



Gaps in Coverage and Barriers to Ratification and Implementation of International Labour Standards

ILO International Labour Standards (NORMES) department: www.ilo.org/global/standards

While there is general agreement that international labour standards are essential to guiding national legislation and policy in addressing the labour protection gap for rural workers, the effective protection of these workers still suffers from significant gaps in coverage and barriers to ratification and implementation, as noted by the ILO supervisory bodies, notably the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

On the topics of **freedom of association and collective bargaining**, while the objective of applicable Conventions, including the Right of Association (Agriculture) Convention, 1921 (No.11) (ratified by 122 member States to date) and Convention No. 141 which acknowledges the importance of an organized rural sector, along with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is to guarantee to all workers the right to set up representative organizations to defend their rights (notably through collective bargaining), in many countries agricultural and rural workers are still denied the right to organize and bargain collectively; and where such rights are guaranteed, the actual number of agricultural trade union members is usually relatively small compared to the total number of workers in the sector.

Rural workers frequently continue to experience difficulties arising out of legislation or practice when it comes to organizing in trade unions, mainly due to the fact that rural employment has distinctive features, such as the predominance of small enterprises with relatively few employees, the prevalence of self-employment and the temporary or seasonal nature of much of the wage employment. .

While it is more common for the workforce on large commercial farms and plantations to be represented by trade unions and to be covered by collective agreements, restrictions on the right of temporary workers or those employed by out-growers to join trade unions are being increasingly reported. Furthermore, there is still evidence of government interference restricting the exercise of this basic right, the most common legal obstacle being the full or partial exclusion of agricultural workers from legislation guaranteeing the right to freedom of association and collective bargaining. There are often excessive requirements regarding a minimum numbers of members as a condition for a trade union to be recognized. During the past years the supervisory bodies of the ILO have examined serious cases of violations, including mass dismissal, anti-union discrimination, refusal to grant union recognition, as well as violence, death threats and even murder.

The number of rural workers covered by collective agreements remains low despite the importance of collective bargaining for securing decent conditions of work and stable labour relations in a sector that is frequently excluded from the scope of generally applicable legislation. The role of collective bargaining in wage setting in particular, is crucial since many countries exclude agricultural workers

from minimum wage protection. In practice, collective agreements in agriculture are in most cases tailored to the conditions of employment in specific crops or particular subsectors. Agreements between a single employer or company and a trade union are common but there are also cases where agricultural employers' organizations of a particular subsector would conclude agreements with trade unions that are applicable to all their members. A related problem is to ensure that such agreements are effectively applied, especially in the absence of effective labour inspection systems in agriculture.

The Office is currently working on producing a global overview of gaps in law and practice in freedom of association and collective bargaining in the rural sector as part of a technical cooperation project.

Forced labour: Despite the widespread ratification and fundamental nature of the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), forced labour remains prevalent in many rural areas, especially among migrant agricultural workers and victims of trafficking. The ILO supervisory bodies have drawn attention to situations where slavery-like conditions are transmitted by birth to individuals who are compelled to work for their master without pay. The CEACR has on several occasions addressed the issue of bonded labour with regards to plantation workers, as well as other agricultural and rural workers, including indigenous workers (in particular, in Asia and Latin America), in its comments made under Convention No. 29. In some cases, the CEACR has noted situations where non-respect of rights concerning payment of wages and worktime has led to the imposition of practices of forced labour, such as the obligation to do overtime work under the threat of a penalty. Furthermore, in some countries, national laws still provide for the possibility of imposing work in the agricultural sector, for example in the form of compulsory cultivation, etc.

Child labour: In a context where nearly seventy per cent of working children are in the agricultural sector (over 132 million girls and boys aged 5-14 years), the Minimum Age Convention, 1973 (No. 138) seeks to progressively eliminate child labour by enforcing the minimum age to admission to employment (determined by Governments to be between the ages of 14 and 16, depending on a country's level of development), and to promote compulsory education of children up to this minimum age. In addition, the Worst Forms of Child Labour Convention, 1999 (No. 182) includes as one of the worst forms of child labour prohibited for persons under 18, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Agriculture is one of the three most dangerous sectors in which to work at any age. As children's bodies and minds are in the process of growing and developing, exposure to workplace hazards can be more devastating, resulting in lifelong disabilities. For instance the CEACR has noted the incidence of serious health problems in children linked to agricultural work in numerous countries, often caused by prolonged exposure to dangerous pesticides and dehydration. The CEACR has also noted that in some countries, children in agriculture have higher rates of work related injuries than their counterparts in other sectors.

Despite measures taken by Governments to prevent hazardous work under the Convention, the CEACR has noted that in several countries the majority of hazardous work performed by children remains in the agricultural sector. Many children under the age of 18 working in rural areas are engaged in several types of hazardous work, including the preparation and use of pesticides, herbicides and fertilizers, work involving the care of sick animals, handling of farm machinery and work in certain crops (such as cotton or tobacco); The CEACR has repeatedly encouraged Governments to take measures to update their lists of hazardous types of work to reflect the dangerous nature of these activities and to protect children against these risks. Nonetheless, even when

legislation prohibits such hazardous work for persons under 18, the enforcement of this prohibition is often insufficient due to limited inspection mechanisms in the agricultural sector, which the CEACR has noted in both developed and developing countries.

A less frequent, yet still important problem is the use of forced child labour in the agricultural sector. The CEACR has noted cases where this worst form of child labour has been used for the purpose of agricultural production, such as when school-aged children are obliged to participate in the harvest rather than attend school, or where children are trafficked to neighbouring states or internally, to work on plantations.

Equality of opportunity and treatment: With 169 member States having ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and 167 States the Equal Remuneration Convention, 1951 (No. 100), there is general acceptance of the principles of non-discrimination and equal remuneration, including for rural workers. However, the CEACR has stressed in a number of its comments the absence of legislation providing equality of treatment and equal remuneration for agricultural workers, with particularly adverse effects for women and workers belonging to disadvantaged groups. Even where there is legislation in force, agricultural workers may face discrimination (in particular women, indigenous workers, migrant workers and lower-caste workers), abusive or insalubrious working conditions, and are often paid lower wages. In many developing countries export-oriented agriculture has become an important source of paid work for women in the last decade.

Employment policy and promotion: The promotion of productive employment lies at the heart of decent work. The Employment Policy Convention, 1964 (No. 122), serves as a blueprint for member States as they implement active employment policies in efforts to recover from the global economic crisis that has also badly affected the rural sector. The Convention is complemented by the Employment Policy Recommendation, 1964 (No. 122), which urges special emphasis on a broad-based programme to promote productive employment in the rural sector to be incorporated within the framework of an integrated national policy; and by the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), which states that all member countries might implement special public works programmes, such as rural infrastructure projects, in order to create and maintain employment, to raise income levels and to reduce poverty.

In its recent General Survey of 2010 on employment instruments¹, the CEACR highlighted the importance of including rural employment when national authorities and social partners prepare, adopt and implement national employment plans and poverty reduction strategies. Industrialized and developing countries should make efforts to address both urban and rural development so as to ensure equitable regional development. Representatives of workers and employers from the rural sector are key actors in ensuring the effective implementation of human resources development policies and programmes.

Based on reports received from 108 governments, the CEACR indicated in its 2010 General Survey that the negative impact on employment from the present downturn is likely to be stronger in countries that are more integrated into the global markets. In countries exporting primary commodities, the decline in demand for agricultural commodities and in their prices will mean that

¹ General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report III (Part 1B) International Labour Conference, 99th Session (June 2010)

the rural sector will face a rise in under-employment and a decline in income. In developing countries, the need to give priority to rural employment arises not only from the weight of this sector in total employment, but also from the fact that the majority of the poor population in low-income countries is typically located in rural areas. If employment policy is to have a large impact in predominantly rural economies, both in terms of increasing aggregate productive employment and contributing significantly to the reduction of poverty, it must emphasize the promotion of rural employment.

Some countries have recently adopted measures that promote the international labour standards related to employment. For instance, the CEACR noted with interest the implementation of the National Rural Employment Guarantee Act (NREGA) in India, which aims to provide 100 days of guaranteed unskilled waged employment to each rural household in more than 600 districts of the country. The success of the Grameen Bank in managing microcredit programmes in Bangladesh and in many other countries has also been noted. Philippines and Mexico have given specific attention to the promotion of SMEs in rural areas. Among other initiatives in industrialized countries, the Committee noted the Rural Business-Cooperative Service (RBS) programme in the United States, which provides support for research, management and marketing. The RBS is also responsible for establishing vocational education and training services for agricultural and rural workers.

The CEACR concluded that most developing countries show a clear commitment to the objective of employment promotion and have adopted a wide range of policies and programmes towards this end. Nevertheless, the rate of unemployment remains high in a significant proportion of developing countries. The traditional view that unemployment rates in developing countries should be low, in part because of a lack of social protection measures, runs counter to actual experience over the past two decades. The employment instruments point to three useful policy options for reducing unemployment, which do not appear to have received sufficient emphasis in the current policies of some of these countries. The first is to identify and adopt measures to increase the labour intensity of economic growth. The second is to devote increased attention to employment promotion in rural areas, since this is where the majority of the labour force in many developing countries is still located. The third is to provide access to funding to encourage an entrepreneurial spirit among young persons and women. The third instrument may also contribute to the enhanced protection of “groups of special concern”.

Labour inspection: Labour inspection is the most important tool governments have at their disposal to ensure compliance with labour laws and to identify gaps in national legislation. The CEACR has emphasized the need to develop labour inspection activities in agriculture, especially to protect young workers and tackle child labour. Both the Labour Inspection Convention, 1947 (No. 81), which concerns industry and commerce, and Convention No. 129 on labour inspection in agriculture, are relevant to the activities taking place in rural areas and are included among the governance Conventions identified in the 2008 Social Justice Declaration. However, Convention No. 129 is particularly relevant because it is specifically aimed at agriculture. This Convention requires governments to establish a system of labour inspection in agriculture with a view not only of securing the enforcement of the legal provisions relating to conditions of work and protection of workers, but also providing technical information and advice to employers and workers and bringing to the attention of the competent authorities defects or abuses that are not specifically covered by the law. In this sense, labour inspection has a crucial and proactive role to play.

Convention No. 129 is particularly well-adapted to the conditions of the rural economy in that it applies to a wide range of agricultural undertakings regardless of the employment relationship of the workers; provides for the extension of the coverage of the labour inspection system to tenants,

sharecroppers, members of cooperatives and members of the family of the operator of the undertaking; and provides for a possible advisory function for labour inspectors in relation to the conditions of life of workers and their families. The accompanying Recommendation No. 133 envisages a role for labour inspectors in education campaigns, including of hygiene, safety and other appropriate subjects in the teaching programmes of rural and agricultural schools and in the organisation of conferences for persons working in agriculture. These provisions can have a far-reaching impact in improving the conditions of work and life of rural workers and unleashing rural development.

Nevertheless, Convention No. 129 remains among the least ratified Governance Conventions despite the Director-General's recent campaign for the ratification and implementation of these instruments. The CEACR has noted the reluctance of several member States to extend labour inspection systems to the agricultural sector, due in part to administrative, technical and economic obstacles. Only a small proportion of agricultural enterprises are legally covered by labour inspection systems worldwide. In addition, in many developing countries, these enterprises are rarely visited in practice due to a lack of resources allocated to labour inspectorates. The influence of labour inspection is, in practice, mostly confined to formal activities in urban areas.

In most of the developing countries, in particular in Africa, Asia and South America, where the majority of the population depends on agriculture, and where the environment comprises more and more hazards, the main obstacle noted by the CEACR to the application of Convention No. 129 is the lack of resources. A particular tendency in English speaking Africa is to tackle the diminishing public resources by decentralizing the labour inspection service, which often impedes its functioning even further. A particularly acute problem is the lack of transport facilities to perform inspection visits of the workplaces as worksites are often scattered and inaccessible. In certain countries, roving safety representatives are put in place in order to mitigate this difficulty.

The CEACR has stressed that the increase in ILO technical cooperation and assistance activities in the area of inspection, as well as in a certain number of international initiatives in which the ILO is involved, has demonstrated that, even if somewhat belated, collective awareness of the need to develop labour inspection systems in agriculture is increasingly noticeable and labour inspectors' duties, powers and prerogatives and their field of intervention have been substantially expanded in the agricultural sector in some countries.

Wages: Wage setting is one of the most contentious rural labour issues, especially as payments are often delayed and wages tend to be low, with many workers being paid below the national minimum wage. The Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) calls for the creation or maintenance of adequate machinery to fix minimum wage rates. The national competent authority may exclude from the scope of application of this Convention certain categories of agricultural workers, such as members of the farmer's family. Workers are to be guaranteed a minimum wage sufficient to meet their needs, but also to preserve the purchasing power of the wage. The Convention provides that the employers and workers concerned may participate in, or be consulted with regard to, the operation of the minimum wage-fixing machinery on a basis of complete equality. Guidelines for fixing minimum wages are found in the accompanying Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89). Other relevant ILO standards are the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage Fixing Convention, 1970 (No. 131).

The protection and timely payment of wages is dealt with by the Protection of Wages Convention, 1949 (No. 95), which applies to all workers, without qualification. It provides that wages are only payable in legal tender. The partial payment of wages in the form of allowances in kind may only be authorized in certain circumstances for certain occupations. Partial payment in kind is a practice that is often used in the agricultural sector. Where there is full payment in kind, with no cash remuneration, this poses serious problems for agricultural workers.

Over the years, the supervisory bodies have raised a number of problems concerning the application of these Conventions to rural workers, including non-payment or deferred payment of wages; exclusion of agricultural workers from national legislation; non-respect of periodic readjustment of minimum wage rates; the lack of adequate sanctions to deter abuse of the minimum wage system, where it exists; and the lack of statistics and data on workers covered by minimum wages in this sector. The CEACR has also commented for many years on practices resulting in ten of thousands of indigenous agricultural workers being in a situation of debt bondage through the use of systems of advances on wages, stores located in camps that charge excessive rates compared to market prices, compulsory deductions from wages for savings schemes, payments in kind and the deferred payment of wages.

Occupational safety and health: Agriculture is one of the three most dangerous occupations to work in, along with construction and mining. Agricultural workers are nevertheless often partially or wholly excluded from coverage under national occupational safety and health (OSH) regulations.

The Safety and Health in Agriculture Convention, 2001 (No. 184), and its accompanying Recommendation No. 192 are particularly significant because for the first time in international law, most agricultural workers can now be covered by international preventive and protective OSH measures. Convention No. 184 is based on the same progressive management systems approach as the central and comprehensive Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and calls for a continuous improvement of the national OSH situation in agriculture through the formulation, implementation and regular review of a national policy in consultation with workers' and employers' organizations.

Furthermore, and in addition to requiring the setting up of an appropriate system of inspection for agricultural workplaces, Convention No. 184 prescribes specific preventive and protective measures in most areas relevant to agricultural work. It regulates measures to be taken regarding machinery safety and ergonomics; handling and transport of materials; sound management of chemicals; animal handling and protection against biological risks; and the construction and maintenance of agricultural facilities. For young workers, the minimum age for assignment to hazardous agricultural work is 18 years and 16 years for other farm jobs. Temporary and seasonal workers are to receive the same level of protection as permanent workers. It is also prescribed that the special needs of women agricultural workers in relation to pregnancy, breastfeeding and reproductive health are to be taken into account. The Convention also contains provisions concerning working time arrangements and insurance coverage against occupational injuries and diseases. The Recommendation and a recently adopted Code of practice² provides further guidance on the practical application of the provisions of the Convention.

² See <http://www.ilo.org/public/english/dialogue/sector/techmeet/mesha10/index.htm>.

Under Convention No.184, the CEACR has dealt with questions relating to: the national policy process; risk assessments; adequate and appropriate systems of inspection; situations causing immediate and serious danger; right of workers to select safety and health representatives; minimum age requirements; ensuring that information is conveyed and understood; sound management of chemicals; biological risks; appropriate training; temporary and seasonal workers; and the reproductive health of women agricultural workers.

Social security: Social security of agricultural workers was addressed by the ILO from the very start of its standard setting activities. The social security Conventions that are currently up to date do not distinguish between agricultural and industrial workers and aim to establish a minimum number of persons covered by reference to classes of employees, of the economically active population or a percentage of all residents (Social Security (minimum standard) Convention, 1952 (No. 102), Employment Injury Benefits Convention, 1964 (No. 121), Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Medical Care and Sickness Benefits Convention, 1969 (No. 130), Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

In practice, social security arrangements for those working in agriculture are generally integrated into the overall social security system with only farmers covered by special rules. The ILO is also actively involved in promoting the establishment of a basic social floor for the population that is not covered by existing social security systems, mainly those working in agriculture and in the informal economy and their families, and including : (1) access to a nationally-defined set of essential health care-services; (2) income security for children through family/child benefits aimed at facilitating access to nutrition, health and education; (3) income security combined with employment guarantees and employability-enhancing policies for those in active age groups who are unable to earn sufficient income on the labour market; and (4) income security for all residents in old age and with disabilities through specific pensions.

Migrant workers³: Reliance on migrant workers has become a characteristic feature of the agricultural sector, especially for seasonal activities. And with the agricultural sector being considered as one of the most hazardous industries, many migrant workers find themselves working in very poor and hazardous working conditions while often receiving wages lower than the established minimum wage. Those migrant workers employed in an irregular situation are even more vulnerable to abuse, exploitation and discrimination.

Indigenous and tribal peoples: Many indigenous peoples work in agriculture. If they earn their livelihood as subsistence farmers, their main problems frequently arise from unequal access to land with respect to land title and ownership rights, credit, marketing facilities and resources. If they work for others, they often face de facto discrimination in terms of conditions of employment. They are also often subject to forced dispossession of land for the creation of agricultural undertakings as well as logging and mining activities. In all such cases, legislation and policies should make provision for measures to allow indigenous peoples access to resources, including the means to carry out the activities from which they earn their living.

The Indigenous and Tribal Peoples Convention, 1989 (No. 169), provides protection and rights for indigenous workers in seasonal and casual employment, including in agriculture. The establishment of

³ Migration for Employment (Revised) Convention, 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

appropriate and effective mechanisms for the consultation and participation of indigenous and tribal peoples regarding matters that concern them is the cornerstone of the Convention. It is important to ensure the right of indigenous and tribal peoples to decide their development priorities through meaningful and effective consultation, as well as the participation of these peoples at all stages of the development process, particularly when development models and priorities are discussed and decided. The peoples concerned may often consider agriculture to be the priority. In Part II the Convention deals with the rights and ownership of land that has been traditionally occupied by indigenous peoples as well as safeguarding their rights to natural resources. Part III provides that they are to enjoy the protections afforded by national law and practice, as do other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them. Part IV addresses vocational training, handicrafts and rural industries, and advocates for the strengthening and promotion of rural industries and traditional occupations as a tool for maintaining indigenous cultures, economic self reliance and development.

Plantations: At the time the Plantations Convention, 1958 (No. 110) was adopted, plantations constituted an important economic sector for many countries in tropical and subtropical regions, and the poor living and working conditions of plantation workers were widely recognized. The principal objective of the Convention was to afford broader protection to those workers. The working and living conditions of plantation workers continue to be a source of concern in most parts of the world. Recent comments by the CEACR have focused on particular instances of “lawlessness” that seem to prevail in some plantations as reflected in the violations of several fundamental, priority and other ILO Conventions. Recourse to child labour and the prevention of workers’ unionization seem to be the most recurrent phenomena, while instances of compulsory pregnancy testing and debt bondage have also been reported. Another problem specific to plantations is the scarcity of labour inspection visits (or the non-transparency of inspection results) as in many cases, private security forces are used to prevent all unwelcome visitors from penetrating plantation zones. Mention should also be made of the increased health risks to which plantation workers are often exposed, for instance due to the widespread use of pesticides. Finally, abusive practices regarding the regular payment of wages or the payment of the established minimum wage seem to be a common feature, commonly experienced by migrant plantation labourers.

Fisheries: Convention No. 188 provides not only for an exemption possibility of limited categories of fishing vessels and fishers (Article 3), but also for the progressive implementation of certain provisions (Article 4). Nevertheless the comprehensive nature of this instrument appears to represent difficulties in implementation for certain countries. As the Convention is meant to cover all fishing operations (except subsistence fishing and recreational fishing), it is sometimes suggested that all small-scale fishing or artisanal fishing, which may well represent 80 per cent of all fishing activity in a given country, qualifies as “subsistence fishing” and should therefore be excluded from the scope of the Convention. Yet, the Convention may not be interpreted as allowing unconditional or unrestricted exceptions, and, as a result, concerns are raised as to possibility of ratification by certain countries.

For more information:

ILO International Labour Standards (NORMES) department

Website: www.ilo.org/global/standards

Contact: normes@ilo.org