

R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

Recommendation on supplementary measures for the effective suppression of forced labour

Adoption: Geneva, 103rd ILC session (11 Jun 2014) - Status: Up-to-date instrument.

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Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 103rd Session on 28 May 2014, and

Having adopted the Protocol of 2014 to the Forced Labour Convention, 1930, hereinafter referred to as “the Protocol”, and

Having decided upon the adoption of certain proposals to address gaps in implementation of the Forced Labour Convention, 1930 (No. 29), hereinafter referred to as “the Convention”, and reaffirmed that measures of prevention, protection, and remedies, such as compensation and rehabilitation, are necessary to achieve the effective and sustained suppression of forced or compulsory labour, pursuant to the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Convention and the Protocol;

adopts this eleventh day of June of the year two thousand and fourteen the following Recommendation, which may be cited as the Forced Labour (Supplementary Measures) Recommendation, 2014.

1. Members should establish or strengthen, as necessary, in consultation with employers’ and workers’ organizations as well as other groups concerned:

(a) national policies and plans of action with time-bound measures using a gender- and child-sensitive approach to achieve the effective and sustained suppression of forced or compulsory labour in all its forms through prevention, protection and access to remedies, such as compensation of victims, and the sanctioning of perpetrators; and

(b) competent authorities such as the labour inspectorates, the judiciary and national bodies or other institutional mechanisms that are concerned with forced or compulsory labour, to ensure the development, coordination, implementation, monitoring and evaluation of the national policies and plans of action.

2.

(1) Members should regularly collect, analyse and make available reliable, unbiased and detailed information and statistical data, disaggregated by relevant characteristics such as sex, age and nationality, on the nature and extent of forced or compulsory labour which would allow an assessment of progress made.

(2) The right to privacy with regard to personal data should be respected.

PREVENTION

3. Members should take preventive measures that include:

- (a) respecting, promoting and realizing fundamental principles and rights at work;
- (b) the promotion of freedom of association and collective bargaining to enable at-risk workers to join workers' organizations;
- (c) programmes to combat the discrimination that heightens vulnerability to forced or compulsory labour;
- (d) initiatives to address child labour and promote educational opportunities for children, both boys and girls, as a safeguard against children becoming victims of forced or compulsory labour; and
- (e) taking steps to realize the objectives of the Protocol and the Convention.

4. Taking into account their national circumstances, Members should take the most effective preventive measures, such as:

- (a) addressing the root causes of workers' vulnerability to forced or compulsory labour;
- (b) targeted awareness-raising campaigns, especially for those who are most at risk of becoming victims of forced or compulsory labour, to inform them, inter alia, about how to protect themselves against fraudulent or abusive recruitment and employment practices, their rights and responsibilities at work, and how to gain access to assistance in case of need;
- (c) targeted awareness-raising campaigns regarding sanctions for violating the prohibition on forced or compulsory labour;
- (d) skills training programmes for at-risk population groups to increase their employability and income-earning opportunities and capacity;
- (e) steps to ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy and that they are effectively enforced. The relevant information on the terms and conditions of employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations or collective agreements;
- (f) basic social security guarantees forming part of the national social protection floor, as provided for in the Social Protection Floors Recommendation, 2012 (No. 202), in order to reduce vulnerability to forced or compulsory labour;
- (g) orientation and information for migrants, before departure and upon arrival, in order for them to be better prepared to work and live abroad and to create awareness and better understanding about trafficking for forced labour situations;
- (h) coherent policies, such as employment and labour migration policies, which take into account the risks faced by specific groups of migrants, including those in an irregular situation, and address circumstances that could result in forced labour situations;
- (i) promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion; and
- (j) in giving effect to their obligations under the Convention to suppress forced or compulsory labour, providing guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address

the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked.

PROTECTION

5.

(1) Targeted efforts should be made to identify and release victims of forced or compulsory labour.

(2) Protective measures should be provided to victims of forced or compulsory labour. These measures should not be made conditional on the victim's willingness to cooperate in criminal or other proceedings.

(3) Steps may be taken to encourage the cooperation of victims for the identification and punishment of perpetrators.

6. Members should recognize the role and capacities of workers' organizations and other organizations concerned to support and assist victims of forced or compulsory labour.

7. Members should, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

8. Members should take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as:

(a) eliminating the charging of recruitment fees to workers;

(b) requiring transparent contracts that clearly explain terms of employment and conditions of work;

(c) establishing adequate and accessible complaint mechanisms;

(d) imposing adequate penalties; and

(e) regulating or licensing these services.

9. Taking into account their national circumstances, Members should take the most effective protective measures to meet the needs of all victims for both immediate assistance and long-term recovery and rehabilitation, such as:

(a) reasonable efforts to protect the safety of victims of forced or compulsory labour as well as of family members and witnesses, as appropriate, including protection from intimidation and retaliation for exercising their rights under relevant national laws or for cooperation with legal proceedings;

(b) adequate and appropriate accommodation;

(c) health care, including both medical and psychological assistance, as well as provision of special rehabilitative measures for victims of forced or compulsory labour, including those who have also been subjected to sexual violence;

(d) material assistance;

(e) protection of privacy and identity; and

(f) social and economic assistance, including access to educational and training opportunities and access to decent work.

10. Protective measures for children subjected to forced or compulsory labour should take into account the special needs and best interests of the child, and, in addition to the protections provided for in the Worst Forms of Child Labour Convention, 1999 (No. 182), should include:

(a) access to education for girls and boys;

(b) the appointment of a guardian or other representative, where appropriate;

(c) 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; and

(d) efforts to reunite children with their families, or, when it is in the best interests of the child, provide family-based care.

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

(a) provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings, during which the person shall be authorized to remain in the territory of the member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour;

(b) provision of temporary or permanent residence permits and access to the labour market; and

(c) facilitation of safe and preferably voluntary repatriation.

REMEDIES, SUCH AS COMPENSATION AND ACCESS TO JUSTICE

12. Members should take measures to ensure that all victims of forced or compulsory labour have access to justice and other appropriate and effective remedies, such as compensation for personal and material damages, including by:

(a) ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages;

(b) providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits;

(c) ensuring access to appropriate existing compensation schemes;

(d) providing information and advice regarding victims' legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge; and

(e) providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate.

ENFORCEMENT

13. Members should take action to strengthen the enforcement of national laws and regulations and other measures, including by:

(a) giving to the relevant authorities, such as labour inspection services, the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organizations concerned for the prevention and protection of victims of forced or compulsory labour;

(b) providing for the imposition of penalties, in addition to penal sanctions, such as the confiscation of profits of forced or compulsory labour and of other assets in accordance with national laws and regulations;

(c) ensuring that legal persons can be held liable for the violation of the prohibition to use forced or compulsory labour in applying Article 25 of the Convention and clause (b) above; and

(d) strengthening efforts to identify victims, including by developing indicators of forced or compulsory labour for use by labour

inspectors, law enforcement services, social workers, immigration officers, public prosecutors, employers, employers' and workers' organizations, non-governmental organizations and other relevant actors.

INTERNATIONAL COOPERATION

14. International cooperation should be strengthened between and among Members and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained suppression of forced or compulsory labour, including by:

- (a) strengthening international cooperation between labour law enforcement institutions in addition to criminal law enforcement;
- (b) mobilizing resources for national action programmes and international technical cooperation and assistance;
- (c) mutual legal assistance;
- (d) cooperation to address and prevent the use of forced or compulsory labour by diplomatic personnel; and
- (e) mutual technical assistance, including the exchange of information and the sharing of good practice and lessons learned in combating forced or compulsory labour.

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