

GUIDELINES TO PREVENT
ABUSIVE RECRUITMENT,
EXPLOITATIVE EMPLOYMENT
AND TRAFFICKING
OF MIGRANT WORKERS
IN THE BALTIC SEA REGION

IN BRIEF

ADSTRINGO



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This is a short version of the *Guidelines to Prevent Abusive Recruitment, Exploitative Employment and Trafficking of Migrant Workers in the Baltic Sea Region* written by **Liliana Sorrentino** and **Anniina Jokinen** within the framework of the EU financed ADSTRINGO project. The Guidelines report is publicly available online on www.heuni.fi as well as www.cbss.org/tfthb

The ADSTRINGO project “Addressing Trafficking in Human Beings for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches” is a transnational project that has been coordinated by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). During 2012-2014 it has been carried out in nine countries in the Baltic Sea region and has included research, network and capacity building to better address human trafficking for labour exploitation. The project partners have been the Ministry of the Interior of the Republic of Lithuania, the University of Tartu in Estonia and the Council of the Baltic Sea States Task Force against Trafficking in Human Beings (CBSS TF-THB). The CBSS TF-THB has also coordinated a parallel project in Poland and in the Russian Federation.

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– IN BRIEF

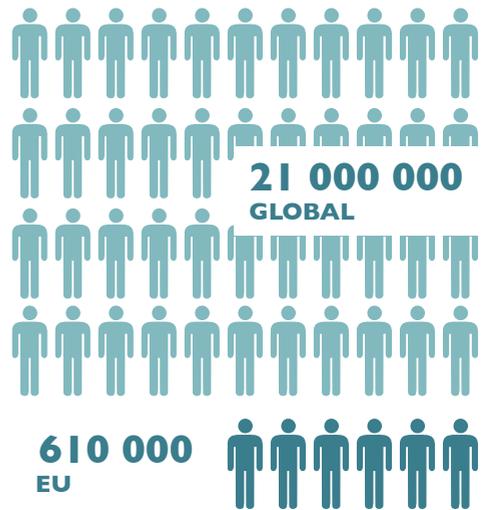
The **Guidelines – In Brief** version has been designed to be easy to use, refer to and function as a quick overview and checklist on how to best prevent exploitation of migrant workers. It is targeting States, Businesses - especially Recruitment Agencies and Employers - Trade Unions and NGOs. The **In Brief** version includes short extracts from the original Guidelines. For in depth information, references and sources we refer to the main Guidelines publication.

WHY DO WE NEED GUIDELINES TO PREVENT EXPLOITATION OF MIGRANT WORKERS?

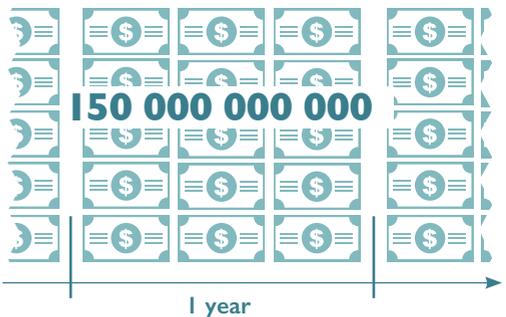
Over the past decades the labour market has been changing in most countries of the world including in Europe and in the Baltic Sea region. Increased competition and restructuring of work production is pressing down prices both nationally and internationally. All of this has affected how work is organised and contracted out in today's societies. Nowadays especially low-skilled and low-paid jobs are built on an increasingly flexible work force which consists to a large extent of migrant workers, who undertake work that no-one else wants to do. These workers can be especially vulnerable to discrimination and to other exploitative practices, including trafficking for forced labour.

International sources suggest that trafficking for the purpose of forced labour is on the increase globally. People are abused, exploited and trafficked to supply unpaid or very low-paid work and/or services without receiving any reward while being kept in conditions contrary to human dignity.

The International Labour Organization (ILO) estimates: **21 million individuals** are trapped into situations akin to slavery, forced to work or trafficked globally; **610,000** of them are victims of forced labour in the European Union.



According to a 2014 report from the International Labour Organization (ILO), forced labour in the private economy generates **US\$ 150 billion** in illegal profits **per year**.



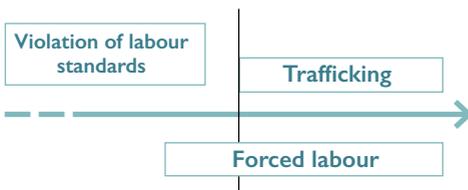
Empirical evidence across the globe indicates a **strong correlation between abusive recruitment and employment practices and trafficking for forced labour** as demonstrated in the figure below.

Trafficking, forced labour and exploitation



It is not uncommon for migrant workers to **pay unreasonable fees for recruitment, travel, accommodation, and to be deceived about working conditions.** These workers often end up in situations of labour exploitation, especially in sectors employing low skilled, low wage, seasonal, part time, precarious workers, often agency workers (e.g. cleaning, construction, restaurant and agriculture sectors). **People often move along a continuum of exploitation in which they experience a wide range of abusive situations** from poor living conditions to long working hours with very low wages to more severe forms of exploitation such as trafficking.

The continuum of exploitation:



Examples of abusive and exploitative recruitment and employment practices encountered by migrant workers in the Baltic Sea region.

- Violence and threats
- Confiscation of passports, identity cards, bank cards, work permits
- Underpayment or non-payment of wages
- Debt bondage
- Secret contract clauses, illegal salary deductions and overcharged loans
- Overpricing of accommodation, food, transport and other items
- Controlling freedom and movement of workers
- Irregular deductions from wages for tools, mandatory certificates etc.
- Excessively long working hours with no overtime compensation, mandatory allowances for evening, night and weekend work
- Denying the right to holiday and holiday compensation
- Isolation, denying contacts with others and with family members
- Denying access to language courses
- Threats of dismissal, of reporting the worker to authorities, of returning the worker back to country of origin
- Threat of providing insufficient working days/hours to secure minimum income for the renewal of the work permit
- Charging illegal recruitment fees
- Deception over the contents of work, contracts, terms of employment and work permits
- Denying the right to join trade union
- Provision of unsafe and unhealthy working and living environment
- Denying access to medical care

To be **effective prevention needs to address those multiple violations of the law**, which are more easily detectable and are often precursors to trafficking. **Promoting equality and labour rights for all workers is the most efficient way of improving the general standards of employment**, which will also enhance the situation of the most vulnerable workers.

THE PURPOSE OF THE GUIDELINES IS TO:

- Promote decent work and protect fundamental rights at work;
- Strengthen enforcement of existing labour standards, especially in sectors prone to exploitation which employ migrant labour;
- Foster a level playing field for ethical recruiters and employers;
- Promote strategic partnerships among public authorities, businesses, trade unions and NGOs in the prevention of abuse and exploitation at national, regional and international level.

TARGET GROUP:

- Policy makers and decision-makers in the Ministries of Labour, Justice, Home Affairs, Social Affairs and Foreign Affairs in the Baltic Sea Region
- Top management of private employment agencies and their sector associations
- Top management of businesses operating in the agriculture, cleaning and restaurant sectors and their sector associations
- Representatives of trade unions, especially those operating in the sectors of agriculture, cleaning, restaurants and agency work
- Representatives of NGOs, especially migrant rights groups, migrant service providers and anti-trafficking NGOs

TERMINOLOGY

Trafficking in persons/ Labour trafficking - *the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include [...] forced labour or services, slavery or practices similar to slavery, servitude [...]*

Migrant worker - *Any person who is, will be or has been engaged in work or other a remunerated activity in a state of which she or he is not a national.*

Forced labour - *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 herself/himself voluntarily.*

KEY PRINCIPLES AND STANDARDS:

- 1.** A human rights-based approach should always be applied.
- 2.** States shall act with due diligence to respect, protect and fulfil human rights, and in particular States are responsible for preventing trafficking in human beings, investigating and prosecuting traffickers, and for assisting and protecting trafficked persons.
- 3.** All workers shall be treated equally and without discrimination.
- 4.** All migrant workers shall enjoy the protection of employment law.
- 5.** Businesses, including Private Employment Agencies (PrEAs), shall be responsible for acting with due diligence in the respect of human rights.



THE 4 MAIN SECTIONS OF THE GUIDELINES:

Guidelines for States:

Prevent abusive and exploitative recruitment and employment practices

Guidelines for Businesses:

Due diligence to prevent abuse and exploitation

Guidelines for States, Business, Trade Unions and Civil Society: Joining efforts to protect the rights of migrant workers

Multidisciplinary cooperation and coordination at international level

GUIDELINES FOR STATES TO PREVENT ABUSIVE AND EXPLOITATIVE RECRUITMENT AND EMPLOYMENT PRACTICES

STATES SHOULD:

→ Regulate labour providers i.e. Private Employment Agencies

Introduce legislation to regulate the activities of Private Employment Agencies (PrEAs) and of informal labour providers through the introduction of a system of licensing or registration and appoint a responsible institution for this.

→ Ensure that workers are not charged fees for recruitment and placement

States should introduce legal provisions to ensure that migrant workers are not charged directly or indirectly any fees or costs for recruitment and placement.

→ Provide effective and proportional sanctions in order to deter abusive employment practices conducive to exploitation

Establish a **system of warnings and penalties** for PrEAs engaging in exploitative practices and in other breaches of licensing/registration requirements and labour standards. Depending on the gravity of the violation(s) penalties could range from:

- Licence/registration revocation,
- Temporary suspension of PrEAs licence/registration,
- Publication of name and address of the non-compliant PrEA,
- Temporary or permanent ban on business activity,
- Financial penalties,
- Ineligibility for participation in tenders for public contracts and/or for access to government-backed loans or subsidies.

→ Introduce a specific offence of fraudulent recruitment.

→ Ensure corporate liability for trafficking offences

→ Monitor and enforce standards of recruitment and employment in order to curb abuse and exploitation

- Prioritise protection of migrant workers' rights over immigration control.
- Implement pre-departure and post-arrival measures in order to detect abusive practices.
- Strengthen the role and capacity of labour inspectors and invest in awareness-raising and capacity building of front-line officials.

→ Specialise and target inspection and enforcement activities in sectors prone to exploitation

→ Request that businesses comply with their corporate responsibility to respect human rights

Strengthen the incentives for business self-regulation on ethical recruitment in line with the UN Guiding Principles on Business and Human Rights (UN GPs).

→ Promote transparency: Clear liability and accountability rules for recruiters and employers, including in supply chains

Adopt legislation that requires businesses operating in sectors prone to exploitation to disclose information on their labour supply chain and on respect of core ILO labour standards.

Strengthen regulations on corporate liability/responsibility for respecting collective agreements and/or minimum wages and labour standards in supply chains for services and goods.

→ Establish regulatory oversight over audit firms

Enhance transparency and accountability of the audit industry, as well as of their work in supply chain auditing. Establish mechanisms for audit firms to report to law enforcement about indications and suspicions of exploitation and trafficking for forced labour.

The new EU Directive on public procurement establishes that public contracting authorities may introduce a social clause to ensure compliance with national, European and international obligations in the fields of environmental, social and labour law. These new criteria apply to the entire procurement process, including to award contracts but also to exclude those who do not comply. The exclusion criteria of the Directive also include any economic operator who has been convicted of child labour and trafficking in persons. The new Directive also provides that public authorities may exclude abnormally low bids, "tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices". It also encourages public authorities to ensure close monitoring of compliance with social and labour law obligations". Furthermore, the Directive includes **stricter rules on subcontracting** to ensure some **transparency in the subcontracting chain** by putting more **responsibility on the main contractor**.

PROMOTE ETHICAL PUBLIC PROCUREMENT MEASURES IN ORDER TO PREVENT EXPLOITATION AND TRAFFICKING OF MIGRANT WORKERS

The public sector in most countries is the largest buyer and consumer of goods and services, and therefore has a large responsibility. Public authorities and organisations at central and local level should ensure that they are not contributing to exploitation and abuse. They should set the example and lead the way in being ethically responsible, and require that their partners do the same. **High social and ethical requirements** should therefore be recognised and **have an important weight** among the award criteria in public tenders, while **price consideration should not overwhelmingly prevail**.

STATES SHOULD:

→ **Ensure that when purchasing goods, works and services all public sector organisations**, including state-owned, controlled or supported enterprises, have in place **appropriate due-diligence procedures** to guarantee respect of human rights wherever they operate.

→ **Consider developing ethical procurement guidelines for use by public sector organisations** in tenders for public contracts at international, national and local level.

Public contracting authorities could request their contractors' commitment to:

- **Respect human rights and comply with domestic and international obligations** set in labour, social and equality and non-discrimination law;
- Have in place an **explicit policy commitment and corresponding processes to ban exploitation**, forced labour and trafficking in human beings;
- **Provide evidence of regular payment of workers' wages** in line with the sector's collective agreement or other minimum wage standard and of compliance with occupational health and safety, and social insurance;
- Respect **ethical standards of recruitment** of mi-

grant workers (e.g. Dhaka Principles for migration with dignity);

- Include in their **sub-contracting contracts** for goods and services a provision **obliging all the subcontractors in the chain to respect the sector's national minimum wage or collective agreement** regarding the terms and conditions of employment;
- Conduct **due diligence process on its operations, including** in respect to its **supply chain partners to identify, prevent and mitigate risks** of adverse human rights impact, including **exploitation**. When conducting due diligence process businesses should ensure that they and their partners do not engage in any of the following practices, e.g. withholding of identity or other worker's document, charging workers recruitment fees, overcharging costs for boarding, lodging and transportation;
- Document that where abuses have been found in their operations or in those of their sub-contractors, all reasonable steps have been taken to prevent further violations throughout their supply chain, to provide **remedy for abuses** and to refer cases to the authorities where appropriate;
- Report on their **efforts to prevent exploitation and trafficking** in their operations and in their supply chain;
- Have an **independent social audit to provide evidence** for compliance with human rights standards, social, labour and equality law.

States procurement policies should include the following exclusion criteria:

- Exclusion from bidding of economic operators that have participated in a criminal organisation or have been found guilty of child labour; forced labour; trafficking in human beings, corruption, fraud, fraudulent recruitment, withholding of identity or other documents, non-payment of taxes or social security contributions;
- Exclusion of 'abnormally low' bids resulting from lack of compliance with social and labour law or from abusive practices.

The evidence of serious risks of exploitation, especially in certain economic sectors, and the gravity of the trafficking offence, provide enough reasons for States to require businesses to specifically report on their efforts to prevent exploitation and trafficking.

GUIDELINES FOR BUSINESSES: DUE DILIGENCE IN ORDER TO PREVENT ABUSE AND EXPLOITATION IN RECRUITMENT AND EMPLOYMENT OF MIGRANT WORKERS

Businesses are to demonstrate that they exercise due diligence to “identify, prevent, mitigate and account for how they address their impacts on human rights”. More specifically, Private Employment Agencies (PrEAs) and other businesses that recruit, hire or employ migrant workers especially in sectors prone to exploitation in the Baltic Sea region are encouraged to:

- **Build knowledge of the risks of abuse, exploitation and trafficking for forced labour** of migrant workers;
- **Commit to prevent trafficking for forced labour, abuse and exploitation in all their business activity**, including in their supply chain;
- Establish **operational level complaint mechanisms to respond to labour abuses of migrant workers**, and make them easily, safely and confidentially accessible to migrant workers so that they understand the process, are not afraid of complaining, and are confident of receiving an effective and timely response;
- Establish **independent monitoring, verification and certification mechanisms** to document compliance and implementation of **codes of conduct or self-established ethical standards** and commit to share data with law enforcement on suspected exploitation.

“Businesses are expected not only to declare respect of human rights but also to know and show how they ensure such commitment wherever they operate.”

DEVELOP BUSINESS SELF-REGULATION ON ETHICAL STANDARDS FOR RECRUITMENT AND EMPLOYMENT OF MIGRANT WORKERS

→ Establish clear recruitment policies and ensure that **neither the PrEA nor its sub-agents or the labour user charge fees or costs to job-seekers for their recruitment and placement.** Such costs or fees shall be the responsibility of the future employer.

→ Establish **systems to verify, demonstrate and document** that costs of recruitment were not recovered, directly or indirectly, from workers through salary deductions, reductions of other benefits or other type of charges or changes in the terms and conditions of work.

→ Ensure **respect of job seekers and workers privacy** when processing personal data collected about them.

→ **Prohibit the withholding of a worker's passport or other identity document, or driving license or bankcard** by the PrEA and/or its agents and/or the labour user.

→ **Check user enterprise** reputation and ability to pay wages.

→ Ensure that the work **contract** is provided to the worker in **written** format, in a language that the person understands; a copy of the contract should be available for the worker prior to deployment.

→ Ensure that the **contract includes** information about: wage level, payment modalities, working hours, overtime, frequency of rest days, indemnities and bonuses if any, safety of working conditions, responsibility for occupational health and safety, insurance, availability and accessibility of grievance mechanisms.

→ Ensure that a worker can terminate a contract at any time by giving **reasonable notice and without penalty**, such as withholding of wages or having to pay a fee for early termination of work.

→ Ensure that the recruiting process and the contract of employment of migrant workers are in line with the principle of **equality of treatment and opportunity**, regardless of whether they are in a regular or irregular situations.

→ Ensure that workers recruited and/or employed by the PrEA retain right to **freedom of association** and to **collective bargaining.**

→ **Train middle management** and staff supervisors so that they can spot indications of hidden third party exploitation and trafficking.

→ Conduct **on-site random visits to labour users** after the deployment of workers to check that there are no abuses.

PROMOTE SELF-REGULATION OF BUSINESSES IN ORDER TO PREVENT ABUSE AND EXPLOITATION IN THE WORKPLACE AND IN THE LABOUR SUPPLY CHAIN

BUSINESSES SHOULD:

→ Commit to **carefully screen** their **sub-contractors and partners** with whom they operate in the recruitment of migrant workers. Screening should aim at verifying that their partners do not engage in abusive and fraudulent practices or charge recruitment costs to job seekers.

→ Commit to **respect labour standards** and not to interfere with worker's freedom to choose and join a union.

→ Establish **proactive policies to map out risks of trafficking in their supply chain.** To mitigate risks of labour exploitation, businesses should consider limiting their recourse to labour sub-contractors to a minimum of well-trusted and licensed partners.

→ Consider introducing clauses in their contracts with companies in their supply chain that foresee **contract termination in case of detection of abusive and exploitative practices of workers.**

JOINING EFFORTS TO PROTECT THE RIGHTS OF MIGRANT WORKERS: GUIDELINES FOR STATES, BUSINESSES, TRADE UNIONS AND CIVIL SOCIETY

THE DHAKA PRINCIPLES FOR MIGRATION WITH DIGNITY

The Dhaka Principles for migration with dignity provide a very **good standard for ethical recruitment** of migrant workers. They are **principles that responsible recruiters and employers of migrant workers should respect** and were developed by the Institute for Human Rights and Business following a wide range of consultations with stakeholders.

The Dhaka Principles set two core principles of non-discrimination and equal protection under employment law and articulate the following ten standards:

1. **No fees charged to migrant workers**
2. **Clarity and transparency of worker contracts**
3. **Inclusive policies and procedures**
4. **Non-retention of passports or ID documents**
5. **Regular, direct and timely remuneration**
6. **Right to worker representation**
7. **Safe and decent working conditions**
8. **Safe and decent living conditions**
9. **Access to remedies**
10. **Freedom to change employment and safe return guaranteed**

→ **Protect and promote the right to information**

States shall introduce legal provisions and practical mechanisms to provide migrant workers full, free and understandable information about their rights and obligations, as well as conditions related to their admission, stay and eventual employment.

→ **Ensure orientation and information on safe and legal migration opportunities in countries of origin and destination**

States of origin and destination and in cooperation with trade unions, NGOs and businesses, should develop initiatives for dissemination of information on safe and legal migration opportunities, such as through TV, radio, and social media or through outreach at places of departure and arrival.

The actors should jointly aim at increasing the level of pre-deployment information and post-arrival orientation to migrant workers.

→ **Ensure just and favourable conditions of work, legally binding job offers and written employment contracts**

Employment law and/or regulation should require that the job offer for the recruitment and employment of migrant workers specifies important information such as the sector of employment, place and type of work, duration of employment, working conditions, particularly the remuneration, the working hours, and the amount of any paid leave.

→ **Establish a network of labour attachés in key destination countries**

States in countries of origin should consider appointing labour attachés to work in consular offices in the main countries of destination to ensure the protection and welfare of their own citizens working abroad.

→ **Protect and promote the right to freedom of association and to collective bargaining of migrant workers**

States should ensure that migrant workers enjoy the right to freedom of association (right to join and form a trade union) and to collective bargaining without any hindrance and without discrimination, including regardless of their status, and regardless of whether they are agency workers or directly hired employees.

Support self-organisations of migrant workers in order to monitor labour standards.

→ **Extend trade union protection to migrant workers in an irregular situation**

Trade unions should discuss and agree on the **main criteria to extend union protection to migrant workers in irregular situations** who are not their members; States should **encourage and support outreach efforts to prevent exploitation and trafficking**, and **protect the rights of workers** through partnership among government agencies, workers' organizations, employers' associations, faith groups and NGOs.

States should **ensure that civil society assisting irregular migrants is not penalized**.

→ **Provide possibilities for workers to change the employer, without losing her or his residence permit, in case of abuse**

→ **Ensure implementation of specific protection measures and assistance for workers who are victims of exploitation and trafficking in human beings**

States should provide **residence permits for migrant workers** who are **victims of exploitation and trafficking**.

States should allow exploited and trafficked migrant workers to **lawfully stay in the country to pursue compensation claims** before civil, labour or criminal courts.

States should ensure the **right to non-punishment of trafficked workers** for offences committed by them whilst being trafficked, or as a consequence of having been trafficked.

PROTECT AND PROMOTE THE RIGHT TO REMEDY

In line with their duty to protect, States should ensure that **migrant workers whose rights and freedoms were violated enjoy equal access to justice and remedy for harms committed against them** through civil, administrative, judicial or other legal action, regardless of their status.

→ **Establish mechanisms for confidential reporting of abuse and for lodging confidential complaints**

States should establish mechanisms allowing migrant workers who are victims or witnesses of abuse and/or crime to **lodge complaints** confidentially, preferably to an independent body (e.g. an ombudsman), and without fear of retaliation, such as loss of work or fear of referral to immigration authority, arrest and expulsion.

→ **Provide legal aid and support services to access remedies, especially compensation**

States should ensure that exploited and trafficked migrant workers are **provided free legal counselling and assistance** in a language that they understand during proceedings.

States should provide **financial resources to NGOs and trade unions to establish support services** for exploited and trafficked migrant workers so that they can effectively seek justice.

MULTIDISCIPLINARY COOPERATION AND COORDINATION AT THE INTERNATIONAL LEVEL

Addressing trafficking requires developing effective mechanisms and practices for bilateral and international cooperation between and among all stakeholders.

Establish or strengthen national coordination mechanisms promoting public-private partnership

→ States should ensure that existing multidisciplinary coordination mechanisms for trafficking in persons include representatives of labour inspectorates, trade unions, and migrant rights groups, as well as representatives of Private Employment Agencies and employers' associations, and their representatives operating in sectors prone to exploitation such as agriculture, cleaning and restaurants.

Strengthen trade union and NGOs cross-border cooperation

→ Trade unions, NGOs and migrant rights organisations in the Baltic Sea region should strengthen cross-border cooperation between origin and destination countries especially in sectors employing low-skilled migrant workers.

Strengthen regional cross-border cooperation among employers' associations, private employment agencies and businesses

→ Employers' associations, PrEAs and businesses should strengthen regional cooperation to exchange and disseminate information to prevent exploitation and trafficking of migrant workers.

Establish multidisciplinary cooperation mechanisms between sending and receiving countries

→ States in countries of origin and destination should develop bilateral agreements to promote and ensure cross-border cooperation among labour inspectorates, licensing authorities, police, prosecutors and judiciary to more effectively tackle abuse and exploitation of migrant workers.

On 11 June 2014, ILO adopted a new **Protocol to tackle modern forms of forced labour**. The new legally binding ILO Protocol on Forced Labour aims to advance prevention, protection and compensation measures, as well as to intensify efforts to eliminate contemporary forms of slavery.

The Protocol, supported by a Recommendation, was adopted by government, employer and worker delegates to the International Labour Conference (ILC). It brings the existing **ILO Convention 29** on Forced Labour, adopted in 1930, into the modern era to address practices such as human trafficking.

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