Labour Conference in 2012 suggests that, with respect to forced labour and child labour, governments should, in consultation with employers’ and workers’ organizations, consider “developing a complementary and appropriate approach between criminal justice and labour institutions”. It adds that employers’ and workers’ organizations “may advise, through

⁵ Both the Trafficking Protocol (Art. 10(2)) and the European Trafficking Convention (Art. 29(3)) require States to provide or strengthen training for relevant officials on methods to prevent trafficking, prosecute traffickers and protect the rights of victims. See also the UNTOC Convention, Art. 29 (training and technical assistance); SAARC Convention, Art. VIII(1) and (2) (sensitization and provision of sufficient means, training and assistance); European Trafficking Convention, Art. 29(1) (provision of financial resources).

⁶ See the European Trafficking Convention, Art. 29(1) and (2).

⁷ These are characterized as prevention measures. See the Trafficking Protocol, Arts 11–13; European Trafficking Convention, Arts 7–9.

⁸ See Chapter 2 for a discussion of international and regional means of cooperation. In the context of enforcement, such measures could include cooperation for the purposes of the confiscation of criminal proceeds, extradition agreements and mutual legal assistance in investigations, prosecutions and judicial proceedings. See, for example, the UNTOC Convention, Arts 13, 16 and 18; SAARC Convention, Art. VII. See also the OHCHR Recommended Principles and Guidelines, Guideline 11.

⁹ For additional jurisdictional provisions, see Article 15 of the UNTOC Convention; see also the European Trafficking Convention, Art. 31; EU Trafficking Directive, Art. 10.

¹⁰ 2012 General Survey, paras 321 and 322.

social dialogue, the priorities and activities of independent labour inspection and other enforcement institutions with respect to fundamental principles and rights at work”.¹¹

195. The February 2013 Meeting of Experts emphasized that measures should be taken to enhance the capacity and reinforce the role of the labour inspectorate with respect to forced labour. It highlighted the importance of cooperation and coordination between the labour inspectorate and other law enforcement bodies, and the need to ensure the transparency of public prosecutorial bodies and the independence of the judiciary.

National law and practice

Prohibition and punishment of forced labour

196. Effective enforcement depends first of all on the existence of an adequate legal framework. Virtually all ILO member States have constitutional or legislative provisions that prohibit forced labour or related practices, such as slavery, servitude, trafficking or bonded labour.¹² In India and Pakistan, laws adopted in 1976 and 1992, respectively, abolished the “bonded labour system”, extinguished all outstanding bonded debt owed by bonded labourers and provided for sanctions against their employers. In Niger, Act No. 2003-025 of 13 June 2003 amended the Penal Code to make slavery a crime punishable by a prison term of up to 30 years. France prohibits all forms of trafficking in persons under the Penal Code (section 225-4), and also criminalizes the subjection of vulnerable persons to conditions of work incompatible with human dignity (section 225-14). However, some national legislation does not provide comprehensive coverage. For instance, a number of anti-trafficking laws are restricted to trafficking for sexual exploitation. Nevertheless, since the Trafficking Protocol entered into force in 2003, the scope of definitions in national laws has tended to become more comprehensive.¹³ For example, Israel amended its Criminal Code in 2006 to include labour exploitation within the definition of human trafficking. Paraguay also amended its Criminal Code in 2009 to expand the offence of transnational trafficking to include trafficking for forced labour. The EU Trafficking Directive defines exploitation as including not only the “minimum” activities enumerated in the Trafficking Protocol, but also forced begging and the “exploitation of criminal activities” (Article 2(3)).

197. Despite this trend of enlarging the definition of trafficking, prosecution and conviction rates remain extremely low worldwide, particularly for cases of trafficking for labour exploitation. The total number of convictions for trafficking offences, according to UNODC data for 2007 to 2010, was between 5,500 and 7,000 per year.¹⁴ Other sources suggest that, due to a range of factors, trafficking for labour exploitation has lower detection and prosecution rates than trafficking for sexual exploitation.¹⁵

¹¹ ILO: *Framework for action for the effective and universal respect, promotion and realization of fundamental principles and rights at work 2012–16*, International Labour Conference, 101st Session, Geneva, 2012, paras 15(c) and 16(b).

¹² See 2007 General Survey, paras 67 and 137. Almost all national constitutions contain prohibitions of slavery, while over 100 constitutions contain a specific prohibition of forced or compulsory labour: 2012 General Survey, para. 10. At least 134 countries and territories in the world have criminalized human trafficking: UNODC (2012): *Global Report on trafficking in persons*, Vienna, p. 83.

¹³ *ibid.*, pp. 82 and 83.

¹⁴ *ibid.*, pp. 26 and 85. Similar global data on prosecution and conviction rates are not available for other forms of forced labour, such as bonded labour and slavery.

¹⁵ *ibid.*, p. 36. See also United States State Department (2012): *Trafficking in persons report*, p. 44.

198. In seeking to facilitate effective prosecution, several countries have adopted new laws either criminalizing forced labour as a stand-alone offence, or introducing amendments to clarify the prohibition of forced labour. In the United Kingdom, a new criminal offence prohibiting forced labour and servitude was introduced by section 71 of the Coroners and Justice Act, 2009. The accompanying legal guidance explains that, although specific offences for trading in slaves and trafficking for both sexual and labour exploitation already existed, the Act seeks to give further and specific protection to victims of forced labour. The guidance also notes that the Act covers situations where the victim has not been trafficked, or when the trafficking element could not be proved.¹⁶ Similarly, the Australian Parliament amended the Criminal Code in February 2013 to introduce a new stand-alone offence of forced labour to facilitate the prosecution of trafficking and slavery, in particular for the purposes of labour exploitation. In Ireland, a Bill to amend the Criminal Law (Human Trafficking) Act, 2008, which was still pending in May 2013, introduces a definition of “forced labour” that is in line with Convention No. 29 to make it clear that the Act also covers situations of forced labour.

199. An effective national legal framework requires adequate penalties, not only to punish criminal conduct, but also to deter potential offenders. In several countries, the penalties prescribed under labour legislation for the exaction of forced labour merely consist of a fine or a very short prison sentence. However, other countries establish substantial penalties. For instance, in Mauritania, Act No. 2007/048 criminalizing slavery and punishing slavery-like practices provides for imprisonment of from five to ten years and a fine of 500,000 Mauritanian ouguiyas (MRO) to MRO1 million (about US\$1,912 to US\$3,824). In the Philippines, acts of trafficking are punishable by penalties of 20 years imprisonment and substantial fines. Aggravated penalties in cases involving children, serious physical injury, public officials or other circumstances are also common. Article 4 of the EU Trafficking Directive specifies more severe penalties (at least ten years of imprisonment) in cases involving a “particularly vulnerable” victim, including a child; a criminal organization; deliberate or gross negligence endangering the life of the victim; or the use of serious violence or harm to the victim. Several countries, such as Bangladesh, Cyprus and Ecuador, provide for higher penalties in cases of trafficking for sexual exploitation than for trafficking for labour exploitation.

200. A number of complementary approaches are used in Brazil to enforce the legal provision outlawing “conditions analogous to slavery”. Pursuant to Inter-ministerial Decree No. 02/2011 MTE/SDH, the Ministry of Labour and Employment and the Human Rights Secretariat maintain a so-called “dirty list”, which is a public register of individuals or legal entities found to have subjected workers to slavery-like conditions. Once on the list, the offender is monitored by the labour inspectorate for a two-year period to ensure that there is no recurrence of the violation, while public and private financial institutions impose restrictions on them, such as the denial of credit. Through penalties for slave labour violations, Brazilian labour courts have required the payment of wage arrears as well as “collective moral damages”. In recent decisions, these damages have reached record amounts.¹⁷ A pending draft amendment to the Constitution would authorize the expropriation of establishments found using slave labour.

¹⁶ United Kingdom Crown Prosecution Service: *Legal guidance: Slavery, servitude and forced or compulsory labour*, p. 2/5.

¹⁷ In 2010, for example, the Higher Labour Court ordered a construction enterprise to pay 5 million Brazilian reais (approximately US\$2.85 million) in collective moral damages for subjecting 180 workers to slave labour.

201. Some countries also provide for the confiscation of the assets of those convicted of trafficking offences. In Egypt, article 13 of Law No. (64) of 2010 to combat human trafficking provides for the confiscation of all criminal proceeds. In Romania, traffickers' assets can be confiscated under section 19 of the Law on Preventing and Combating Trafficking in Human Beings, 2001.¹⁸

Role of labour administration and labour inspectorates

202. In view of the complexity of detecting, investigating and prosecuting forced labour and related offences, close collaboration is required between the various branches of law enforcement. While the role of the criminal law enforcement authorities in combating trafficking in persons is well established in many countries, the critical contribution of labour administrations and inspectorates in combating forced labour is not always sufficiently recognized or supported.

203. Labour inspectorates are uniquely placed to take action against forced labour because of their right of access to the workplace, their mandate to detect violations of labour law and their ability to initiate immediate action, communicating as necessary with other relevant authorities. Forced labour cases often involve several simultaneous violations of labour law relating, for example, to wages, hours of work, occupational safety and health and the payment of social security contributions. By taking effective and immediate action to address and correct such violations, labour inspectors can prevent exploitative situations from degenerating further into coercive forced labour practices. Inspectors can also detect and investigate forced labour and trafficking cases, often in collaboration with criminal law enforcement authorities. In cases where, for different reasons (including the high burden of proof), it is difficult to pursue criminal prosecutions and sanctions for offences, labour law enforcement may offer an alternative route to punishing employers and compensating victims.

204. In some countries, the labour administration has a clear mandate to enforce the prohibition of forced labour. In Brazil, the labour administration has played a leading role in enforcing prohibitions against slave labour, and labour inspectors and prosecutors have been actively involved for many years in investigating and prosecuting slave labour cases in labour tribunals. In Malaysia, under the Anti-Trafficking in Persons (Amendment) Act, 2010, labour officers may exercise the same powers of enforcement as the police, and have investigated and assisted in the prosecution of criminal cases involving trafficking for labour exploitation. In India, the main enforcement responsibility in relation to bonded labour lies at the district level with district magistrates who may authorize the involvement of other officials. Labour officers can have an important role to play when intervention is required at the workplace, in addition to providing rehabilitation assistance to released bonded labourers.

205. In many countries, the specific mandate of labour inspectors to combat undeclared work can provide an important entry point for action against forced labour. In France, for example, labour inspectors and prosecutors, assisted by the police, can conduct joint visits to combat "illegal work". If they uncover compelling evidence of criminal offences, including forced labour, the offender may be detained. Cooperation between the labour inspectorate and other relevant public institutions is essential in designing joint strategies, planning operational action and exchanging information. Granting secure access to the databases of different institutions can allow inspectors to carry out workplace risk-mapping, and therefore to target their inspections more effectively. For example, labour inspectors in Belgium and the Netherlands have access to a

¹⁸ The confiscation of assets is also discussed in Chapter 6.

comprehensive set of data, which may include information on a worker's nationality, immigration status and registration for social security and tax purposes. Labour administrations throughout Europe can also exchange information through the Internal Market Information System (IMI), which links public bodies at the national, regional and local levels with their counterparts in other countries.

206. However, it is important to ensure that such “joined-up” approaches do not place workers, especially those with an irregular status, at heightened risk of deportation or of sanctions for offences that they may have been obliged to commit by their exploiters. As observed by the Office in the report prepared for the general discussion on labour administration and labour inspection at the International Labour Conference in 2011, cooperation between labour inspectors, criminal law enforcement and immigration authorities with respect to foreign and migrant workers must be approached with caution “bearing in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions”.¹⁹ Failing to protect workers from possible sanctions deters them from denouncing abusive conditions.²⁰

Regulation and monitoring of private employment agencies

207. Abusive practices by private employment agencies can lead to situations of forced labour and the regulation of such agencies is therefore a key component of effective enforcement.²¹ Labour inspection has an important role to play in this respect, as private employment agencies are usually regulated under labour law. In Portugal, the national labour inspectorate undertakes targeted inspections of temporary work agencies in collaboration with sectoral employer's organizations and the national employment and vocational training institute. The Gangmasters Licensing Authority in the United Kingdom regulates the operations of private labour providers in agriculture and related activities. Several civil and criminal enforcement options exist, ranging from advisory and warning letters to criminal prosecution. Under the Gangmasters (Licensing) Act, 2004, it is a criminal offence for labour providers to operate without a license (punishable by up to ten years imprisonment and a fine) and for third parties to use the services of an unlicensed labour provider (punishable by up to six months imprisonment and a fine).

208. In the Philippines, new provisions in section 16(h) of the Expanded Anti-Trafficking in Persons Act, 2012, require the Philippine Overseas Employment Administration (POEA) to create a “blacklist” of recruitment agencies, illegal recruiters and persons facing administrative, civil and criminal complaints for trafficking either in the Philippines or overseas, and those involved in cases where trafficked victims have been rescued, even in the absence of formal complaints against the recruiter. The POEA has the authority to suspend the license or registration of any blacklisted agency. In Ethiopia, Employment Exchange Services Proclamation No. 632/2009 provides for the suspension and revocation of the licenses of private employment agencies in a number of

¹⁹ ILO: *Labour administration and labour inspection*, Report V, International Labour Conference, 100th Session, Geneva, 2011, para. 304. See also ILO: *Labour inspection in Europe: Undeclared work, migration, trafficking*, LAB/ADMIN Working Document No. 7, Geneva, 2010, pp. 6 and 30.

²⁰ See Chapter 5.

²¹ For a discussion of the links between forced labour, trafficking and abusive intermediaries, see the 2010 General Survey, paras 362 and 363. See Chapter 4 for further information on the regulation of the private recruitment industry.

circumstances, including when they have failed to protect the rights, safety and dignity of citizens they have sent abroad. Fee charging, the withholding of travel documents without the worker's consent and the provision of false information are also prohibited. In both Ethiopia and the Philippines, agencies and employers can be held jointly and severally liable for claims related to overseas employment contracts.

Capacity enhancement of law enforcement and other relevant actors

209. The vast majority of countries provide some type of training or sensitization for law enforcement officials, and many also provide training for other relevant government actors. In Austria, for instance, tax inspectors receive regular training on identifying potential victims. In Poland, regular anti-trafficking training is provided for police and border guards, as well as for prosecutors, labour inspectors, social security personnel and staff working in refugee centres. The EU Trafficking Directive requires Member States to promote regular training for officials likely to come into contact with victims or potential victims (Article 18(3)). In its preamble, it calls on Member States to promote such training not only for the police, but also for other officials, including border and immigration officers, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, health and social welfare personnel and consular staff (paragraph 25).

210. Over half of the countries reviewed for this report have established specialized units focusing on forced labour offences, and particularly on human trafficking. Such units generally have a criminal justice focus, and involve the police or prosecution authorities. Latvia has a specialized unit on human trafficking and pimping in the Organized Crime Board of the main criminal police, and trafficking is also covered by a specialized organized crime prevention unit in the office of the Public Prosecutor. In Argentina, a specialized prosecutor's office to combat human trafficking coordinates with the anti-trafficking units of the federal police, the coast guard and the national gendarmerie.

211. Cooperation between the relevant government authorities is also key to an effective enforcement response.²² Some countries have developed institutions that combine labour and criminal law enforcement to investigate forced labour offences, although these remain quite rare. In Jordan, a joint human trafficking inspection unit established in 2012 includes labour inspectors and police officers, and monitors hotels, restaurants, bars and nightclubs known to be "high risk" locations. In Brazil, the Special Mobile Inspection Group, comprising labour prosecutors, federal police and labour inspectors, responds to allegations of slave labour, rescues workers and imposes immediate sanctions on employers. In the Netherlands, the Inspectorate SZW, which investigates, inter alia, illegal employment, labour exploitation and benefit fraud, has cooperated with the tax authorities to detect fraudulent practices by temporary work agencies in connection with human trafficking.

212. The effectiveness of government enforcement action can be enhanced through cooperation with workers' organizations and civil society. Trade unions can identify victims, denounce violations and provide support to workers during court proceedings.²³ Migrants' associations, religious congregations, human rights NGOs and other community-based groups can also contribute to the identification of victims in view of

²² See Chapter 3 for further information on the role of national coordination mechanisms.

²³ See Chapter 6 for a discussion of the role of trade unions in facilitating the access of victims to justice.

their presence at the local level and their capacity to gather information through their members and networks.

Conclusion: Implementation gaps and opportunities

213. The low number of prosecutions and convictions in relation to the global scale of forced labour and human trafficking points to a profound implementation gap in terms of enforcement. The evidence indicates that this gap is more pronounced in situations of forced labour exploitation than forced sexual exploitation. The fact that forced labour prevails primarily in the informal and rural economies, often in hidden and illicit activities or in private homes, creates particular enforcement challenges. This situation underscores the need for innovative approaches to enforcement, and for coordination between the various concerned authorities. The vulnerable situation of victims of forced labour, including those with irregular migration status, underscores the necessity for enforcement action to be accompanied by strong victim protection measures.

214. None of the existing international and regional trafficking treaties explicitly recognizes the role of labour institutions in action against trafficking and, in practice, labour administrations are rarely represented on national anti-trafficking coordination bodies. While labour institutions are more often included in, or lead, similar bodies on forced labour, labour inspectorates may still lack an explicit mandate to detect and/or investigate forced labour offences.

215. The exaction of forced labour is a serious offence which calls for a strong criminal justice response. However, the practical difficulties of investigating and prosecuting forced labour suggest that a reliance on criminal law enforcement alone is unlikely to be successful. Rather, there is a need to develop a comprehensive approach involving both criminal and labour justice systems. This requires national labour administrations and labour inspectorates to be given a clear mandate, training and adequate resources to play their full role in combating forced labour and related practices, including through preventive and punitive enforcement action. Another opportunity lies in strengthening regulation and enforcement in relation to private recruitment agencies, including through cooperation between the labour authorities in the areas of origin and destination of migrant workers.

216. A new international instrument(s) could provide standards and guidance to strengthen the role of labour administrations and labour inspectorates in enforcement action against forced labour and related practices. It could make explicit the value added of the development of a complementary approach between criminal and labour justice systems.

Chapter 8

Strengthening the ILO's role in the effective elimination of all forms of forced labour

217. This chapter draws together the main conclusions from the preceding analysis of current law and practice with regard to the elimination of forced labour. It also outlines the value added of a new ILO instrument(s) and possible key elements of such instrument(s).

The global context

218. It may be useful to recall briefly the context of the present report. Despite the high ratification rates of the ILO's Conventions on forced labour and the worst forms of child labour, and the existence of many other international instruments prohibiting slavery, slavery-like practices and trafficking in persons, these problems persist on an alarming scale. The ILO estimates that at least 20.9 million women and girls, men and boys, are trapped in jobs that they have not chosen freely or cannot leave, victims of deception, coercion and extreme exploitation, and denied their basic human rights. No region is untouched. The ILO's constituents now have an historic opportunity to strengthen global efforts to put an end to forced labour and related practices.

219. Convention No. 29 provides a solid foundation and point of departure. The definition of forced labour that it sets out remains as relevant today as when it was adopted in 1930, characterizing it as work or service exacted "under the menace of any penalty" and for which the person "has not offered himself voluntarily". The Convention specifies that the illegal exaction of forced labour shall be punishable as a penal offence, subject to adequate penalties and strict enforcement. While the complete suppression of all forms of forced labour, as required by Convention No. 29, implies a need for States to take effective action to prevent the crime and protect its victims, the Convention does not contain any explicit standards or guidance regarding how, in practice, this should be done.

220. While notable progress has been made in combating forced labour in particular, but not only with respect to State-imposed forms, the global context has changed significantly since the adoption of Convention No. 29. The great majority of forced labour today is exacted by individuals and private entities operating outside the rule of law, rather than by States themselves. Forced labour practices permeate many types of economic activity, from agriculture to domestic work, construction to manufacturing. Although most forced labour occurs in the informal economy, in the absence of adequate controls, products made by forced labourers can still enter the value chains of multinational corporations.

221. States require guidance not only to address forced labour at home, but also to enable them to cooperate internationally, especially since estimates indicate that around 30 per cent of victims are exploited in countries other than their own. The evidence presented in this report demonstrates clearly that, while many positive initiatives have been taken in recent years to tackle forced labour, contemporary forms of slavery and human trafficking, more comprehensive and effective action is needed to eliminate these practices definitively.

The value added of a new ILO instrument or instruments

222. The value added of a new ILO instrument or instruments, supplementing Convention No. 29, would be the provision of specific standards and guidance tailored to the needs of ILO member States, including employers' and workers' organizations. The aim would be to enable members to strengthen their action against forced labour by adopting a comprehensive and integrated approach to prevention, victim protection, compensation and enforcement, including through international cooperation and/or assistance.

223. The key principles underpinning a new instrument(s) would be the adoption of a rights-based approach that takes into account the best interests and views of those who are actually or potentially affected by forced labour; the gender and age sensitivity of all the measures proposed; and coherence and coordination between all relevant areas of policy and action to eliminate forced labour and human trafficking.

224. It should be emphasized that new standard setting would *supplement* and *strengthen* existing ILO standards on forced labour, and on the broader protection of workers' rights, by providing more explicit standards and detailed guidance to member States on giving effect to the principle of the elimination of forced labour. The existing provisions of Convention No. 182 concerning special measures to secure the elimination of the worst forms of child labour, including forced labour of children, would not be reviewed or put into question by the new standard(s). Standard setting would also *complement* international law on trafficking in persons and slavery by addressing issues of particular relevance to the world of work.

225. The standard could take the form of a Protocol to Convention No. 29 and/or a Recommendation. This decision has to be taken by the Conference in light of the responses by member States to the questionnaire presented below.

226. A Protocol would be open for ratification and could be succinct, specifying the main principles for the prevention of forced labour, victim protection, compensation and enforcement, and the key measures that Members ratifying the Protocol should take to give effect to those principles.

227. A Recommendation could provide more detailed guidance on the concrete measures to be taken to address gaps in implementation in relation to the prevention of forced labour, victim protection, compensation and enforcement, as well as coordination and cooperation among ILO Members.

Suggested key elements of a new instrument or instruments

228. Based on the analysis of current law and practice and of implementation gaps presented in this report, and the practical experience of ILO member States and others in combating forced labour and related practices, the following are suggested as possible elements for inclusion in a new instrument or instruments.

229. The instrument could recall that Convention No. 29 covers all forms of forced or compulsory labour and is applicable to all human beings, irrespective of their sex or nationality. The instrument could also recognize that the transitional provisions set out in Article 1(2) and (3) and Articles 3–24 of Convention No. 29 are no longer applicable.

230. The instrument could recall the importance of universal respect, promotion and realization of all fundamental principles and rights at work as rights in themselves and as enabling conditions, as well as the standards regarded as the most significant from the viewpoint of governance covering tripartism, employment policy and labour inspection.

231. The instrument could recognize that the existence of forced labour represents an obstacle to the achievement of decent work for all, the global eradication of poverty and the advancement of social justice. Its effective elimination requires simultaneous action on a broad range of fronts by many partners.

232. A strong framework for international coordination and collaboration is required, as neither the causes nor the consequences of forced labour are confined within national boundaries, but reflect the interconnectedness of countries in a globalized world, including through international labour migration and the international trade in goods and services. It is of paramount importance that States take appropriate steps to assist one another in their efforts to eliminate forced labour through enhanced international cooperation and/or assistance, including measures to address the root causes of forced labour.

233. International and national policy coherence should be reinforced with respect to the eradication of forced labour. Policies regarding labour migration and recruitment, social protection, wages and working conditions, employment and training, education and social dialogue, among others, based on existing international labour standards and ILO guidance, have a key bearing on the protection of workers from conditions which may degenerate into forced labour.

234. While it is the prime responsibility of governments to protect people from forced labour and related violations of human rights, other actors have key roles to play. Governments should, particularly through their labour administration systems, systematically consult representative organizations of employers and workers when planning, designing, implementing and monitoring measures against forced labour. Consultation with other relevant civil society and community-based organizations is also encouraged. Furthermore, governments should consult and develop partnerships with non-State entities, such as multinational corporations and global union federations, so as to enhance the effectiveness of action against forced labour at the global level.

235. The role and capacity of labour administrations in general, and labour inspectorates in particular, need to be strengthened in relation to combating forced labour, including in the informal economy. They require an explicit mandate, adequate resources and training in order to fulfil this role, including in prevention, victim identification and protection, and investigation and prosecution. A complementary, coordinated and mutually-supportive approach is required between labour and criminal justice systems.

236. The capacity for research and data collection on forced labour needs to be strengthened as a basis for designing better targeted policies and intervention strategies, and monitoring their effectiveness and impact. Statutory reporting mechanisms at national level could be considered to promote the gathering and dissemination of relevant information to all stakeholders.

237. A national institutional framework is required which enables the involvement of and effective coordination between all concerned government authorities, social partners and other stakeholders. There could, in some instances, be merit in promoting or strengthening a single national structure to address all forms of forced labour, human trafficking, slavery and related practices.

238. Governments should establish a sound national legal framework to combat all forms of forced labour. National policies and action plans should be comprehensive and integrated, including specific and time-bound measures for the prevention of forced labour and the protection and compensation of victims, as well as dissuasive sanctions. Adequate human and financial resources should be allocated for the implementation of national action plans.

239. Prevention strategies should address the range of root causes of forced labour and should include: measures to empower specific at-risk population groups (such as migrant workers, those in the informal economy, domestic workers, indigenous peoples, ethnic minorities, people with disabilities, children and young people); measures to strengthen legal protections and the rule of law; and measures aimed at ending the trade in and consumption of goods and services tainted by forced labour. Enhanced regulation of private recruitment agencies should be a key focus of prevention efforts.

240. Protection measures should focus on upholding the human rights of women and girls, men and boys who are victims of forced labour and trafficking. They should strike an appropriate balance between fulfilling the immediate needs of victims, including psychological support, shelter and material assistance, and their long-term need for social and economic recovery and reintegration. Governments could consider the establishment of national referral or similar mechanisms to ensure that the needs of victims are met in a coordinated and integrated manner, including services for children and migrant workers. Legal provision for the non-prosecution and non-punishment of offences committed as a direct result of a victim's forced labour status is critical to encourage them to approach the authorities. Strong protection measures also encourage the cooperation of victims in legal proceedings against perpetrators.

241. Access to justice for all victims of forced labour, and the right to an effective remedy, should be assured, including through measures to enable victims to obtain free legal assistance,¹ and compensation for material and moral damages, including wage arrears.

242. Employers and their organizations can undertake educational programmes to raise the awareness of their members concerning the risk of forced labour and how to mitigate it. At the national level, employers' organizations can advocate the elimination of forced labour, encourage governments to take measures to tackle it and engage in social dialogue on the issue. Employers' organizations can inform their member companies about national legal and regulatory requirements in the countries where they operate, and provide a platform for their members to share issues of interest, challenges and good

¹ In the case of criminal charges being brought against the victim, the defendant's right to legal assistance that is free of cost, where needed, has been recognized as a minimum human rights requirement in various international and regional instruments. See, for example, the International Covenant on Civil and Political Rights, Art. 14(3).

practice relating to the elimination of forced labour. Employers' organizations can also encourage their members to become more aware of the policies of their suppliers and to put in place appropriate due diligence processes to identify and remedy any possible forced labour problems.

243. Workers and their organizations can advocate the elimination of forced labour and the protection of victims, encourage governments to take measures and allocate resources to tackle it, and engage in social dialogue on the issue. They can undertake campaigns to promote equal opportunities and participation for all men and women workers, the organization and empowerment of vulnerable groups of workers, including in the informal economy, and child protection. This should include raising awareness of the risks of forced labour and human trafficking and how to avoid them. Workers' organizations can also extend their services, such as information and free legal counselling, to workers at risk of forced labour and to victims.

Questionnaire

Introduction

This questionnaire is presented to member States in preparation of the standard-setting item (single discussion) on “supplementing the Forced Labour Convention, 1930 (No. 29), to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour” at the 103rd Session (2014) of the International Labour Conference. The Governing Body selected this item at its 317th Session (March 2013).¹

The February 2013 Meeting of Experts, in concluding that “implementation gaps should be addressed through standard setting” on forced labour, considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach a consensus on this issue. It did not retain the option of a new Convention. Members who spoke in support of the item at the 317th Session of the Governing Body (March 2013) expressed different views on the form of the possible new standard(s).²

The nature of these instruments is briefly described hereunder:

- ❑ A Protocol is an international treaty, subject to ratification and linked to a Convention. It creates legal obligations applicable to the ratifying State and can be ratified only by those Members which have ratified the Convention. The associated Convention remains open for ratification. A Protocol is used for the purpose of partially revising or supplementing a Convention, to allow adaptation to changing conditions, thus making the Convention more relevant and up to date.³
- ❑ A Recommendation has no binding force and is not subject to ratification. It provides guidance as to national policy, legislation and practice. It can supplement a Convention (or Protocol) or it can be a stand-alone instrument.

The decision on the form of the new instrument(s) should be taken by the International Labour Conference at its 103rd Session (June 2014). On the basis of the outcome of the February 2013 Meeting of Experts and the discussion in the Governing Body at its 317th Session (March 2013), the Office has structured the questionnaire according to a proposed Protocol to Convention No. 29, complemented by a proposed Recommendation. Where respondents are of the view that a provision should be retained, but belongs in the other form of instrument, then this should be indicated under “comments”.

The current standard-setting exercise does not call into question the obligation of ratifying member States to suppress the use of forced or compulsory labour (Article 1(1) of Convention No. 29), the definition of forced labour and the exclusions under

¹ GB.317/INS/2(Rev.) and GB.317/PV, para. 25(a)(i).

² GB.317/PV, paras 3–24.

³ The ILC has adopted five Protocols to date.

Article 2(1) and (2), or the provision on criminalization and penalties (Article 25). However, it should be noted that a series of transitional provisions set forth in Article 1(2) and (3) and Articles 3–24 of Convention No. 29 are deemed no longer applicable.

The aim in adopting a new instrument(s) is to establish standards and provide guidance to member States regarding prevention, victim protection and compensation for forced labour, and other relevant measures to address implementation gaps. While Convention No. 29 implies the need for such measures to achieve the elimination of forced labour in all its forms, it does not contain specific provisions on these issues. The new standard(s) may also serve to formalize recognition of the non-applicability of the transitional provisions of Convention No. 29, consideration of which was recommended by the Committee of Experts in its General Survey of 2007.⁴

Having regard to article 38, paragraph 1, of the Standing Orders of the Conference, governments are requested to consult the most representative organizations of employers and workers before finalizing their replies. Such consultations are mandatory in the case of Members that have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Governments are also reminded of the importance of ensuring consultations among all relevant departments when formulating their replies.

In order to be taken into account by the Office in its analysis of replies, completed questionnaires must be received no later than 31 December 2013. In accordance with established practice, the most representative organizations of employers and workers may send their replies directly to the Office.

The report and the questionnaire are available on the ILO website at the following URL: <http://www.ilo.org/ilc/ILCSessions/103/reports/ReportsubmittedtotheConference/lang--en/index.htm>. Respondents are encouraged, where possible, to complete the questionnaire in electronic format and to submit their replies electronically to the following email address: forcedlabour2014@ilo.org.

I. Preamble

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

Yes No

Comments:

⁴ See *Eradication of forced labour*, Report III (Part 1B), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), ILC, 96th Session, 2007, para. 196.

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

II. Form of a possible instrument or instruments

8. *Should a possible instrument or instruments to be adopted by the International Labour Conference to supplement Convention No. 29 take the form of:*

(a) *a Protocol, supplemented by a Recommendation?*

(b) *a Recommendation?*

Comments:

III. Content of a proposed Protocol

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

Yes No

Comments:

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

Yes No

Comments:

11. *Should the proposed Protocol provide that each Member should take effective and comprehensive measures to prevent all forms of forced labour, including by:*

- (a) *educating and informing people, of both sexes and all ages, in order to reduce their risk of becoming victims of forced labour?*

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

Other question

18. *Should the proposed Protocol contain a provision acknowledging that the transitional period provided for in Convention No. 29 has long expired and revoking the transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3–24?*⁵

Yes No

Comments:

IV. Content of a proposed Recommendation

National policies and plans of action

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

Yes No

Comments:

⁵ The transitional provisions set forth in Article 1(2) and (3) and Articles 3–24 of Convention No. 29 are deemed no longer applicable. Convention No. 29 provides that “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, the ILO supervisory bodies have since considered that the use of forced or compulsory labour may no longer be justified by invoking these transitional provisions because it would appear to disregard their transitional function and contradict the spirit of the Convention. See the 2007 General Survey, para. 10. In March 2010, the 307th Session of the Governing Body approved a revised report form under article 22 of the Constitution concerning Convention No. 29, which notes that information will no longer be requested under the transitional provisions as they are no longer applicable, reflecting the Governing Body’s view that the transitional period no longer applies.

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

Yes No

Comments:

Prevention

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

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

Protection

23. *Should the proposed Recommendation provide that:*

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

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

24. *Should the proposed Recommendation provide that Members should ensure that protection measures to meet the needs of all victims for both immediate assistance and long-term recovery include:*

(a) *adequate and appropriate accommodation?*

Yes No

Comments:

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

Yes No

Comments:

(c) *material assistance?*

Yes No

Comments:

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

Yes No

Comments:

(e) *protection of privacy and identity?*

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

25. *Should the proposed Recommendation provide that protection measures for children subjected to forced labour should include, along with consideration of the special needs and best interests of the child:*

(a) *the appointment of a guardian, where appropriate?*

Yes No

Comments:

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

Yes No

Comments:

26. *Should the proposed Recommendation provide that protection measures for migrant workers subjected to forced labour should include:*

(a) *provision of a reflection and recovery period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim, during which the person shall be authorized to remain in the territory of the country concerned?*

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

Compensation and access to justice

27. *Should the proposed Recommendation provide that Members should take measures to ensure that all victims of forced labour have access to effective and appropriate legal remedies, in particular compensation for material and non-material damages, including by:*

(a) *providing legal assistance, preferably free of cost?*

Yes No

Comments:

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

Yes No

Comments:

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

Yes No

Comments:

(d) *allowing a representative of the victim to pursue legal remedies, including compensation, on his or her behalf?*

Yes No

Comments:

(e) *providing for alternative dispute resolution mechanisms, where appropriate, with simplified procedural requirements?*

Yes No

Comments:

(f) *establishing victim compensation funds?*

Yes No

Comments:

Enforcement

28. *Should the proposed Recommendation provide that Members should:*

- (a) *provide all necessary resources and training to the labour inspection services to enable them to fulfil their role, in collaboration with other relevant agencies, in prevention, law enforcement and protection of victims of forced labour?*

Yes No

Comments:

- (b) *in addition to penal sanctions and in accordance with national laws and regulations, provide for the imposition of other penalties, such as the confiscation of profits of forced labour and of other assets?*

Yes No

Comments:

- (c) *in giving effect to Article 25 of Convention No. 29, ensure that legal persons can be held liable for the violation of the prohibition of forced labour?*

Yes No

Comments:

- (d) *strengthen efforts to identify victims, including by developing indicators of forced labour for use by labour inspectors, police, public prosecutors, representatives of employers' and workers' organizations, non-governmental organizations and other relevant actors?*

Yes No

Comments:

International cooperation

29. *Should the proposed Recommendation provide that Members should strengthen cooperation and coordination at the international level, including through other multilateral institutions, as well as assist each other in ensuring the effective elimination of forced labour, including by:*

(a) *mobilizing resources for national action programmes and international technical cooperation and assistance?*

Yes No

Comments:

(b) *mutual legal assistance?*

Yes No

Comments:

(c) *mutual technical assistance including the exchange of information and the sharing of good practice and lessons learned in combating forced labour?*

Yes No

Comments:

Appendix I

Estimated number and prevalence of victims of forced labour, by region

Region	Number of victims	Prevalence per 1 000 inhabitants
Africa	3 700 000	4.0
Asia and the Pacific	11 700 000	3.3
Central and South Eastern Europe (non-EU) and Commonwealth of Independent States	1 600 000	4.2
Developed economies and EU	1 500 000	1.5
Latin America and the Caribbean	1 800 000	3.1
Middle East	600 000	3.4
Total	20 900 000	

Appendix II

Ratifications of ILO Conventions and other international instruments

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol		Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	
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Afghanistan		x	x			x			a
Albania	x	x	x	x	x		a		a
Algeria	x	x	x	x	x		a		a
Angola	x	x	x						
Antigua and Barbuda	x	x	x		x	P			d
Argentina	x	x	x	x	x				a
Armenia	x	x	x	x	x				
Australia	x	x	x	x	x	x		x	x
Austria	x	x	x	x	x	x			a
Azerbaijan	x	x	x	x	x	x			a
Bahamas	x	x	x	x	x	x			d

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Bahrain	x	x	x		a		a		a
Bangladesh	x	x	x			x			a
Barbados	x	x	x	x		x			d
Belarus	x	x	x	x	x		a	x	x
Belgium	x	x	x	x	x	x		x	x
Belize	x	x	x		a				
Benin	x	x	x	x	x				
Bolivia, Plurinational State of	x	x	x	x	x	x			a
Bosnia and Herzegovina	x	x	x	x	x		d		d
Botswana	x	x	x	x	x				
Brazil	x	x	x	x	x		a		a
Brunei Darussalam			x						
Bulgaria	x	x	x	x	x			x	x
Burkina Faso	x	x	x	x	x				
Burundi	x	x	x	x	x				

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol		Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	
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Cambodia	x	x	x	x	x				a
Cameroon	x	x	x	x	x	x			a
Canada	x	x	x	x	x	x		x	x
Cape Verde	x	x	x	x	x				
Central African Republic	x	x	x						a
Chad	x	x	x						a
Chile	x	x	x	x	x	x			a
China			x						a
Colombia	x	x	x	x	x				
Comoros	x	x	x						
Congo	x	x	x	x					a
Costa Rica	x	x	x	x	x				
Côte d'Ivoire	x	x	x						a
Croatia	x	x	x	x	x		d		d
Cuba	x	x				x		x	x

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Cyprus	x	x	x	x	x		d		d
Czech Republic	x	x	x	x					d
Democratic Republic of the Congo	x	x	x		a				a
Denmark	x	x	x	x	x	x		x	x
Djibouti	x	x	x		a				a
Dominica	x	x	x		a	x			d
Dominican Republic	x	x	x	x	x				a
Ecuador	x	x	x	x	x	x			a
Egypt	x	x	x	x	x	x			a
El Salvador	x	x	x	x	x			x	
Equatorial Guinea	x	x	x	x	x				
Eritrea	x	x							
Estonia	x	x	x	x	x				
Ethiopia	x	x	x		a		x		a
Fiji	x	x	x			x			d

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Finland	x	x	x	x	A	x			a
France	x	x	x	x	x	x		x	x
Gabon	x	x	x		a				
Gambia	x	x	x	x	x				
Georgia	x	x	x	x	x				
Germany	x	x	x	x	x	x		x	x
Ghana	x	x	x		a				a
Greece	x	x	x	x	x	x		x	x
Grenada	x	x	x		a				
Guatemala	x	x	x		a	x		x	x
Guinea	x	x	x		a	x			a
Guinea-Bissau	x	x	x	x	x				
Guyana	x	x	x		a				
Haiti	x	x	x	x	x			x	x
Honduras	x	x	x		a				

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Hungary	x	x	x	x	x	x		x	x
Iceland	x	x	x	x	x				a
India	x	x		x	x	x		x	x
Indonesia	x	x	x	x	x				
Iran, Islamic Republic of	x	x	x						a
Iraq	x	x	x		a	x		x	x
Ireland	x	x	x	x	x	x			a
Israel	x	x	x	x	x	x		x	x
Italy	x	x	x	x	x	x		x	x
Jamaica	x	x	x	x	x		d		d
Japan	x		x	x					
Jordan	x	x	x		a		a		a
Kazakhstan	x	x	x		a	P			a
Kenya	x	x	x		a				
Kiribati	x	x	x		a				

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Korea, Republic of			x	x					
Kuwait	x	x	x		a		a		a
Kyrgyzstan	x	x	x	x	x		a		a
Lao People's Democratic Republic	x		x		a				a
Latvia	x	x	x	x	x				a
Lebanon	x	x	x	x	x				
Lesotho	x	x	x	x	x		d		d
Liberia	x	x	x		a	x		x	
Libya	x	x	x	x	x		a		a
Lithuania	x	x	x	x	x				
Luxembourg	x	x	x	x	x			x	x
Madagascar	x	x	x	x	x		a		a
Malawi	x	x	x		a		a		a
Malaysia	x	<i>Denunciation</i>	x		a				a
Maldives, Republic of	x	x	x						

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Mali	x	x	x	x	x	x			d
Malta	x	x	x	x	x		d		d
Marshall Islands									
Mauritania	x	x	x		a	x			a
Mauritius	x	x	x		a		d		d
Mexico	x	x	x	x	x	x		x	x
Moldova, Republic of	x	x	x	x	x				
Mongolia	x	x	x		a		a		a
Montenegro	x	x	x		d		d		d
Morocco	x	x	x		a	x			a
Mozambique	x	x	x	x	x				
Myanmar	x				a	x			
Namibia	x	x	x	x	x				
Nepal	x	x	x				a		a
Netherlands	x	x	x	x	A	x		x	x

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956		
	Ratification	Ratification	Ratification	Signature	Ratification, Accession (a), or Acceptance (A), or Succession (d)	Signature, or Participation (P)	Ratification, Accession (a), or Succession (d)	Signature	Ratification, Accession (a), or Succession (d)
New Zealand	x	x	x	x	x	x			a
Nicaragua	x	x	x		a	x			a
Niger	x	x	x	x	x	x			a
Nigeria	x	x	x	x	x		d		d
Norway	x	x	x	x	x	x		x	x
Oman	x	x	x		a				
Pakistan	x	x	x				a	x	x
Palau									
Panama	x	x	x	x	x				
Papua New Guinea	x	x	x				a		
Paraguay	x	x	x	x	x	P			a
Peru	x	x	x	x	x			x	
Philippines	x	x	x	x	x		a		a
Poland	x	x	x	x	x			x	x
Portugal	x	x	x	x	x			x	x

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol		Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	
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Qatar	x	x	x		a				
Romania	x	x	x	x	x	x		x	x
Russian Federation	x	x	x	x	x		a	x	x
Rwanda	x	x	x	x	x				a
Saint Kitts and Nevis	x	x	x		a				
Saint Lucia	x	x	x			x			d
Saint Vincent and the Grenadines	x	x	x	x	x		x		a
Samoa	x	x	x						
San Marino	x	x	x	x	x			x	x
Sao Tome and Principe	x	x	x		a				
Saudi Arabia	x	x	x	x	x		a		a
Senegal	x	x	x	x	x				a
Serbia	x	x	x	x	x		d		d
Seychelles	x	x	x	x	x				a
Sierra Leone	x	x	x	x			d		d

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956		
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Singapore	x	<i>Denunciation</i>	x						d
Slovakia	x	x	x	x	x				d
Slovenia	x	x	x	x	x				d
Solomon Islands	x	x	x			x			d
Somalia	x	x							
South Africa	x	x	x	x	x	x			
South Sudan	x	x	x						
Spain	x	x	x	x	x	x			a
Sri Lanka	x	x	x	x			a	x	x
Sudan	x	x	x				d	x	x
Suriname	x	x	x		a				d
Swaziland	x	x	x	x	x				
Sweden	x	x	x	x	x	x			a
Switzerland	x	x	x	x	x	x			a
Syrian Arab Republic	x	x	x	x	x	x			a

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol		Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	
	Ratification	Ratification	Ratification	Signature	Ratification, Accession (a), or Acceptance (A), or Succession (d)	Signature, or Participation (P)	Ratification, Accession (a), or Succession (d)	Signature	Ratification, Accession (a), or Succession (d)
Tajikistan	x	x	x		a				
Tanzania, United Republic of	x	x	x	x	x		a		a
Thailand	x	x	x	x					
The former Yugoslav Republic of Macedonia	x	x	x	x	x				d
Timor-Leste	x		x		a				
Togo	x	x	x	x	x				a
Trinidad and Tobago	x	x	x	x	x		d		d
Tunisia	x	x	x	x	x		a		a
Turkey	x	x	x	x	x	x		x	x
Turkmenistan	x	x	x		a	x			a
Tuvalu									
Uganda	x	x	x	x			a		a
Ukraine	x	x	x	x	x		a	x	x
United Arab Emirates	x	x	x		a				

ILO member State	Forced Labour Convention, 1930 (No. 29)	Abolition of Forced Labour Convention, 1957 (No. 105)	Worst Forms of Child Labour Convention, 1999 (No. 182)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000		Convention to Suppress the Slave Trade and Slavery, signed at Geneva on 25 September 1926 and amended by the Protocol		Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	
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United Kingdom	x	x	x	x	x	x		x	x
United States		x	x	x	x	x			a
Uruguay	x	x	x	x	x		a		a
Uzbekistan	x	x	x	x	x				
Vanuatu	x	x	x						
Venezuela, Bolivarian Republic of	x	x	x	x	x				
Viet Nam	x		x		a		a		
Yemen	x	x	x				a		
Zambia	x	x	x		a		d		d
Zimbabwe	x	x	x						d

Appendix III

Conclusions adopted by the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation (Geneva, 11–15 February 2013)

Context

It is to be recalled that the International Labour Conference at its 101st Session (2012) concerning the recurrent discussion on fundamental principles and rights at work called on the International Labour Office 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”. On the recommendation of its Officers, the Governing Body approved the agenda of the Meeting, which was to formulate recommendations to the Governing Body as to whether there was scope for standard setting to complement the ILO’s Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The topics to be covered had been identified in the Framework for Action, namely: (i) prevention of forced labour; (ii) victims protection, including compensation; and (iii) human trafficking for labour exploitation.

The experts met in Geneva from 11 to 15 February 2013.

Introduction

1. The experts emphasized that freedom from forced labour is a human right. The experts recognized that the ILO’s instruments on forced labour, namely the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), have played an important role in making progress to eradicate forced labour in all of its forms. The high rate of ratification of these Conventions attest to the commitment of ILO member States to the effective eradication of forced labour in all its forms. With regard to countries that have not ratified these Conventions, the Declaration on Fundamental Principles and Rights at Work of 1998 reaffirms the obligation of ILO member States to respect, promote and realize in good faith the principles concerning the fundamental rights in the Conventions concerned. Nevertheless, today, new manifestations of forced labour have appeared and an estimated 90 per cent of the 20.9 million victims of forced labour are exploited by private individuals or employers who operate outside the rule of law, primarily in the informal economy. This is unacceptable and no region of the world is spared. The Global Jobs Pact adopted in 2009 recalled the necessity to increase vigilance to achieve the elimination and prevention of an increase in forms of forced labour. Some populations, such as children, migrant workers, domestic workers, indigenous peoples and workers in the informal economy are particularly vulnerable.

Almost half of all victims have migrated internally or across borders. In this rapidly changing world, the challenge of eradicating forced labour is as great as ever before.

2. The experts emphasized that, taking into account Conventions Nos 29 and 105 and the UN Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially women and children, the ILO should pursue complementary approaches in accordance with its mandate and expertise with a view to ensuring the effective eradication of forced labour, including forced labour exacted as a result of trafficking.
3. The ILO should continue to pursue and strengthen its efforts to address the broader manifestations of forced labour today in view of the growing number of children, women and men who are victims of forced labour globally.
4. Despite the broad reach of Convention No. 29 and the measures taken to date by member States, the experts considered that significant implementation gaps remain in the effective eradication of forced labour and need to be urgently addressed in terms of prevention, victim protection, compensation, enforcement, policy coherence and international cooperation which are set out below.
5. The experts stressed the importance of allocating sufficient resources in order to effectively implement measures concerning prevention, victim protection, compensation and enforcement.

Prevention

The experts reached consensus on the following issues:

6. The vital importance of preventive measures to combat forced labour. Of all the measures to eliminate forced labour, prevention should be systematically considered by national authorities and social partners.
7. The preventive role of labour administration and inspection as well as the need for better coordination with other law enforcement agencies and training programmes for the judiciary, the police, immigration, social workers, and other relevant authorities.
8. The importance of regular awareness-raising activities, such as media campaigns, information brochures and school programmes, targeting people vulnerable to forced labour and other stakeholders.
9. Data collection, knowledge sharing and research are essential to design effective prevention measures and countries should reinforce their efforts in this area.
10. The need to address the trade in goods or services that could be tainted by forced labour.

Victim protection and compensation

The experts reached consensus on the following issues:

11. The identification of forced labour victims needs to be improved, and appropriate measures have to be put in place to protect all victims and suspected victims of forced labour, whether they have been trafficked or not.
12. Strong victim protection measures, such as social services, can have a positive impact on the successful prosecution of cases.
13. Labour-related protection provisions, such as payment of wage arrears, are often neglected while they should be part of a comprehensive and systematic approach to victim protection.
14. Governments should explore the feasibility of different compensation mechanisms, such as setting up a state fund or strengthening provisions to recover compensation from offenders.

Enforcement

The experts reached consensus on the following issues:

15. Appropriate measures should be taken to enhance the capacity of the labour inspectorate to combat forced labour, including trafficking for forced labour, through the allocation of adequate resources and appropriate training.
16. The importance of cooperation and coordination between the labour inspectorate and other law enforcement bodies, including the police, public prosecutors and the judiciary.
17. The need to reinforce the ability of the labour inspectorate to protect the rights of forced labour victims.
18. The need to ensure the transparency of the public prosecutorial bodies, as well as the independence of the judiciary.
19. Victims' access to justice should be facilitated, and all appropriate legal and administrative procedures should be simplified for this purpose.
20. Other means of action to combat forced labour could include strategies to coordinate among various police departments, visa arrangements to ensure that victims of forced labour can stay in the country during the period of investigation and trial, as well as targeted measures to reach out to the most vulnerable groups.
21. The importance of imposing sufficiently effective and dissuasive penalties, in particular penal sanctions, on perpetrators of forced labour and to ensure a strong criminal justice regime.

Policy coherence, coordination and social dialogue

The experts reached consensus on the following issues:

22. The promotion of policy coherence is at the heart of the ILO's mandate and it needs to be reinforced with respect to forced labour, including trafficking for forced labour.
23. Cooperation at national, regional and international levels and within the multilateral system is of paramount importance for the effective elimination of forced labour.
24. The usefulness of adopting results-oriented national action plans against forced labour.
25. Social dialogue and the involvement of social partners in the development and implementation of measures to combat forced labour including trafficking in persons, are essential to reinforce national and international action against forced labour.

Value added of new ILO instrument(s)

26. In light of the consensus reached on the abovementioned issues, the experts considered that there was an added value in the adoption of supplementary measures to address the significant implementation gaps remaining in order to effectively eradicate forced labour in all its forms.
27. There was consensus among the experts that the implementation gaps should be addressed through standard setting to advance prevention, protection and compensation measures to effectively achieve the elimination of forced labour globally. The experts considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach a consensus. The experts did not retain the option of a new Convention.