Forced Labour Convention, 1930

Canada ratified the Forced Labour Convention, 1930 on 13 June 2011.
Adoption: The Convention was adopted by the General Conference of the International Labour Organization on 28 June 1930.
Entry into force: 1 May 1932
Number of signatories and ratifications/accessions: 178 countries have ratified the Forced Labour Convention.

Summary information

The efforts of the international community to limit and abolish the use of forced labour include three instruments, the Forced Labour Convention of 1930, the 1957 Abolition of Forced Labour Convention, and the Protocol of 2014 to the Forced Labour Convention, 1930.

While the Slavery Convention adopted by the League of Nations in 1926 undertook to abolish that obscene practice, there was concern that the existence of compulsory or forced labour in areas under colonial administration could develop in conditions analogous to slavery. The International Labour Organization was requested by the League to study the issue which led to the Forced Labour Convention, 1930.

The Convention is aimed at colonial administrations and starts by defining forced labour or compulsory labour and indicating exclusions such as compulsory military service and work or service in the case of specific emergencies. Early on it reinforces the prevailing ban on the use of forced or compulsory labour for the benefit of private employers. Criteria are set that must be met before there can be any forced or compulsory labour including the requirement of imminent necessity and the impossibility of obtaining volunteer labour.

The convention places restrictions on who can be required to provide forced labour or compulsory labour, the length of time working hours and remuneration. There are also requirements with respect to working conditions and the provision of food, proper sanitation and medical care.

The Convention forbids the use of forced or compulsory labour for work underground in mines and requires the abolition of forced or compulsory labour for the transport of persons or goods and permits the compulsory cultivation of crops only against famine or a deficiency of food supplies.

Ratifying countries must ensure that the illegal extraction of forced or compulsory labour is punishable by law and that penalties are adequate and strictly enforced and they are required to report annually on the measures they have taken to give effect to the provisions in the Convention.

The Forced Labour Convention, 1930 was adopted by the General Conference of the International Labour Organization on 28 June 1930. It entered into force in May 1932, twelve months after the date on which the ratifications of two members of the ILO were registered with the Director-General.

History

In 1926, the League of Nations adopted the Convention to Suppress the Slave Trade and Slavery (Slavery Convention) in which the parties to the convention undertook "to prevent and suppress the slave trade" and "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms."

However, in addition to the continued prevalence of slavery in certain parts of the world at that time, colonial administrations in many parts of the world were using "various forms of coercion to obtain labour for the development of communications and the general economic infrastructure, and for the working of mines, plantations and other activities."

As a consequence, the Slavery Convention also expressed concern that compulsory and forced labour could develop into conditions analogous to slavery and required parties to the convention to take all necessary measures to prevent this from happening. It also stated that "compulsory or forced labour may only be exacted for public purposes" and that "in territories in which compulsory or forced labour for other than public purposes still survives, the … Parties shall endeavour progressively and as soon as possible to put an end to the practice." It also required that such labour "shall always be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence."

The Temporary Slavery Commission created by the League of Nations in 1924, whose recommendations directed the League in the development of the Slavery Convention, had acknowledged that it had not done a detailed study on the issue of compulsory or forced labour and suggested that such a study would fall within the ambit of the International Labour Organization (ILO).

As a result, the Assembly of the League of Nations, when it adopted the Slavery Convention, also adopted a resolution that asked the ILO to study "the best means of preventing forced or compulsory labour from developing into conditions analogous to slavery." In December 1926 the Council of the League of Nations adopted a resolution to the same effect.

The ILO studied the issue and examined the situation with respect to forced labour in areas under colonial rule by various countries such as Belgium, Britain, France Italy and Portugal, including regulations already put in place by these countries.

There was already virtually unanimous agreement that forced labour could not be used for the benefit of private employers. However, for public initiatives, four criteria were identified that would govern every instance when recourse to forced labour could be considered:

- how essential is the required work;
- the urgency of the required work;
- the impossibility to obtain voluntary labour; and
- the burden on the present generation to undertake the work, considering the labour available and its capacity to do the work.

There was also concern about the use of indirect, although legal, means to force people into private employment, through the use of excessive taxation on native people, by reducing the means for the workers to provide independently for their own needs through unjust restrictions on the ownership or use of land and by issuing regulations such as pass laws, “which place employed persons in a position of advantage as compared with others.”

The report of the ILO study on forced labour was presented at the 12th Session of the International Labour Conference in 1929 and a draft questionnaire with respect to a possible convention on forced labour was adopted.

The Forced Labour Convention was adopted by the adopted at the 14th Session of the International Labour Conference on 28 June 1930 by 93 votes to nil and entered into force in May 1932, twelve months after the date on which the ratifications of two members of the ILO were registered with the Director-General.

Key Provisions

The Convention defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Despite this definition, the following activities are excluded:

- “any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
- any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
- any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or

vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; [and]

- minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

The Convention encoded the already prevailing ban on the use of forced or compulsory labour for the benefit of private employers and required member countries that ratify the convention to completely suppress any such practice that might exist by the time the convention comes into force for that country. Nor are countries allowed to put constraints on their people that would effectively indirectly force them to work for private employers.

The Convention provides the "the highest civil authority in the territory concerned" with responsibility for "for every decision to have recourse to forced or compulsory labour." That highest civil authority can "delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence." But the following criteria must be met before there can be any forced or compulsory labour:

- "the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service";
- "the work or service is of present or imminent necessity";
- "it has been impossible to obtain voluntary labour for carrying out the work or rendering the service"; and
- "the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work."

The last criterion is further amplified by the requirement that only "adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour" and that the number of adult able-bodied men indispensable for family and social life in each community must be maintained (cannot exceed 25%). As well, school teachers and pupils and officials of the administration in general are exempted.

The Convention requires that the maximum period for which any person may be taken for forced or compulsory labour in any one period must not exceed sixty days in any twelve month period. Persons taken for forced or compulsory labour must have the same working hours and day of rest and be remunerated at the same rates as persons in normal working conditions. In addition, they must be protected by legislation related to workmen's compensation for accidents or sickness as a result of forced or compulsory employment and their subsistence supported by the authority employing them in the event of incapacity caused by the work.

Additional articles in the Convention set conditions of work for situations in which people taken for forced or compulsory labour are required to work in areas where the food or the climate differs greatly from that to which they are accustomed or where they have to remain at workplaces for considerable periods of time. For the latter situation, there are provisions for adequate medical care and proper sanitary conditions as well as for a satisfactory supply of water, food and fuel. In addition, there is a requirement that “any worker who may wish to remain as a voluntary worker at the end of his period of forced or compulsory labour is permitted to do so without, for a period of two years, losing his right to repatriation free of expense to himself.”

The Convention forbids the use of forced or compulsory labour for work underground in mines. It also requires the abolition of forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, within the shortest period possible, and the promulgation of strict regulations governing the conditions of work in the interim for countries where it is still in practice. The Convention allows “the competent authority” to require compulsory cultivation of crops only “as a method of precaution against famine or a deficiency of food supplies and always under the condition that the food or produce shall remain the property of the individuals or the community producing it.”

The Convention forbids the use of forced or compulsory labour against a community as a means of collective punishment for crimes committed by any of the members of that community.

Member countries that ratify the Convention must ensure that the illegal extraction of forced or compulsory labour is punishable by law and that penalties are adequate and strictly enforced. They are required to report annually “on the measures they have taken to give effect to the provisions of this Convention”, including “as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information.”

Member countries upon ratification are required to append to their ratifications a declaration stating:

- “the territories to which it intends to apply the provisions of this Convention without modification;
- the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;
- the territories in respect of which it reserves its decision.”

Note that ratifying countries can subsequently submit a subsequent declaration to cancel in whole or in part the reservations made.

The Convention came into effect twelve months after the date on which the ratifications of two Members of the International Labour Organization were registered with the

Director-General (1 May 1932). It comes into force for any Member twelve months after the date on which the ratification is registered with the International Labour Office.

Canada's Commitments and Responsibilities

Canada helped develop the Convention and voted to adopt it at the International Labour Conference in 1930 but did not ratify the Convention until 13 June 2011. The reasons for the delay of 80 years in ratifying the Convention by the Canadian Government seem obscure and difficult to understand. It should be noted that Canada has yet to ratify two other fundamental ILO conventions: the *Right to Organize and Collective Bargaining Convention (1949)* and the *Minimum Age Convention (1973)*.

To add to the confusion, in 1959 Canada ratified the more stringent ILO *Convention on the Abolition of Forced Labour*, *1957* which prohibits forced or compulsory labour as a means of political coercion, as punishment for holding political views or for participating in strikes, as a method to mobilize labour for economic development or as a means of discrimination.

In June, 2014 the International Labour Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930, a legally binding ILO protocol on forced labour, aimed at advancing "prevention, protection and compensation measures, as well as to intensify efforts to eliminate contemporary forms of slavery." Canada has yet to ratify the 2014 Protocol.

International Monitoring and Implementation

The Forced Labour Convention, like other international labour standards, is backed by a supervisory system to ensure that countries implement the conventions they ratify and to indicate where the standards could be better applied. There are two kinds of supervisory mechanism:

- The regular system of supervision: examination of periodic reports submitted by Member States on the measures they have taken to implement the provisions of a ratified Convention; and
- Special procedures: a representations procedure and a complaints procedure.

Regular System of Supervision

Article 22 of the Forced Labour Convention requires member states to submit annual reports to the International Labour Office on the measures they have taken to give effect to the provisions of the Convention. The report is to "contain as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information." Governments are

required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of conventions directly to the ILO.

The ILO set up the Committee of Experts on the Application of Conventions and Recommendations in 1926 to examine the growing number of government reports on ratified conventions. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

Today the Committee of Experts is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Experts come from different geographic regions, legal systems and cultures. There are no Canadian experts currently serving on the Committee.

"When examining the application of international labour standards the Committee of Experts makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned."

"The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labour Conference the following June, where it is examined by the Conference Committee on the Application of Standards. A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report."

Special Procedures

There are two types of special procedures:

The Representations procedure "grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member state which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". A three-member tripartite committee of the Governing Body may be set up to examine the representation and the government's response. The report that the committee submits

to the Governing Body states the legal and practical aspects of the case, examines the information submitted, and concludes with recommendations. Where the government's response is not considered satisfactory, the Governing Body is entitled to publish the representation and the response."

Under the Complaints procedure "a complaint may be filed against a member state for not complying with a ratified convention by another member state which ratified the same convention, a delegate to the International Labour Conference or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO's highest-level investigative procedure; it is generally set up when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 11 Commissions of Inquiry have been established." A Commission of Inquiry was held as a result of a 1996 complaint against the Government of Myanmar for non-observance of the Forced Labour Convention, 1930. The Commission of Inquiry found widespread and systematic use of forced labour in Myanmar and, as a result, in 2000, the Governing Body of the ILO "asked the International Labour Conference to take measures to lead Myanmar to end the use of forced labour."

It should be noted that the Convention has been cited in recent court cases in several countries including France, Austria, Belgium, Germany and Pakistan.

Canada was requested in 2014 by the Governing Body of the ILO to provide a report in 2017 and again in 2020 on the measures which it has taken to give effect to the provisions in the Forced Labour Convention. There have been no observations published with respect to Canada.

References

Slavery Convention

Stopping Forced Labour – Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work

The Question of Forced Labour before the International Labour Conference by Jean Goudal

International Labour Conference – 12th Session

International Labour Conference – 14th Session

Forced Labour Convention, 1930

Canada's shameful refusal to ratify the ILO convention on forced labour

ILO adopts new Protocol to tackle modern forms of forced labour

Applying and promoting International Labour Standards

Committee of Experts on the Application of Conventions and Recommendations

Conference Committee on the Application of Standards

Representations

Complaints

Decisions by Subject

Requested reports and replies to CEACR comments: Canada