

A Human-rights Moment

A newly adopted International Labour Organization Protocol should help combat forced labour and human trafficking of fishers at sea

It was around 12 a.m. on 11 June 2014 when the plenary of the International Labour Conference of the International Labour Organization (ILO) overwhelmingly adopted a new legally binding Protocol to tackle modern forms of forced labour.

The Protocol, supported by a Recommendation, was adopted by government, employer and worker delegates, with 437 votes for, 27 abstentions and eight against.

The new Protocol brings the existing ILO Convention 29 on Forced Labour, adopted in 1930, into the modern era to strengthen protection against forced labour, particularly as

And trafficking is a growing concern for many member States. So both the Protocol and the Recommendation provide very concrete guidance as to how to address trafficking for the purpose of forced or compulsory labour. But then, in addition, and, more importantly, we have these provisions now on protection, prevention and remedy, which apply to all victims of forced labour, whether they have been trafficked or not. And which we believe can really make a difference in terms of suppressing and eliminating forced labour in the future.”

ILO Conventions

The ILO has two Conventions on Forced Labour (No. 29, adopted in 1930, and No. 105, adopted in 1957). The first defines forced labour as “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”, and requires States “to suppress the use of forced or compulsory labour in all its forms” and to ensure that penal sanctions are strictly applied on those who impose forced labour. The second adds a specific obligation for States never to impose forced labour as a means of political coercion or education, punishment for expressing political views or participating in strikes, mobilizing labour for economic development, labour discipline or for racial, social, national or religious discrimination. In addition to ILO Conventions Nos. 29 and 105, a number of international and regional instruments address forced labour, slavery, trafficking in persons, as well as institutions

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found in the private economy. The accompanying Recommendation provides technical guidance on the implementation of both the Convention and the new Protocol.

In the words of Beate Andrees, Head of the ILO Special Action Programme to combat Forced Labour: “This is a truly historic moment, because delegates in this room have now modernized effectively Convention 29, which was adopted 84 years ago. And there is a new Protocol, supplementing the Convention. We will have much stronger measures now to protect the victims, to prevent forced labour, and to also give victims the possibility to access remedies.”

“There is a clear link between forced labour and human trafficking.

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and practices similar to slavery. Worth mentioning is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol). However, in spite of the broad range of instruments available, measures taken in practice have focused mostly on increasing the detection of offenses, while preventive action and victim protection have been accorded lower priority.

The definition of forced labour provided by Convention No. 29 is still valid, as it is a broad concept that covers a wide range of coercive labour practices, which occur in all types of economic activity and in all parts of the world. However, a good number of the provisions of Convention No. 29 are outdated, as they were intended to regulate the compulsory labour of native workers in colonial territories. Indeed, when the Convention was adopted in 1930, State-sanctioned forced labour by colonial-era governments was the norm, and, thus, most of its provisions were designed to regulate that form of

forced labour, providing, for instance, safeguards for workers when forced labour is exacted from them.

Today, there is a decline in certain traditional forms of forced labour, while new practices have emerged, occurring mainly in the “private economy”. The way forced labour works in the world today is very different from the way it worked in the 1930s. Indeed, at present, forced labour occurs overwhelmingly (in 90 per cent of cases) at the hands of private actors, not governments, a situation which the Convention dealt with inadequately. Contemporary forms of forced labour entail a variety of exploitative labour practices wherein victims are compelled to work in a variety of formal and informal industries through trafficking, debt bondage, withholding of payment or identity documents, deception, threat of physical violence, psychological coercion or confinement. The main sectors affected are agriculture (including fishing), mainly in developing countries but also in industrialized countries. We also see a

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A Burmese migrant boy in Samut Sakhon, Thailand. In many parts of the world, especially in developing countries, fishers are often forced to work for long hours at very low pay in difficult and hazardous conditions

International Labour Standards

International Labour Standards are legal instruments drawn up by ILO's constituents (governments, employers and workers) that set out basic principles and rights at work. They are either Conventions, Protocols or Recommendations

Conventions are legally binding international treaties that may be ratified by member States. A Convention lays down the basic principles to be implemented, in a given area, by ratifying countries.

A Protocol, just like a Convention, is an international treaty subject to ratification. In the context of the ILO, however, a Protocol does not exist independently and is always linked to a Convention. It creates legal obligations applicable to the ratifying State and can be ratified only by those Members that have ratified the Convention. The associated Convention remains open for ratification. A Protocol is used for the purpose of partially revising or supplementing a Convention, to allow adaptation to changing conditions, thus making the Convention more relevant and up-to-date.

A Recommendation, just like a Convention, has to be brought before the competent authorities, but is not subject to ratification and, therefore, does not have binding force. 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.

Source: ILO (2009). Rules of the game. A brief introduction to International Labour Standards.

lot of forced labour in domestic work or care work, in the entertainment industry and in construction and manufacturing. According to recent ILO estimates, perpetrators—ranging from small labour intermediaries to well-organized criminal enterprises—exploite around 21 mn victims worldwide, and illegal profits generated on their backs are estimated at US\$150 bn per year.

It is against this backdrop that the ILO, after conducting a detailed analysis to identify gaps in existing coverage of its standards, considered that, despite the broad reach of Convention No. 29 and the measures taken to date by member States, 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.

The new legal instruments supplement and strengthen existing ILO standards on forced labour, as well as complement international law on trafficking in persons and slavery by addressing issues of particular relevance to the world of work. The new instruments do not review, duplicate or put in question existing standards.

The new Protocol sets out minimum standards to strengthen

prevention, protection and remedies, including compensation for forced-labour victims. As such, the instruments address implementation gaps and supplement the Forced Labour Convention No. 29.

The provisions of the adopted instrument seek to:

- strengthen the prevention of forced labour through measures including targeted awareness-raising campaigns, skills-training programmes, and the promotion of freedom of association and collective bargaining;
- strengthen the protection of victims of forced labour through assistance, recovery and rehabilitation measures, through the development and implementation of national policies and plans of action, and by involving employers' and workers' organizations;
- ensure access to justice and compensation;
- strengthen the enforcement of national laws and regulations and other measures; and
- encourage international co-operation among member States.

Worth mentioning is the fourth article of the Protocol in which States have pledged to ensure that all victims of forced labour, regardless

of immigration status, have access to appropriate and effective remedies, such as compensation; and to refrain from prosecuting such victims for their 'participation' in unlawful activities connected to forced labour.

Forced labour in fisheries

Recent trends within the fisheries sector, such as overfishing, illegal fishing, declining fish stocks and a shift in sourcing the workforce from developed to developing States mean that more relatively low-cost migrant workers are employed by the fisheries sector. They are particularly too often deceived and coerced by brokers and recruitment agencies and forced to work on board vessels under the threat of force or by means of debt bondage.

In addition, migrant workers are often not in possession of their identity documents, making it difficult to leave their workplace when they do reach port. Victims are prone to illness, physical injury, psychological and sexual abuse, and death. Fishers are often forced to work for long hours at very low pay, and the work is intense, hazardous and difficult. They are often very isolated and their work on board vessels in remote locations of the sea for months and years at a time means that abuse can take place for significant periods of time before any intervention is possible. Sadly, capture fisheries have amongst the highest occupational fatality rates in the world.

Fishing and fish trade are among the earliest globalized industries and represent a sector steeped in culture and tradition. In its broadest definition, the fisheries sector is one of the world's largest employers and about 38 mn people work in capture production. The demand for, and trade in, fish has increased steadily over the decades. Wild-fish stocks are subject to high levels of overfishing and most, if not all, commercially exploited fish stocks are fully or over-exploited.

The high exploitation rate of these fish stocks has meant that fishing operators, both small-scale and industrial, must go further out to sea

to locate abundant fishing grounds. Globalization allows many long-distance fishing operators, structured as transnational corporations, to make use of secret jurisdictions, to register their vessels either in open international registers to avoid law enforcement measures or in flag States that are unable or unwilling to meet their international responsibility or to exercise their criminal law enforcement jurisdiction.

Therefore, fishers aboard vessels engaged in transnational organized fisheries crime have little or no protection from employers' abuses. Transnational fishing operators and operations engaged in organized crime pose real challenges to effective compliance measures and law enforcement, and require a high degree of transboundary law enforcement co-ordination and co-operation, which is currently lacking.

For some years now, ILO has worked hard to ensure a global convention with minimum standards for work in the fisheries sector through the Work in Fishing Convention, 2007 (No. 188). In May 2013, the ILO convened a Global Dialogue Forum on the implementation of the Convention. According to Brandt Wagner, Head, Transport and Maritime Unit, Sectoral Activities Department, ILO, this meeting discussed challenges in

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the Convention's implementation, evaluated how it could be used as a tool to address major issues in the sector, shared good practices and experiences, reported and reviewed promotional activities, and provided an update on the status of national efforts to implement and ratify the Convention.

Participating governments, fishing-vessel owners' associations and trade unions, therefore, came together and called for the ILO to work with

INTERPOL, the United Nations Office on Drugs and Crime (UNODC), and with other UN agencies and international organizations to address the most severe forms of labour exploitation in the fisheries sector, with promotion and implementation of C.188 being one aspect of it.

In June 2014, a British newspaper, *The Guardian*, released a six-month investigation that revealed that the fishing industry in Thailand is all too often built on slavery, with men often beaten, tortured and killed to catch fish food to feed prawns sold cheaply in the United Kingdom (UK) and United States (US) supermarkets. However, although forced labour and human trafficking in the fishing industry may appear to be most prominent in southeast Asia, it is a problem of global reach and all the regions of the world are concerned. It affects not only the industry, but also flag States, fishing companies, retailers, wholesalers, fish-processing companies and consumers of fish.

In addition to the great personal tragedies this activity causes, it also exposes the entire local community, mostly in developing countries, to a significant loss of income. The activity also fuels unfair advantages compared with the many law-abiding stakeholders in the market.

The new ILO Protocol, together with the ILO Work in Fishing Convention C.188, will help revitalize action to end abusive working conditions within the fisheries sector. Many of the provisions proposed by both instruments will foster the implementation of ILO-specific activities through on-the-ground projects such as the Global Action Programme against forced labour and trafficking of fishers at sea (*GAPfish*) which is currently being developed. The *GAPfish* project will consist of four pillars—research, prevention/protection/prosecution, capacity building and awareness raising, and transparency and multi-stakeholder initiatives (MSI) with activities in four State categories (source States, flag States, port/coastal States and market States). The first

implementation phase of *GAPfish* is planned to start in 2015.

GAPfish intends to implement specific activities such as targeted awareness-raising campaigns for migrant fishers; assistance, recovery and rehabilitation programmes for the victims; skill training for law enforcement officers and labour inspectors; and international workshops to increase the co-operation between States.

The primary beneficiaries of the project would be migrant fishers in small-scale and industrial fisheries, and, indirectly, their dependents and local communities. It would also benefit inspectors, investigators, government agencies and key stakeholders in States that are tasked with regulation of fishing vessels and are faced with large numbers of foreign fishers seeking protection and compensation. *GAPfish* would, moreover, assure social partners and key stakeholders in the fisheries value chain that fish entering the market is caught in accordance with decent working conditions, and by avoiding unfair competition.

Ultimately, the project will also contribute to greater consumer protection, food security and conservation of marine living resources, by ensuring greater transparency in the fisheries value chain.

For more

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

Forced Labour Convention, 1930 (No. 29)

www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105

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

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3174672:NO

Protocol of 2014 to the Forced Labour Convention, 1930