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FOR INFORMATION

## Report and conclusions of the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation

**Summary:** This document, submitted to the Governing Body for information, contains the report and conclusions of the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation (TMELE/2013/7), which took place in Geneva from 11 to 15 February 2013.

**Author unit:** The International Labour Standards Department (NORMES) and the Programme on Promoting the Declaration on Fundamental Principles and Rights at Work (DECLARATION).

**Related documents:** GB.316/INS/4; GB.317/INS/2(Rev.): paragraphs 8 to 55 and 310 to 312.

1. At its 316th Session in November 2012, the ILO Governing Body decided to convene a tripartite meeting of experts in February 2013 with the objective of providing recommendations to its 317th Session (March 2013) with respect to a possible standards-related item that could be placed on the agenda for the 103rd Session of the International Labour Conference in June 2014. This decision was taken following the recurrent discussion on fundamental principles and rights at work, which took place in June 2012, at the end of which the Conference called on the Office to conduct a detailed analysis, including through the possible convening of meetings of experts to identify possible gaps in existing coverage of ILO standards with a view to determining whether there is a need for standard setting to complement the ILO's forced labour Conventions in the areas of prevention of forced labour; victim protection, including compensation; and trafficking in persons for labour exploitation.
2. The Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation was led by an independent Chairperson, Mr Jean-Jacques Elmiger, and was composed of eight Government experts, eight Employer experts and seven Worker experts. There were also Government observers from seven member States, and representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) as well as from certain intergovernmental and international non-governmental organizations. In order to facilitate the work of the Meeting, the Office prepared a background report which is available on the website of the ILO, as is the list of participants.
3. The report of the Meeting of Experts (TMELE/2013/7) as well as the conclusions adopted are submitted to the Governing Body for information. These documents will certainly be useful to the Governing Body during its discussion of the agenda of the 103rd Session of the Conference (2014).

Geneva, 7 March 2013



## **Final report**

**Tripartite Meeting of Experts on Forced Labour  
and Trafficking for Labour Exploitation**  
(Geneva, 11–15 February 2013)

Geneva, 2013

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INTERNATIONAL LABOUR ORGANIZATION

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**International Labour Standards Department and Programme for  
the Promotion of the Declaration on Fundamental Rights at Work**

**TMELE/2013/7**

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INTERNATIONAL LABOUR OFFICE, GENEVA

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## I. Introduction

1. Following the recurrent discussion on fundamental principles and rights at work, which took place in June 2012, the International Labour Conference (ILC) called on the International Labour Office to “conduct a detailed analysis, including through the possible convening of meetings of experts to identify gaps in existing coverage of ILO standards with a view to determining whether there is a need for standard setting to: (i) complement the ILO’s forced labour Conventions to address prevention and victim protection, including compensation; and (ii) address human trafficking for labour exploitation”.<sup>1</sup> At its 316th Session in November 2012, the ILO Governing Body decided to convene a tripartite meeting of experts in February 2013 with the objective of providing recommendations to its 317th Session (March 2013) with respect to a possible standards-related item that could be placed on the agenda for the 103rd Session of the ILC in June 2014.
2. In order to facilitate the discussion of the Meeting, the Office prepared a background report entitled “Report for discussion at the Tripartite Meeting of Experts concerning the possible adoption of an ILO instrument to supplement the Forced Labour Convention, 1930 (No. 29)” (hereinafter the report). This report is divided into four parts. Part I contains a brief introduction describing the present context of forced labour. Part II reviews the international legal framework related to forced labour and trafficking in persons and examines the ILO’s forced labour Conventions, as well as other relevant international and regional instruments. Part III examines national law and practice respecting prevention and protection measures, as well as measures focused on combating trafficking for labour exploitation. Part IV builds upon the analysis of international and national frameworks to present specific points for further discussion and proposals for the way forward.

## II. Composition of the Meeting of Experts

3. The Meeting was led by an independent Chairperson<sup>2</sup> and was composed of eight Government experts,<sup>3</sup> eight Employer experts<sup>4</sup> and seven Worker experts.<sup>5</sup> There were also Government observers from seven member States (Australia, Bangladesh, Belarus, Japan, Malaysia, Saudi Arabia and Sudan), and representatives from the International

<sup>1</sup> ILO: “Conclusions concerning the recurrent discussion on fundamental principles and rights at work”, *Provisional Record* No. 15, ILC, 101st Session, Geneva, 2012, para. 22(c).

<sup>2</sup> Mr Jean-Jacques Elmiger (Switzerland); in his absence, the Government expert from Brazil acted as Chairperson during the first day of the Meeting (Monday, 11 February 2013).

<sup>3</sup> Mr Renato Bignami (Brazil), Mr Bilal Almajali (Jordan), Ms Catalina Doru (Republic of Moldova), Ms Marielle van der Linden (Netherlands), Mr Emmanuel Igbinosun (Nigeria), Ms Joji V. Aragon (Philippines), Ms Marcia Eugenio (United States) and Mr Chinyanta Chikula (Zambia).

<sup>4</sup> Mr Daniel Mammone (Australia), Mr Syed N. Taher (Bangladesh), Mr Saleh Atibu (Democratic Republic of the Congo), Mr Adnan Abu Elragheb (Jordan), Mr Octavio Carvajal Bustamante (Mexico), Mr Julio Cesar Barrenechea Calderon (Peru), Mr Juan José Llona Barrenechea (Spain) and Mr John Kloosterman (United States).

<sup>5</sup> Mr Expedito Solaney Pereira de Magalhaes (Brazil), Ms Annick Desjardins (Canada), Mr Yves Veyrier (France), Mr Abdul Halim Mansor (Malaysia), Mr Mamadou Niang (Mauritania), Mr Ramesh Badal (Nepal) and Ms Prakashnee Govender (South Africa).

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Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). In addition, representatives of the following intergovernmental and international non-governmental organizations attended the Meeting as observers: United Nations Office on Drugs and Crime (UNODC), Office of the United Nations High Commissioner for Human Rights (OHCHR), International Organization for Migration (IOM), Council of Europe, Anti-Slavery International and the Global Alliance Against Traffic in Women (GAATW).

### III. Opening statements

4. The Secretary-General of the Meeting, Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, highlighted that the ILO's mandate and mission to combat forced labour began more than 80 years ago with the adoption of the Forced Labour Convention, 1930 (No. 29). She recalled that Convention No. 29 prohibited all forms of forced or compulsory labour and that this prohibition was considered to be a peremptory norm of international human rights law, from which no derogation was permitted. Convention No. 29 and the Abolition of Forced Labour Convention, 1957 (No. 105), were among the most widely ratified of all ILO instruments: 177 of the ILO's 185 member States had ratified Convention No. 29, and 174 had ratified Convention No. 105. The global struggle to eliminate forced labour was fundamental to the promotion of decent work and to the protection of workers from unacceptable forms of work.
5. As regards the existing international standards relating to forced labour, including ILO Conventions Nos 29 and 105, the United Nations (UN) Conventions related to slavery, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol on Trafficking), the Secretary-General underlined that the principles enshrined in these instruments, which together called for the elimination of the worst forms of human exploitation, remained important in the context of multiple and serious challenges to the world of work. Recalling the historical context in which these instruments were adopted, she described how Convention No. 29 had taken special account of the problems existing in 1930 in territories under colonial administration and in certain independent States. After the Second World War, further concerns had emerged about the use of forced labour as a means of political coercion or labour discipline, and for economic development purposes, resulting in the adoption of Convention No. 105. The adoption by the UN of the 1926 Slavery Convention provided the first international legal definition of slavery, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery defined slavery-related practices in greater detail. In 2000, the Palermo Protocol on Trafficking was adopted, which was principally a criminal justice instrument and provided the first international definition of trafficking in persons, linking it explicitly to the notion of forced labour by specifically defining exploitation to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation.
6. Turning to the data on forced labour, according to the global estimates published by the ILO in 2012, 20.9 million women, men and children were victims of forced labour globally. The vast majority (90 per cent) were exploited by private individuals or enterprises which operated outside the rule of law, and the remainder by the State. These estimates had shown that while women and girls were generally more susceptible, men and boys in fact accounted for 45 per cent of the total. Among those victims exploited in the "private" economy, around a quarter were enduring sexual exploitation, while three-quarters were undertaking forced labour in other sectors such as agriculture, construction, manufacturing or domestic work. The new estimates therefore highlighted the need to focus attention on the problem of forced labour exploitation specifically, as well as the link

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between forced labour and migration, with almost half of all forced labour victims having moved either across borders or within their country.

7. Moreover, ILO research had shown that forced labour generated massive illegal profits, estimated at US\$44 billion each year, for the perpetrators, while victims lost billions of dollars in unpaid wages and recruitment fees. Workers in the informal economy, who lacked protection, were particularly vulnerable. The facilitation of transitions from the informal to the formal economy, which had been proposed as a possible agenda item for the 2014 ILC, could help to redress these risks in the long term. Formalization, however, could not address the urgent, immediate needs of forced labour victims, or tackle the root causes of forced labour, such as poverty and discrimination, for which comprehensive and targeted measures were still needed.
8. The Secretary-General underlined that, although there had been an improved understanding of the problem of forced labour, including trafficking, as well as new legislation and growing international concern, the vast majority of victims remained unidentified and unprotected. Low prosecution rates meant that most offenders had escaped with impunity. Recent data gathered by UNODC also suggested that the crime of trafficking for labour exploitation remained significantly under-detected compared to forced sexual exploitation. This was possibly due to the fact that criminal justice approaches and prosecutions were pursued to the exclusion of other relevant areas of law, including labour law. The ILO's technical cooperation experience had shown that countries which had adopted an integrated and coordinated approach, including through strong collaboration between criminal justice and labour administration, had done better in combating all forms of forced labour.
9. Turning to victim protection, the Secretary-General emphasized that more effective measures and assistance were required, tailored to the needs of victims. Victims of forced labour often required different assistance to those of forced sexual exploitation. Access to compensation also needed to be improved. Research had shown that compensation was often difficult to obtain in practice, although the recovery of unpaid wages and damages was often the most urgent priority for many victims. There were also gaps in the area of prevention, and efforts to combat forced labour too often focused on symptoms, rather than causes. The current scale of forced labour demonstrated that those laws and policies targeting prevention had been less than effective. Most countries lacked comprehensive measures that targeted employer or consumer demand. Experience had shown that initiatives undertaken in collaboration with the social partners to eliminate forced labour from global supply chains could be extremely effective. Labour inspectors could also play a key role in prevention, by providing targeted training and awareness raising, to prevent exploitative practices that could degenerate further into forced labour.
10. The Secretary-General underlined that it was also urgent to include the social partners (employers' and workers' organizations) in the discussion. Neither Convention No. 29 nor the Palermo Protocol on Trafficking addressed the role of the social partners. With some notable exceptions, most countries did not include employers' and workers' representatives in institutional frameworks and mechanisms to combat forced labour and trafficking. The involvement of social partners in efforts to combat child labour was exemplary in this regard, and the Worst Forms of Child Labour Convention, 1999 (No. 182), like other ILO instruments, required consultation with employers' and workers' organizations. Both groups had similarly crucial roles to play in combating forced labour, including human trafficking.
11. The Secretary-General recalled that the objectives of this Tripartite Meeting of Experts had been established in the conclusions adopted by the ILC concerning the recurrent discussion on fundamental principles and rights at work at its 101st Session in 2012. Accordingly, the purpose of this Meeting was for the experts to formulate recommendations to the

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Governing Body as to whether there was scope for standard-setting and/or other measures to complement the ILO's forced labour Conventions. The discussions were not intended to undermine the existing legal framework articulated in the two ILO Conventions on forced labour, but rather to identify areas where a complementary approach could measurably strengthen efforts to eradicate forced labour, particularly in the areas of prevention, victim protection and trafficking for labour exploitation. If it was considered that the adoption of a new instrument or instruments would have an added value in filling the gaps identified, it could then be considered what form such an instrument or instruments could take. If the experts did not consider that there was a need for a new standard, recommendations as to steps to eliminate the scourge of forced labour would also be very valuable.

- 12.** The acting Chairperson, the Government expert from Brazil, outlined his experience in the fields of forced labour and trafficking, in particular his work as a labour inspector. Brazil had officially recognized the problem of forced labour in 1995, and, since that time, many national advancements and measures had been achieved, including the ratification of the Palermo Protocol on Trafficking. Combating forced labour began with asking difficult questions about what was needed to protect workers and to promote fair competition among enterprises. The Chairperson hoped that the discussion would generate some responses to these important questions.
- 13.** The spokesperson for the Employer experts, the Employer expert from Australia, recalled that Convention No. 29 was one of the eight fundamental Conventions and among the most ratified of the ILO Conventions. The broad international support for the eradication of forced labour was also illustrated by the large number of countries having ratified the UN Slavery Convention and the Palermo Protocol on Trafficking. This Meeting was key to the understanding of the prevalence of forced labour as well as to the examination of what had worked to address this scourge and what had not. It was clear from the report that the problems of forced labour and trafficking were multidimensional, and that their solutions needed to be multifaceted and targeted. The different perspectives of the experts would be useful in determining how, at the international level, practical and workable solutions could be developed.
- 14.** The Employer experts would continue to support cooperation at both the international and national levels, with tripartite discussion, towards the eradication of forced labour. In this connection, the Employer spokesperson referred to his role as the employer representative to the National Roundtable on People Trafficking in Australia, with tripartite participation, which addressed issues of forced labour and trafficking at the national level, as well as promoting cooperation with other countries in the region.
- 15.** The Employer spokesperson concluded by stating that the Meeting should seek to strengthen the existing consensus on the importance of eradicating forced labour. Multiple policy tools were required in this respect, including improved enforcement, education, stronger rule of law and better coordination between the social partners and various governmental institutions.
- 16.** The spokesperson for the Worker experts, the Worker expert from France, emphasized that the ILC, at its June 2012 session, had adopted important conclusions with regard to the fundamental principles and rights at work, reaffirming their universal nature and their importance as human rights, and as prerequisites for achieving the ILO's other strategic objectives. The ILC had therefore called for the implementation of a plan of action to enable "the universal realization of fundamental principles and rights at work". The present Meeting of Experts constituted the first stage, targeting one of the particularly symbolic aspects of the fundamental principles and rights at work. Moreover, even though the goal of universal ratification of Convention No. 29 seemed attainable, the latest ILO statistics showed that the total number of victims of forced labour worldwide was at least 20.9 million. Those figures were a measure of the importance of the work of the present

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Meeting and of the proposals to be made. Some 68 per cent of persons exploited by individuals or enterprises were victims of labour exploitation. Certain categories of workers were particularly vulnerable, such as migrant and domestic workers, indigenous peoples, and workers in the informal economy. The human cost was immense and the ILO had estimated the loss of earnings resulting from forced labour to be US\$21 billion. That represented resources that were missing for establishing social protection systems, which constituted a crucial element in a freely chosen employment relationship and in the protection of workers.

- 17.** In the context of the ILO, Conventions Nos 29 and 105 provided the standard-setting reference framework with regard to the definition and elimination of forced labour. Convention No. 29 had been adopted at a time when governments were the principal entities that imposed forced labour practices. New forms and practices had emerged since then, especially in the wake of increased mobility of workers, which left them more exposed to the risk of forced labour. The report underlined the fact that currently 90 per cent of victims were exploited by individuals or enterprises. The purpose of the present Meeting was not to revise the ILO Conventions or the international instruments adopted in this field, especially the Palermo Protocol on Trafficking, but to decide how to fill the gaps in them. Even though the increasing focus on combating trafficking in persons, which constituted a form of forced labour, was welcome, the penal approach that was currently favoured too often left victims without protection and little room for preventive work. A systematic and coordinated complementary approach against trafficking, assigning a more significant role to labour administration and inspection, as well as to the social partners, would be sure to result in better prevention, detection and protection of victims of trafficking for labour exploitation.
- 18.** As emphasized by the report, it would appear necessary, as a complement to Convention No. 29, to define guidelines that would commit States to taking systematic action in terms of prevention, protection, compensation and reintegration of victims of forced labour, and the vulnerability of victims should be given particular attention. Despite the significant progress made, the extent and gravity of forced labour practices, including trafficking in persons, called for a strong response from the ILO, and hence the Worker experts were in favour of adopting a binding instrument – possibly in the form of a Protocol or a Convention – which, in order to be effective, should be supplemented by a Recommendation. An ILO instrument would foster systematic and coordinated action at the international level, which was essential to the eradication of forced labour, and would provide greater visibility in the fight against trafficking in persons for labour exploitation. In conclusion, the Worker spokesperson emphasized that the Worker experts were fully determined to work towards the elimination of forced labour in all its forms and towards the adoption of strong conclusions on the subject which would complement the major steps already achieved.
- 19.** The Government expert from the Philippines underlined that the comprehensive report and the most recent ILO global estimates on forced labour provided a good baseline for policy action. She looked forward to a constructive discussion on the relevance of Convention No. 29 in the face of new or emerging forms and characteristics of forced labour. In addition to discussing the possibility and form of a new and complementary instrument on forced labour, conceptual clarity on the phenomenon of forced labour was needed to identify gaps in investigation, prevention, labour inspection, enforcement and monitoring. As a labour sending country, the Philippines viewed the proposals in the report through the lens of managing labour migration in vulnerable sectors. Having ratified the Domestic Workers Convention, 2011 (No. 189) in 2012 and having recently developed a national law on domestic workers with a special provision on the elimination of forced labour, the country had important lessons to share. The Government expert hoped that the Meeting would generate diverse and enriching views that would serve as a basis for the

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recommendation that it would submit to the Governing Body in March 2013 concerning a complementary instrument to Convention No. 29.

- 20.** The Government expert from the United States stated that the global estimates on forced labour had underscored the magnitude of the problem and the critical importance of efforts to assist the millions of workers forced to work in violation of their fundamental rights. The ILO forced labour Conventions had long been key to the elimination of forced labour. The purpose of the Meeting was to examine whether there were any gaps in the ILO Conventions. In this regard, the report appeared to indicate that there were no gaps in the standards themselves that would require new standard setting. According to paragraphs 47 and 48 of the report, the ILO supervisory bodies had confirmed that, under Convention No. 29, eliminating the use of forced labour required measures not only to prevent forced labour and punish the perpetrators, but also to protect the victims and provide access to justice and compensation. However, the report identified significant problems in the implementation of the forced labour Conventions in many countries, particularly with regard to prevention and victim protection, as well as compensation. In this regard, the Government expert from the United States expressed the view that gaps in Conventions and gaps in implementation were separate matters that required different solutions. Therefore, she strongly urged that the assessment of whether or not gaps existed in the ILO forced labour Conventions be addressed in an open-minded fashion.
- 21.** An observer from the OHCHR explained that the UN system had systematically addressed human trafficking, including for forced labour, and all other forms of modern slavery and slavery-like practices, through its different legal and policy frameworks. The Universal Declaration of Human Rights prohibited slavery and servitude, and confirmed the right to the free choice of employment. The International Covenant on Civil and Political Rights, as well as the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and the Convention on the Rights of Persons with Disabilities prohibited forced and compulsory labour. The Convention on the Elimination of All Forms of Discrimination against Women required States to take all measures needed to suppress all forms of trafficking in women. The Convention on the Rights of the Child prohibited trafficking in children for any purpose.
- 22.** Moreover, the Human Rights Council had appointed several Special Rapporteurs with thematic mandates, such as trafficking; sale of children; slavery; and violence against women, which focused on issues related to slavery, slavery-like practices, including forced labour, servitude and trafficking. In 2000, the OHCHR had developed a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking, which were submitted to the Economic and Social Council (ECOSOC) of the UN as an annex to the High Commissioner for Human Rights' Report. These provided practical rights-based policy guidance on the prevention of trafficking and on the protection of victims of trafficking and were based on four principles: (i) primacy of human rights; (ii) prevention; (iii) protection and assistance; and (iv) criminalization, punishment and redress. In closing, the observer from the OHCHR emphasized that, if a recommendation for a new instrument were to be the outcome of this Meeting, it was crucial that the proposed instrument take into account all elements of the Recommended Principles and Guidelines, because this soft law instrument had the capacity to address the root causes of trafficking and to provide for strengthened prevention measures.
- 23.** The UNODC had provided an opening statement, which was read by the secretariat. The UNODC assisted States in their efforts to implement the Palermo Protocol on Trafficking. Trafficking in persons was a global concern marked all too often by impunity, which caused vulnerable populations to be continuously at risk and contributed to a lack of protection for victims. Mandated by the UN General Assembly, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) had been established to improve cooperation among relevant UN agencies and other international organizations

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and to ensure that, globally, trafficking in persons was addressed in a comprehensive and holistic manner. As a member of ICAT, the UNODC supported the conclusions and recommendations of ICAT's first policy paper, "The International Legal Framework Relating to Trafficking in Persons", which affirmed that States needed to be made aware of complementary obligations contained in relevant international instruments, other than the Palermo Protocol on Trafficking, that identified, defined and described different forms of exploitation. Therefore, States should be urged to review their laws and policies, with a view to providing appropriate protection and assistance to all victims of exploitation who were entitled to such protection or assistance under the terms of international legal instruments. This would include victims of forced labour, such as bonded labourers, who had not been subject to trafficking in persons, as defined in the Palermo Protocol on Trafficking. Efforts had to be made to ensure a better understanding of the coherence between human rights law, refugee law, labour law and other relevant bodies of law. In this regard, the UNODC welcomed the discussions at this Meeting.

24. An observer from the Council of Europe noted that the report acknowledged the fact that the Convention on Action against Trafficking in Human Beings adopted by the Council of Europe was broader in scope than other regional instruments and contained more mandatory monitoring and enforcement standards. Nonetheless, according to ILO estimates, certain States which were members of the Council of Europe had extremely high prevalence rates with regard to the number of forced labour victims per thousand inhabitants. He highlighted that the Convention on Action against Trafficking in Human Beings was open for signature to non-members, which could bring together the two ends of the trafficking line: the country of origin and the country of destination. Moreover, the European Social Charter contained a definition of forced labour, and the European Committee of Social Rights monitored the effective implementation of the prohibition of forced labour. In this respect, this Committee had recently formulated conclusions relating to domestic work, taking into consideration the recent judgments by the European Court of Human Rights referring to abusive, degrading and inhuman living and working conditions for domestic workers. In this context, the Committee requested governments to indicate the measures taken with regard to labour inspection visits, penal sanctions and protection of migrant workers. The European Committee of Social Rights had also examined issues of forced labour through the collective complaints' mechanism, not yet accepted by all member States. Under this mechanism, the European Trade Union Confederation (ETUC), the IOE, non-governmental organizations with participative status, and employers' and workers' organizations were allowed to lodge complaints.
25. An observer from the GAATW recalled that the organization was a network of 115 non-governmental organizations that worked directly with women on trafficking and related issues, providing assistance in both countries of destination and origin. The GAATW was actively promoting the implementation of the Palermo Protocol on Trafficking and other international instruments. However, the experience of engaging within this framework had revealed an inherent weakness: a trafficked person's identity was that of a victim of a crime, and the focus was on finding and punishing the perpetrator. Yet, in most cases, the abuses and violation of rights occurred in the context of persons seeking their livelihood, during the process of recruitment or at the workplace. Women who were in search of work often moved across or within borders, and sometimes ran away from their workplaces as they had no hope that their rights would be protected in either their country of origin or destination. She emphasized that anti-trafficking policies alone could thus not stop trafficking. Complementary, holistic and comprehensive approaches were needed with regard to migration and labour, as well as the economic and social rights of women. There was also a need to adopt a proactive approach to the elimination of forced labour and to examine the labour dimension, including the informal economy and work that was not counted as labour. She concluded by underlining that it was necessary to set standards, or enhance the existing standards, to protect all workers, regardless of nationality or citizenship.

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- 26.** An observer from Anti-Slavery International stated that the report outlined some of the key areas that would benefit from a supplementary instrument to Convention No. 29, particularly regarding the importance of compensation for victims as both a means of advancing a human rights approach to trafficking in persons and as a means of restorative justice. Since 1930, the practice of forced labour had evolved, even if its substance remained the same, and it was worth considering whether the conceptual framework of prevention and protection, as set out in the report, was sufficient to meet the challenges of the contemporary world. Some of the key risks of forced labour emerged in the national and international gaps in the rule of law and institutional capacity. It was therefore important to focus on questions of policy coherence, coordination and international cooperation in the areas of prevention and protection.
  - 27.** The research conducted by Anti-Slavery International and others had demonstrated that, while forced labour took many different forms, there were three important commonalities. First, those who were subjected to forced labour tended to be vulnerable individuals, usually economically, but often socially or personally. Second, they came from communities that were socially excluded and discriminated against either in their home country, abroad, or both. Third, the governments of the countries in which they were abused, either by design or due to a lack of capacity, failed to ensure proper standards of social and economic justice and rule of law. Conceptualizing contemporary manifestations of forced labour in this manner allowed for new and potentially more effective measures of forced labour prevention and worker protection.
  - 28.** In this regard, affirmative action programmes of social and economic justice that focused on the vulnerability of individuals within socially excluded communities would logically contribute to breaking the cycles of slavery that had persisted for generations. A new instrument should explicitly recommend that national anti-trafficking and forced labour plans of action target social and economic development. This should not be restricted to domestic policies incorporated into national action plans, but should also apply to aid policies, which had not sufficiently taken into account the power dynamics underpinning the social exclusion of those vulnerable to slavery.
  - 29.** A second approach to preventing forced labour and protecting victims was to end their isolation. Forced labour, even where significant numbers of victims were involved, tended to be inflicted in one-to-one relationships, where the slaveholder had the majority of power. By facilitating mutual support through community groups or unionization, thereby equalising the power relationships and promoting mature industrial relations, even some of the most egregious abuses, such as in the brick kilns of South Asia, could be lessened.
  - 30.** Third, in order to reverse the low-risk ratio of trafficking, it was necessary to ensure that forced labour was a stand-alone offence in every country and to increase labour inspection capacity. The United Kingdom had adopted new legislation on forced labour in 2010, resulting in a series of new police investigations and subsequent convictions. However, certain law enforcement and labour inspection measures might be difficult in countries with high corruption and low rule of law. Again, this was an area on which the aid programmes and diplomatic efforts of countries with advanced rule of law could be focused, and which should be included explicitly in national plans of action to combat forced labour. There was self-interest involved in wealthy nations adopting such internationalist anti-trafficking approaches; if trafficking could be prevented in the potential victims' countries of origin, then it would not become a problem for the potential countries of destination.
  - 31.** In the context of a globalized economy, a new instrument should also recognize that citizens of one country could facilitate forced labour in another without ever setting foot there. The existing national and international law did not hold accountable those who ultimately profited from acts of omission and commission related to these forced labour

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practices. A new instrument should recommend robust legislation that would allow courts to hold individual and corporate citizens to account for such behaviour. Such an approach would be in keeping with the Ruggie principles on business and human rights, which recommended the development of extra-territorial legislation to ensure that the globalization of business did not develop beyond the rule of law.

32. A new instrument should also emphasize the importance of diplomatic measures in reducing the vulnerability to trafficking in persons of a country's citizens and remind governments that their responsibility for their citizens did not end when those citizens left the national territory. A new instrument should also recognize that none of the social partners' responsibilities ended at the borders of national territory. Businesses had responsibilities in their global supply chains. Unions also had interests, for example in ensuring decent work in those same supply chains.
33. In conclusion, the observer from Anti-Slavery International indicated that a new instrument should acknowledge the reality that many of the risks of forced labour in the contemporary world emerged from the gaps in national practice and international rule of law in the globalizing economy. If a new instrument could provide clear direction on how to respond to these risks, then it would be well worth the effort.
34. The Worker spokesperson emphasized that one of the cross-cutting issues in the discussion was to identify the most appropriate form of action to be proposed to the Governing Body. The fact of having reached a consensus on recognizing the importance of existing instruments which prohibited forced labour, especially ILO Conventions Nos 29 and 105, was very welcome. The supervisory bodies had been able to take steps to ensure that progress was made and monitored. However, more detailed provisions relating to the implementation of standards needed to be identified. Standards could not take the form of mere principles. If there were gaps in the implementation of standards, thought should be given to the need to make them more explicit and to identify modalities for implementation, adopting a systematic and coordinated approach.
35. The Employer spokesperson emphasized that the Employer experts attended the Meeting with an open mind, and wanted to understand the nature of the problem of forced labour, as well as find possible solutions.

## IV. Discussion

36. The discussion was structured around the seven points for discussion identified in the report: (1) trafficking in persons; (2) prevention of forced labour; (3) protection of forced labour victims; (4) compensation of forced labour victims; (5) enforcement; (6) policy coherence and coordination and international cooperation; and (7) value added of new ILO instrument(s). In order to guide and facilitate the discussion among the experts, the Secretary-General of the Meeting recalled the questions identified in the report under each point for discussion, and provided a short introduction of each.

### Point 1. Trafficking in persons

*What is the relationship between forced labour and trafficking in persons? What regulatory gaps, if any, exist regarding trafficking in persons, and is there a value added in the ILO addressing these gaps by means of standard setting?*

37. The Secretary-General recalled that trafficking for both labour and sexual exploitation was encompassed within the definition of forced or compulsory labour in Convention No. 29. The Committee of Experts on the Application of Conventions and Recommendations

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(Committee of Experts) had consistently addressed trafficking in persons in examining the application of Convention No. 29, requesting countries to take comprehensive measures to combat this phenomenon. In this regard, the report noted that, in most countries, the national legislation defined and punished trafficking in persons, both for sexual as well as labour exploitation, and that in the past decade many States had introduced national programmes, policies and strategies to combat trafficking. The report also identified gaps for which guidance could be valuable, including: (i) efforts to prevent, identify and prosecute cases of trafficking for labour exploitation still lagged far behind those to combat trafficking for sexual exploitation; (ii) the low rates of prosecution of trafficking offences; (iii) insufficient victim protection mechanisms; (iv) the important complementary role of labour administration and labour inspection in combating trafficking was not well-recognized; and (v) the insufficient cooperation between the labour inspectorate and criminal law enforcement bodies.

- 38.** The Worker spokesperson emphasized that it was possible for forced labour to exist without there being any link to trafficking in persons. However, even though Convention No. 29, which provided for the elimination of forced labour, did not explicitly refer to action against trafficking in persons, governments and the supervisory bodies had linked the fight against forced labour to combating trafficking in persons for labour exploitation or sexual exploitation. Since 2001, the issue of trafficking had been the subject of systematic examination by the ILO supervisory bodies. The Committee of Experts had noted with interest the legislative provisions, the institutional frameworks and the national plans adopted by governments in that regard and had thus established a corpus of guidelines for action against trafficking.
- 39.** At the same time, the Palermo Protocol on Trafficking contained a definition of trafficking that was almost universally recognized. By focusing on criminal justice, the Protocol did not give weight to the role that labour administration and inspection could play in combating trafficking for labour exploitation. Nor did it take account of the role of workers' and employers' organizations. Lastly, by aiming primarily to punish offenders, the Protocol might cause victims to be viewed in an ambiguous way. The report emphasized that measures designed to prevent, identify and punish trafficking for labour exploitation lagged behind those that targeted trafficking for sexual exploitation.
- 40.** The Worker spokesperson stressed that even though Convention No. 29 and the Palermo Protocol on Trafficking complemented each other, gaps remained which needed to be filled by standard-setting action by the ILO. Such action would enable a framework to be established, within a single text, of specific actions to be implemented by governments, which would be based on a corpus drawn up by the supervisory bodies. The framework would enable governments to create systematic links between measures taken to combat forced labour and mechanisms for the identification and detection of situations involving trafficking in persons for labour exploitation. This standard-setting approach was essential and could contribute to the adoption of systematic, coherent and coordinated methods at the international level.
- 41.** The Government expert from Jordan indicated that forced labour and trafficking in persons had in common essential elements such as exploitation through the threat of force, deception or the exploitation of vulnerable persons. At the national level, Jordan had adopted a law on combating trafficking, which complemented the new provisions of the Labour Code, by providing for a prohibition of the retention of workers' identity documents.
- 42.** The Government expert from the Republic of Moldova expressed the view that the ILO Conventions relating to forced labour should be complemented with additional provisions on all subjects listed in the report. It would be helpful to make the new ILO standard as specific as possible to facilitate implementation by ILO member States, especially young

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democracies, in terms of regulation of trafficking for labour exploitation. The Republic of Moldova had ratified ILO Conventions Nos 29 and 105 and the Palermo Protocol on Trafficking. Being a country of origin for trafficking in persons, it still faced difficulties in addressing trafficking in persons and forced labour, as it did not have much experience in creating legal mechanisms to combat these phenomena. In addition, the definition of forced labour provided by Article 2(1) of Convention No. 29 meant that work was not to be exacted without the worker's consent, but this element was not always relevant since in many cases recruiters lied to potential victims about working conditions, which caused victims to initially enter a working relationship voluntarily, only to later discover that they had been deceived.

- 43.** The Government expert from Nigeria indicated that the relationship between forced labour and trafficking in persons could be clarified by emphasizing that persons who were deceived about their working conditions or contracts of employment or coerced to work under threats of whatever type, were victims of forced labour. Concerning the question of regulatory gaps, governments had mainly addressed the problem of trafficking in persons through the criminal justice system, to the exclusion of labour administration systems. In Nigeria, for example, the agency for the prohibition of trafficking in persons received more attention from the Government than the Ministry of Labour. One reason was that Convention No. 29 did not highlight in a clear way the need for an integrated approach that involved social partners, governments and non-state actors in the fight to eradicate forced labour. Standard setting to address this gap could be desirable in establishing a holistic and comprehensive legal approach that would address all aspects of trafficking, especially for labour exploitation.
- 44.** The Government expert from the Philippines stated that her Government was working towards finding adequate responses to deal with the phenomenon of trafficking, an emerging form of forced labour. There were opportunities for ILO standard setting, specifically in relation to: (i) reinforcing the role of the labour administration, including the labour inspectorate, in the areas of prevention, identification of victims and successful prosecution; and (ii) awareness raising, particularly to ensure case build-up towards prosecutions and convictions. The fight against trafficking in persons had essentially focused on trafficking in persons for the purpose of sexual exploitation, but not labour exploitation. For example, in the Philippines there had been 81 convictions, but mostly related to sexual exploitation, with only three for labour exploitation. In conclusion, she supported standard setting in this area to pursue stronger policy and legal action against all forms of forced labour.
- 45.** The Government expert from Zambia stated that there was a close link between forced labour and trafficking in persons, in that the latter was often seen as a subset of the former. It would be desirable to have these linkages clearly defined and addressed in an international instrument. As regards regulatory gaps, any new instrument or standard should clearly define the institutions empowered to combat trafficking in persons from the government's perspective.
- 46.** The Government expert from the United States indicated that the discussion should focus on trafficking for forced labour, since trafficking as such was a much broader concept. It was important to define what kind of "trafficking" was being examined and to ensure that modifications to the Palermo Protocol on Trafficking, housed in a different UN agency, were not discussed.
- 47.** The Employer spokesperson explained that the Employer experts understood Point 1 of the discussion to consist of two separate questions, the first concerning the relationship between forced labour and trafficking in persons and the second questioning whether any regulatory gaps existed and whether there was any value added in the ILO addressing these gaps by means of standard setting. As regards the first question, on the basis of the

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definition of forced labour contained in Article 2(1) of Convention No. 29 and the definition of trafficking in persons contained in Article 3 of the Palermo Protocol on Trafficking, it was obvious that there were close links between the two practices, yet they were not entirely congruent. The Employer experts therefore indicated that they had a different analysis than that of the Committee of Experts (see para. 138 of the report), and that they could not support the view that Convention No. 29 implied a legal obligation to suppress trafficking in persons as part of the obligation to suppress forced labour. With regard to the second question, the Employer spokesperson stated that there was obviously a gap in the ILO framework. There was currently no ILO standard dealing with trafficking in persons, yet there existed a UN instrument dealing with the matter. The question arose as to how this gap could be best addressed. The Employer experts had an open mind as to the possible options, but it was important to first understand the problem, before considering the different options and any possible value added.

- 48.** The Worker expert from Mauritania insisted that trafficking in persons took many forms and was characterized by a criminal intent. Workers were abused and exploited by multinational corporations, intermediaries or national companies, which functioned as networks engaged in the “laundering” of exploited labour. Thus, modern forms of slavery had appeared in mineral- and oil-extracting companies. Given the gravity of the situation, it was not possible to be content with flexible mechanisms. It was necessary to provide the ILO with a new binding instrument that addressed the worst forms of forced labour, including trafficking in persons. This was all the more appropriate since these worst forms of forced labour were beyond the control of States and the labour inspectorate.
- 49.** The Worker spokesperson wished to emphasize that, like the Employer experts, the Worker experts were approaching the Meeting with a spirit of openness. Various courses of action had been examined closely and the work done had shown that it was necessary to move towards the adoption of an additional standard. The adoption of a standard was preferable since, even though the existing consensus on the prohibition of all forms of forced labour, including trafficking in persons, was not called into question and the international instruments on forced labour had received widespread ratification, the number of victims of forced labour was at an unprecedented high. Being content with the status quo was therefore out of the question. Neither the sincerity of governments nor the will of the ILO supervisory bodies was at issue here. In view of the present realities, however, there was a need to be effective and to establish a clear and comprehensible framework which systematically imposed commitments on States and produced results.
- 50.** With reference to the statement by the Government expert from the United States concerning concepts of trafficking in persons and forced labour, the Worker spokesperson declared that the objective was not to adopt a “Palermo Protocol No. 2” or even an “ILO Palermo Protocol” but to underscore the link between forced labour and trafficking in persons for labour exploitation. Here the Palermo Protocol on Trafficking displayed certain weaknesses inasmuch as it focused on a penal approach and cases of sexual exploitation were more likely to be penalized in practice, even though cases of labour exploitation accounted for two-thirds of all cases of trafficking. It was necessary to remain focused on the mandate of the ILO and its area of expertise, namely on the link between forced labour and trafficking, identifying the courses of action and approaches implemented by certain States, as documented by the Committee of Experts. All those elements were an argument in favour of a standard-setting instrument providing a clear and coherent framework for action.
- 51.** The Employer expert from the United States stated that while everyone could agree that trafficking in persons was a very important issue and that there were links between trafficking and forced labour, these concepts were not identical. There were types of trafficking that were not forced labour, and vice versa. In the United States, trafficking in persons had engendered a lot of interest on the part of companies and the Government. In

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his view, it was the movement that constituted trafficking, and he was not sure whether trafficking came within the scope of Convention No. 29 in its entirety. He believed the entire Meeting could be taken up discussing trafficking and never get to other important points on forced labour. Accordingly, it could be preferable to separate trafficking from the other points and have a general discussion, perhaps during the ILC, to discuss whether the ILO should engage in standard setting regarding trafficking.

- 52.** The Employer spokesperson stated that the Report offered several types of actions for consideration, a number of which did not involve standard setting, for example the elaboration of national plans or strategies to combat forced labour. Some of these measures had already been implemented by member States, while others were in the process of being implemented. There were a number of proposals in this respect that the Employer experts could unanimously accept.
- 53.** The Worker spokesperson expressed his discomfort because the discussions could give the impression that the experts were pursuing different objectives. However, this was not the case. The approach of the Worker experts was not intended to develop a new standard on trafficking in persons, but rather to complement the normative corpus of forced labour instruments to ensure systematic action against trafficking in persons for labour exploitation through putting in place the necessary measures, including plans of action against trafficking in persons. As pointed out by the Employer experts, there were situations of forced labour without trafficking and trafficking situations which did not lead to forced labour. It was therefore necessary to explicitly provide for the need for governments to act consistently and strongly, on the basis of the guidelines laid down by the ILO supervisory bodies.
- 54.** The Government expert from Zambia recalled that all experts agreed that trafficking and forced labour were not the same. However, the main issue remained that, despite two widely ratified ILO Conventions, the problem was growing on the ground. Emphasizing the importance of a discussion on the root causes of forced labour and consequent ways of addressing it, he believed that the Meeting should focus on how labour markets could be better regulated to address forced labour.
- 55.** The Government expert from the Philippines indicated that Point 1 of the Discussion was not focused on tackling the definition of trafficking in its broadest sense, but rather on the labour exploitation dimensions of trafficking in persons, leading to forced labour. Limiting the definition of trafficking, for the purposes of the discussion, would help to focus on the need for any labour-related standard setting.
- 56.** The Government expert from Brazil recalled the principle in the Declaration of Philadelphia (1944) that work was not a commodity. Forced labour and trafficking were obviously related concepts and the Committee of Experts had adequately linked them. However, there was cause for confusion, since the Palermo Protocol on Trafficking and the two ILO Conventions took very different approaches. Convention No. 29 contained transitional provisions, which according to the Committee of Experts, could no longer be invoked by member States. There was a need to deal with forced labour with more modern tools. He observed that, during his work experience, he had never come across a forced labour case that would not fit under the concept of human trafficking as established by the Palermo Protocol on Trafficking, as it was extremely broad and did not appear to require the “movement” of persons because of the use of the term “harbouring”, meaning that even in the absence of any movement from one place to another, the characteristics of human trafficking for labour exploitation were present when a worker was exploited by any means of abuse of rights, as stated in the Palermo Protocol. The Palermo Protocol on Trafficking had a set of provisions to protect workers, whereas Convention No. 29 did not. This should be taken into account in order for the Meeting to move forward on the track of adopting a new instrument, which would be particularly useful to strengthen the role of the labour

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inspectorate. Furthermore, none of the recent international instruments were established on a tripartite model to deal with trafficking in persons for labour exploitation.

57. The Government expert from Nigeria supported the comments of the Government expert from Brazil and added that it was important for the ILO to revise Convention No. 29 to create the framework for governments to collectively eradicate the scourge of forced labour.
58. The Worker spokesperson stated that the inclusion of a sentence in Convention No. 29 to the effect that “Each Member which ratifies this Convention undertakes to ensure that the actions necessary for the elimination of forced labour also cover measures to fight against trafficking in persons for labour exploitation” would have permitted a better response to situations of trafficking in persons which could lead to forced labour. At the time of adoption of the Convention, this had not been a priority concern, but today this was a necessary course of action. Convention No. 29 needed to be complemented by the adoption of an instrument which included such a provision and accompanied by a Recommendation containing guidelines that might be based on proposals from the supervisory bodies.
59. The Secretary-General clarified that, in light of the discussion, a distinction had to be made between two different approaches towards trafficking in persons for labour exploitation; the one of Convention No. 29 and the one of the Palermo Protocol on Trafficking. The mandate of the ILO was only to deal with world of work issues. Trafficking in persons for labour exploitation had been considered by the Committee of Experts as a modern form of forced labour falling within a broad definition encompassing all different forms of forced labour. The approach of the Palermo Protocol on Trafficking on the other hand was to use trafficking as the broad concept of which forced labour was considered a consequence. There were many examples of ILO standards overlapping with other international instruments, for example the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), with the UN Convention on the Rights of Persons with Disabilities, as well as the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), with the UN Convention on the Rights of the Child. It was important to delineate the distinction between the Palermo Protocol on Trafficking and Convention No. 29. While the Palermo Protocol on Trafficking was limited to trafficking in persons, Convention No. 29 adopted a broader approach, because not all forms of forced labour had a trafficking component. Yet, the question arose as to whether the ILO instruments on forced labour were sufficient to address modern forms of forced labour.

## **Point 2. Prevention of forced labour**

*What regulatory gaps, if any, exist regarding prevention of forced labour which may be filled by new instrument(s)? If such gaps exist, should such new instrument(s) include inter alia:*

- *awareness-raising activities that might take the form of media campaigns, workshops, dissemination of educational materials, brochures, creation of a task force, organization of training programmes for the police, security officers, social workers and other relevant authorities?*
- *steps to reinforce the role of labour inspectorates in the prevention activities (by carrying out worksite monitoring, participating in education and awareness raising for the prevention of exploitation and by monitoring the activities of private employment agencies)?*

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- *guidance to address the demand that gives rise to forced labour (for example, by discouraging employer and consumer demand)?*

60. The Secretary-General indicated that, according to the Report, there had been growing recognition in recent years of the importance of measures to prevent forced labour. While Convention No. 29 did not contain provisions explicitly mentioning prevention, a joint reading of its provisions had led the supervisory bodies to request governments to take a series of measures aimed at preventing all forms of forced labour including trafficking in persons, such as ensuring adequate knowledge of forced labour practices; undertaking awareness-raising activities; reducing the factors that make people vulnerable to forced labour; and strengthening law enforcement responses. Despite good practices being implemented in certain countries, the report highlighted that: (i) many countries did not regard the adoption of comprehensive and effective measures to prevent practices of forced labour as a priority; (ii) national legislative provisions concerning prevention were often fragmentary and did not deal with the subject in a systematic manner; (iii) some countries did not provide adequate support for the role of labour inspection in preventing forced labour practices; (iv) many countries lacked comprehensive measures targeting employer and consumer demand; and (v) the vulnerability of certain categories of workers (such as migrant workers) to practices of forced labour also needed to be addressed.
61. The Employer and Worker spokespersons, as well as most Government experts, observed that, of all types of government intervention, prevention was the least underscored, and agreed that prevention was of paramount importance to the elimination of forced labour. The Government expert from the United States indicated that, while prevention measures were indeed not explicitly stated in Convention No. 29, as was pointed out by the Worker experts, they were implicit in the achievement of the goal of the elimination of forced labour. Generally, all experts recognized the importance of the measures proposed in the report in this area and the Government expert from the Philippines highlighted that one way of amplifying preventive mechanisms would be to ensure that budget allocations for the prevention of forced labour were sufficient.

### **Awareness-raising measures**

62. With regard to awareness-raising measures, all experts agreed that such activities were essential for the prevention of forced labour. The Employer spokesperson emphasized that it was important for (potential) victims to know about their status as victims and for this information to be translated and made available to workers from culturally and linguistically diverse backgrounds, targeting those sectors of the economy particularly vulnerable to trafficking, such as domestic work and agriculture. The Worker spokesperson added that governments should systematically be encouraged to continuously ensure a level of information of the population in general, and in particular of the workers at risk and their families. It was essential to ensure that victims and potential victims were aware of their status as victims and that legislation, even in the informal economy, prohibited the imposition of such working conditions. Considering that forced labour concerned the most vulnerable populations, it was necessary to take into account the insufficient knowledge of the language of the country or the illiteracy of victims. More specifically, the Government expert from the Philippines emphasized that awareness-raising activities should be cascaded down to local governmental units where victims were preponderant and there was no access to social media. The Worker expert from Nepal believed that forced labour should be incorporated into school curricula in order to reach all children, and the Government expert from the Republic of Moldova supported this statement, stressing the importance of focusing on the potential victims through training courses in schools, so as to warn young persons entering the job market about the risks of forced labour. The Government expert from Jordan also referred to other awareness-raising measures such as the organization of advocacy campaigns against all forms of forced labour and trafficking,

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the establishment of a hotline for migrant workers with translation services in their mother tongues and the dissemination of brochures for migrant workers providing guidance on their rights and duties.

### ***Strengthening the role of labour inspection***

- 63.** In respect of labour inspection, the Worker experts and the Government experts from the Philippines, Brazil and Jordan agreed on the need to reinforce the key preventive role played by labour inspectors in the elimination of all forms of forced labour. In this regard, the Worker spokesperson considered that governments should organize the labour inspectorate in such a way so as to ensure that there was systematically a department responsible for combating forced labour. The existence of such a structure, provided that it was allocated the necessary resources to act, would have a deterrent effect due to regular labour inspection visits, especially in areas where there was a high risk of forced labour. The Government expert from the Philippines, recalling that the broad powers of labour inspectors often went beyond those of the police and allowed them to be the first responders to a situation of forced labour, further suggested that it could be highly useful to create indicators or red flags of forced labour for labour inspectors, as the concept of forced labour for labour exploitation was difficult to apprehend, especially in terms of victim identification and case build-up for prosecutors.
- 64.** The Employer spokesperson, while believing that labour inspection had a preventive role to play, highlighted the need to strengthen all institutions investigating instances of forced labour and to ensure a strong rule of law. It was crucial to understand the root causes for the high forced labour estimates, despite the high rate of ratification of Convention No. 29 and the goodwill of member States to tackle forced labour. It should be borne in mind that the Convention foresaw penal sanctions and that, although there was a role to play for the labour inspectorate, it was important not to lose sight of the need to punish perpetrators.
- 65.** Moreover, the Employer spokesperson and the Government expert from the Philippines highlighted the importance of the cooperation, coordination and convergence of efforts of regulators, labour inspectors, police and prosecutors within their respective expertise and mandate to enforce the law so as to ensure effective interventions of government agencies for forced labour prevention. The Government expert from the Philippines underlined especially the need to ensure coordination between police and labour inspectors, particularly in the areas of research, policy and monitoring. In this regard, the Worker spokesperson emphasized the need to be cautious not to divert the labour inspectorate's role by placing them at the service of the police, which could have a negative impact on the protection of victims, especially when they were in an irregular situation. He also considered it necessary to define the relationship between the various ministerial departments.
- 66.** Finally, the Chairperson emphasized the importance of consistency and convergence between the policies implemented, as well as the need to take account of national specificities and to allow governments a certain level of flexibility. Modalities of action against forced labour could vary. In some countries, victim identification was mostly the role of the labour inspectorate, whereas in other countries the migration police would identify foreign workers in situations of forced labour.

### ***Addressing demand***

- 67.** The need to address the demand that gave rise to forced labour was generally acknowledged. The Worker spokesperson emphasized that it was especially important to consider the environment that encouraged forced labour. In particular, multinational companies or companies working with subcontractors were not necessarily aware of

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existing working conditions in their supply chains. It was therefore necessary to provide systematic and general information to enterprises. The intention was not to give a certificate of good or bad conduct, but rather to educate enterprises which operated in supply chains about the risks in certain sectors or countries. Some national practices, such as the “dirty list” in Brazil, could be replicated even though they were not necessarily applicable to all countries. In addition, the Government expert from the United States stressed that it was difficult to address the demand side of forced labour owing to insufficient information as to how to effectively engage consumers, workers and employers in this exercise. The State of California had recently enacted a law that required certain companies to disclose their efforts to address human trafficking in their supply chains with a view to educating consumers.

68. The Employer spokesperson believed that discouraging employer and consumer demand that gave rise to forced labour required a community response; if demand existed for products involving forced labour (locally or imported), part of the education and awareness raising would need to focus on enhancing the community’s understanding of the matter. However, the Employer spokesperson expressed doubts as to whether such demand-side issues should be discussed within the ILO framework. A bottom-up approach underpinned by social dialogue would be important, as well as the sharing of good practices among countries.

### ***Socio-economic measures***

69. As regards the adoption of socio-economic prevention measures, the Worker and Employer spokespersons and the Government expert from the Republic of Moldova shared the view that this could contribute to the fight against forced labour. The Worker spokesperson provided examples of general prevention measures, including the strengthening of the system of family benefits, such as *Bolsa Familia* in Brazil, and the improvement of social protection floors. The Employer spokesperson further stated that part of the solution would be to consider strengthening the ability of private enterprises to offer jobs. The Government expert from the Republic of Moldova cautioned that, while the improvement of living standards, the reduction of poverty and the eradication of corruption would constitute serious impediments to trafficking in persons and forced labour, these long-standing and complex economic and social issues could not be solved in the short term.

### ***Research and data collection***

70. Concerning research and data collection, the Employer spokesperson and the Government expert from the United States highlighted that these were essential preventive measures, since an understanding of the contextual magnitude of the problem of forced labour was required in order to adequately address it. The Government expert from the United States congratulated the ILO on its achievement in designing new methodologies for collecting national statistics. The Employer spokesperson also commended the ILO’s efforts, while stating that more work could be done in this area. The Chairperson further emphasized the importance of statistics and data collection, especially in the informal and irregular economies, and the need for quantitative and consolidated data at the national and international level. In this regard, the ILO should play a leading role in the dissemination of experiences and data.

### ***Other measures***

71. The preventive role that could be played by strong national laws, which prohibited the exaction of forced labour in all its forms and made it punishable, was emphasized by the

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Government expert from Jordan and the Worker expert from Nepal. To illustrate the above, the Worker expert from Nepal stated that the Bonded Labour (Prohibition) Act (2002) had succeeded in abolishing bonded labour (*Kamaiya*).

72. The Government expert from Brazil referred to the importance of protecting the employment relationship, as defined in the Employment Relationship Recommendation, 2006 (No. 198), as a measure particularly relevant for vulnerable workers. Situations of forced labour often took place within various subcontracting schemes and in the context of disguised employment relationships which increased workers' vulnerability. Protection of the employment relationship could therefore be used to avoid situations of forced labour by addressing situations where work was hidden and it was difficult to determine where the worker was within the supply chain.
73. With regard to the situation of persons at particular risk, the Worker spokesperson also emphasized that it would be appropriate to ensure synergies with other ILO instruments, such as the Conventions on social protection, the Migration for Employment Convention (Revised), 1949 (No. 97) (in particular Article 3 thereof against misleading propaganda relating to migration), the Private Employment Agencies Convention, 1997 (No. 181), and the Domestic Workers Convention, 2011 (No. 189). Finally, the Chairperson underlined the need for cooperation with the countries of origin. In this regard, the ILO should have the necessary means to carry out cooperation actions targeted at poorer countries and take measures to deal with the causes and conditions conducive to forced labour.

#### **Points 3 and 4. Protection and compensation of forced labour victims**

*What regulatory gaps, if any, exist regarding the effective protection of forced labour victims which may be filled by new instrument(s)? If such gaps exist, should this protection aim at guaranteeing inter alia:*

- *the full enjoyment of their rights, including labour rights (such as wage arrears and social protection)?*
- *material and financial support in order to prevent them falling back into a situation of vulnerability?*
- *appropriate direct assistance including medical or psychological care, legal assistance and rehabilitation measures?*

*What regulatory gaps, if any, exist regarding the effective compensation of forced labour victims which may be filled by new instrument(s)? If such gaps exist, should the new instrument(s) contain provisions addressing compensation for material and moral damages suffered? If yes, should the new instrument(s) provide guidance regarding:*

- *legislative and other measures to ensure that victims have the right to compensation from perpetrators?*
- *the establishment of state compensation schemes, such as the use of state funds for the compensation of victims?*

74. The Secretary-General recalled that the suppression of forced labour or compulsory labour in all its forms, as required by Convention No. 29, also involved appropriate mechanisms for the identification, release, protection and rehabilitation of victims of forced labour. The Committee of Experts had consistently highlighted that victims of forced labour should receive adequate protection to guarantee the full enjoyment of all of their rights, including

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labour rights, and had requested governments to take measures to this end. In this regard, the report noted that, in terms of victim assistance measures, most countries provided basic assistance, such as shelter and medical treatment, although fewer offered a comprehensive package of services. In cases where such measures had been taken, it had instead been in the context of national action plans/programmes, and generally linked to trafficking in persons, rather than all forms of forced labour. Therefore, guidance would be valuable in respect of the following gaps identified in the report: (i) need for the adoption of appropriate measures for the identification of victims, as a prerequisite for effective protection; (ii) need to strengthen labour administration and inspection systems to identify victims of forced labour; (iii) putting in place appropriate complaints mechanisms; and (iv) access to adequate procedures for obtaining compensation as well as material and financial support to prevent forced labour victims from falling back into a situation of vulnerability.

75. In view of the Meeting's previous deliberations on the issue of the prevention of forced labour, the Employer and Worker spokespersons and most Government experts agreed that another complementary and important component of the fight against forced labour was to address the symptoms of this phenomenon by adequately protecting and compensating the victims. The Employer spokesperson, recalling the importance of examining forced labour in a holistic manner, considered however that the emphasis should be put on addressing the root causes of this scourge.
76. Furthermore, the Employer spokesperson stated that while Convention No. 29 did not expressly mention victim protection, the Committee of Experts had addressed this issue when examining the application of its provisions. The Worker spokesperson also observed that Convention No. 29 did not contain provisions on this subject, but that through implicit reasoning, measures had been taken by governments on a case-by-case basis, sometimes following comments from the supervisory bodies. He therefore underlined the importance of including a specific provision on protection for victims of forced labour in a new instrument, so that States would take measures in this area in a systematic manner.
77. The experts expressed general support for the various measures outlined in the report regarding the protection and compensation of forced labour victims. The Government expert from Nigeria added that victim protection measures were not usually contained in national action plans, and that most countries already had victim protection systems in place, albeit only for trafficking. Similarly, the Government expert from Brazil observed that there was currently a difference in the level of treatment provided to victims of trafficking as compared to victims of forced labour, and that the latter required improved levels of protection.

### ***Victim identification***

78. The Worker spokesperson stated that the question of victim protection was related to that of their identification. Therefore, it was important to implement information campaigns and awareness raising among persons most likely to become victims of forced labour. States should be required to undertake a census of potentially vulnerable categories of workers as well as sectors and regions particularly at risk. Once such a census was completed, measures should be taken to sensitize all stakeholders involved in combating forced labour, including law enforcement bodies, the judiciary, labour administration, employers' and workers' organizations, as well as health services, which in certain cases were effective agents for identifying victims of forced labour. To aid in victim identification, the Worker spokesperson also underlined the importance of reporting systems, the establishment of telephone hotlines, as well as the automatic response of social services. In this regard, the Chairperson observed that, in his own experience, even where the appropriate legislation existed, it remained difficult to identify cases of forced

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labour, and the capacity to compile adequate statistics based on reliable indicators was necessary.

### ***Access to justice***

**79.** The Worker spokesperson emphasized that ensuring access to justice for victims was essential. The Worker expert from Canada observed that, in particular, the vulnerability of victims affected the efficiency of justice, and it was therefore essential to establish appropriate state mechanisms to enable victims to report their situations and obtain redress. The Worker spokesperson referred to several measures concerning protection, which would also facilitate access to justice for victims, including: the need to grant migrant workers temporary residence permits or guaranteed waivers for immigration-related offences in order to enable cross-border victims to assert their rights; and the need to strengthen the role of the social partners, which could, for example, assist victims during judicial proceedings. The Worker expert from Nepal added that access to justice should be provided to victims free of cost. Many Nepalese migrant workers who were victims of forced labour were helpless due to the lack of legal assistance, which was either difficult to obtain or too expensive. He also emphasized that, in forced labour cases, the burden of proof should be on the offender rather than on the victim or the prosecutor, and that the confidentiality of informants should be observed to encourage others to come forward with information. Furthermore, the Government expert from Nigeria stated that it would be useful for an international instrument to establish national referral mechanisms to further protect victims of forced labour and trafficking for labour exploitation.

### ***Victim protection***

**80.** As regards measures to ensure that forced labour victims were in a position to fully enjoy their labour rights (such as wage arrears and social protection), the Employer spokesperson observed that these rights were already addressed by other ILO instruments. The Worker spokesperson, however, considered that the ILO instruments were not intended to address the rights of victims of forced labour, and could not be considered sufficient to guarantee “the full enjoyment” of these rights, in so far as victims of forced labour were impoverished and unable to know and assert their rights.

**81.** With respect to measures to provide appropriate direct assistance and measures to guarantee material and financial support in order to prevent victims from falling back into a situation of forced labour, the Employer spokesperson felt that national circumstances needed to be taken into account and that the nature of assistance to be provided depended on the particular case and situation of the victim. In this regard, the Worker spokesperson emphasized the need to provide material and financial support, as well as immediate assistance for victims in terms of their medical and psychological care, legal assistance, housing assistance and food aid.

**82.** In this regard, the Government expert from the Philippines particularly emphasized the importance of meeting the material and financial needs of victims while their cases were being heard. The experience in the Philippines showed that, especially in forced labour cases, successful prosecutions remained low because many victims lost interest in judicial procedures due to a lack of support. It was therefore crucial to provide adequate material, financial and livelihood support throughout the judicial process to ensure the presence and cooperation of the victims with the investigation authorities, which would increase the likelihood of a conviction. She also highlighted the need to establish mechanisms that facilitated the reintegration of such victims back into society. The Worker spokesperson supported these comments.

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83. The Government expert from Jordan stressed that cooperation was crucial between official and non-official programmes in the areas of physical and psychological recovery and social needs of forced labour victims. The Government expert from Nigeria considered that it might be necessary for a new instrument to address specific victim protection issues such as workers' rights, recovery of wages, financial support, rehabilitation and provision of entrepreneurial skills and training to prevent victims from falling back into situations of vulnerability. In this respect, the Worker expert from Nepal illustrated that, following the abolition of the debt bondage system in his country, rehabilitation, vocational training and education had been provided to freed forced labour victims and their children so that they would not return to the *Kamaiya* system.

### ***Victim compensation***

84. The Worker spokesperson and most of the Government experts agreed on the fact that compensation for victims of forced labour was essential. The Employer spokesperson underlined that the complex issue of victim compensation could not be examined in isolation, and that there were multiple levels of compensation and assistance. Convention No. 29, in requiring that sanctions be imposed on the perpetrators of forced labour, focused on the perpetrator, and did not address victim compensation. In this regard, the right of the victim to pursue compensation from the perpetrator of forced labour required careful definition. Moreover, compensation needed to be considered in light of protection, as the two issues had overlapping goals.
85. The Employer spokesperson believed that it was also important to ensure that in establishing mechanisms for compensation, the policy outcomes did not in any way contribute to the generation of forced labour situations by providing levels of compensation that could encourage victims to perpetuate situations of forced labour. In this regard, the Worker spokesperson replied that it would be irrational to imagine that the establishment of a regime aimed at compensating victims of forced labour and restoring their rights could generate more situations of forced labour.
86. Moreover, the Worker spokesperson noted that it would be appropriate to focus on the compensation mechanism for victims – currently implemented more often in cases of trafficking in persons – which required several sources of financing. The Employer spokesperson expressed that this issue was largely a question for governments, as they would be mainly responsible for funding compensation systems. In this regard, the different state structures in existence could complicate the establishment of such systems, and the particular level of compensation provided should be considered at the national level. Private enterprise and the community at large could play an important role in creating the funding base for compensation schemes. He emphasized that the Employer experts were willing to engage with these difficult issues, with a view to creating a level playing field and ensuring that criminal activity did not undermine genuine enterprises and work arrangements. The Government expert from the Philippines referred to the existing legislation in the Philippines which contained useful elements concerning compensation for forced labour victims, requiring in particular that the property or assets of the perpetrators be recovered following their conviction, and that the proceeds go towards compensating the victims. The creation of a state fund should also be examined, so that, in cases where nothing was recovered from the perpetrator, victims could still receive compensation.
87. The Government expert from the Philippines cautioned however that the issue of compensation by the State remained difficult, because it involved specific commitments from States, such as compensation schemes, state funds and concrete protection measures, and governments were faced with different levels of capacity, which would impact the level of interventions that could be implemented in the short and medium term. The

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Government expert from Brazil raised concerns about the establishment of a compensation fund by governments, due to the related public funding and budgetary issues, as well as the inference that the government was liable for the crime. In this connection, he referred to two recent cases where the Inter-American Commission on Human Rights had determined that Brazil was responsible for cases of forced labour, and the Government had had to send a bill to Congress in order to pay the prescribed compensation. Requiring governments to provide compensation would be holding a State liable for something it had not done. The Government expert from Zambia and the Worker expert from Nepal also expressed support for measures that would ensure that victims obtained compensation from the perpetrator. Such measures would place liability for victim compensation on those individuals who had taken the decision to engage persons in forced labour, who should therefore be held personally liable. The Government expert from Zambia expressed that this was a moral issue, which required a moral answer. The Employer expert from Peru recalled that Convention No. 29, through the wording of Article 25, left it to the jurisdiction of the member States to regulate and legislate on criminal sanctions. Therefore, economic sanctions should be imposed on the individual responsible and not on the State.

88. Responding to the concerns expressed regarding the provision of compensation through public funds, the Worker spokesperson considered that the cost of such compensation for each particular country would not be very high, even if some countries would have more difficulties than others in implementing compensation mechanisms. The Worker expert from Mauritania underlined that the costs inherent to injustice were not additional costs, as the person who had imposed the forced labour had already made a profit in not paying workers what they had been owed. When compensation was paid to victims of forced labour, this only amounted to a small part of what these workers would have received had they been in a normal employment relationship.
89. In conclusion, the Chairperson underlined that it was particularly difficult to assure access to justice for victims of forced labour, to ensure their equal treatment and to provide them with compensation. To strengthen efforts to combat forced labour in Switzerland, it had proven necessary to create new structures to guarantee better cooperation between the actors concerned at the federal and cantonal levels, and to adopt a law on assistance for victims. It was essential to continue to reflect on new avenues of action to ensure protection for victims.

## Point 5. Enforcement

*Should a potential new instrument(s) contain provisions aiming at strengthening law enforcement measures? If yes, should these measures include, inter alia:*

- *cooperation and coordination among labour inspectorate and other law enforcement bodies, including the judiciary, while safeguarding the independence of the labour inspectorate?*
- *strengthening the labour inspectorate through the provision of adequate resources and appropriate training for labour inspectors, law enforcement officials, public prosecutors, members of the judiciary?*
- *simplification of legal and administrative procedures?*

90. The Secretary-General indicated that appropriate legislation and its effective enforcement were of key importance in combating all forms of forced labour, including trafficking in persons. Pursuant to Article 25 of Convention No. 29, governments had to take measures to ensure that perpetrators of practices of forced labour were punished with effective and sufficiently dissuasive sanctions. In this regard, the Committee of Experts had highlighted

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that the effective enforcement of appropriate legislation could be achieved through the strengthening of the labour inspectorate and other law enforcement machinery, as well as measures to ensure that victims were in a position to assert their rights. The persistence of forced labour practices, despite their prohibition by law in the vast majority of countries, suggested the need to discuss whether this was related to implementation or a lack of normative guidance. In this regard, the report identified the following gaps: (i) need to increase prosecution rates for offences related to forced labour; (ii) need to enhance the capacity of the labour inspection services, the police and the judicial authorities to address practices of forced labour; (iii) need to improve cooperation and coordination between the labour inspectorate and other law enforcement bodies, including the judiciary; and (iv) need for further measures to ensure that forced labour victims had access to justice.

91. The Worker and Employer spokespersons emphasized that all the measures proposed in the report constituted valuable measures for ensuring the effective application of the law and should therefore be promoted. The Worker spokesperson underlined the fact that Convention No. 29 established the principle of the adoption of legislation prohibiting forced labour, but without specifying the content of the legal provisions to be adopted. It was therefore necessary to complement the Convention on this point in view of the fact that, even after the adoption of legislation, many measures were still needed to ensure its effective application. The Employer spokesperson reiterated that, although discussion Point 5 referred to a potential new instrument, there were other means of action that could be effective, such as the sharing of experiences.

### ***Effective functioning of the justice system and access to justice***

92. The Employer spokesperson emphasized the importance of a transparent and open prosecution policy carried out by an independent and accountable body. While recognizing the important role of the labour inspectorate, he recalled that Convention No. 29 required member States to impose penal sanctions that implied that primary responsibility was to be delegated to the police and the prosecutor. In order to ensure effective prosecution, a strong rule of law and the independence of the judiciary were of vital importance. The confidence in the judicial system to appropriately deal with forced labour cases was linked to access to justice, as victims needed to be confident that they could access the judicial system without fear of victimization. He recalled that forced labour constituted a deprivation of liberty and therefore adequate and strong penalties formed part of an effective enforcement system. In reply, the Government expert from Brazil insisted on the importance of the labour inspectorate. While Convention No. 29 indeed referred to penal sanctions, forced labour cases always gave rise to one or more violations of the labour legislation. In Brazil, it had proven more effective, in terms of successful prosecutions of forced labour cases, to work with labour judges and labour prosecutors, instead of criminal judges and courts. A recent sentence based on evidence generated by the labour inspectorate had condemned perpetrators of forced labour to pay compensation for “collective moral damages” caused to society as a whole, which illustrated the importance of a strong labour inspectorate, working in coordination with other agencies.
93. With regard to the simplification of judicial and administrative procedures, the Worker spokesperson stressed that the goal should be to simplify access to justice for victims, especially where migrant workers or illiterate workers were concerned, since they were particularly vulnerable. For certain victims of forced labour, the first obstacle to accessing justice was their fear of being accused in turn of having committed an offence, especially when their situation was irregular. Hence, there was a need to increase the visibility of the social partners, but also the labour inspectorate, and to reassure victims by informing them, for example, of the possibility of obtaining a temporary residence permit. In some countries it might be useful to establish rapid detection mechanisms, such as toll-free

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phone numbers, or to launch publicity campaigns alerting families to the risks of forced labour in a simple and comprehensible way, inviting victims or witnesses to turn to the labour inspectorate or the trade unions. The question of the cost of procedures, which might prove prohibitive for victims, should also be examined and measures such as access to legal aid, as was already the case in some countries, should be contemplated.

94. The Employer spokesperson understood the simplification of legal and administrative procedures to mean the ability to file complaints to the appropriate authorities which implied a simple, but effective regime of offences and penalties. In this context, convoluted legal texts undermined successful prosecution. These specific aspects were not mentioned in Convention No. 29, yet the sharing of national experiences usefully brought to the fore challenges which had hampered successful prosecution.

### ***Strengthening of labour inspection***

95. The Worker spokesperson stated that cooperation and coordination among various judicial entities and the labour inspectorate needed to be strengthened, in view of the low rate of prosecutions and convictions of persons found guilty of trafficking in persons, a rate that was even lower for forced labour. Some sectors of activity in which many violations of labour law occurred, especially regarding freedom of association, were particularly exposed to the risks of forced labour. It was therefore important to strengthen the labour inspectorate and draw labour inspectors' attention to those risks.
96. The Government expert from Brazil highlighted, on the basis of his experience as a labour inspector, the importance of a strong labour law enforcement system and suggested that a new instrument be tailored to this need for the following reasons. First, Convention No. 29 did not explicitly mention the role of labour inspectors. The Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), provided guidelines to labour inspectors on their duties and prerogatives but did not mention their role in the elimination of forced labour. The Palermo Protocol on Trafficking likewise did not adequately acknowledge the role of the labour inspectorate. Secondly, labour inspectors were also important for the elimination of forced labour because of their focus on prevention and their expertise in dealing with labour issues. Labour inspectors had to rely less on complaints, which was important because in many instances victims were unable to report violations. Thirdly, labour inspectors were also able to access important remedies as well as collect evidence for prosecution. In this regard, their powers were often more expansive than the police. Fourthly, other challenges in the area of enforcement included a lack of cross-border coordination amongst labour inspectorates. In the framework of the ILO expertise in matters of labour inspection, the role of the labour inspectorate should therefore be strengthened to become a core enforcement institution for forced labour cases.
97. Concurring with the views expressed by the Government expert from Brazil, the Government expert from Zambia indicated that, in his country, the labour inspectorate was part of the Executive and its involvement in cases of trafficking in persons was limited as compared to the police. The police handled such cases from a criminal justice point of view and, due to a lack of training and expertise, were not competent to take into account any forced labour components. He recommended that the enforcement measures under the ILO forced labour Conventions be enhanced to provide for adequate regulatory mechanisms and to strengthen the role of the labour inspectorate.
98. The Government expert from Nigeria also stated that, in his country, labour inspectors were not necessarily given the responsibility of combating forced labour and trafficking. A specialized agency had been set up to fight trafficking in accordance with the Palermo Protocol on Trafficking, but that agency did not have expertise in labour issues. The ILO

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indicators on forced labour were a useful tool in the identification of cases of forced labour. He thus supported the proposal for a complementary ILO instrument to strengthen the role of labour inspectors in the elimination of forced labour.

99. The Government expert from the United States stressed the importance of ensuring the independence of the labour inspectorate, especially in situations where labour inspectors needed to speak openly with workers. Particularly in cases of irregular migration, the workers' immigration status should not hamper the investigative process. In this regard, she indicated that the United States' labour legislation applied regardless of a worker's immigration status. She also highlighted as a best practice the engagement of community groups and trade unions in the identification of victims. Yet, resources were not infinite and should be invested in areas that were especially susceptible to the incidence of forced labour.

### ***Cooperation and coordination among law enforcement bodies***

100. The Employer spokesperson stated that enhancing cooperation and coordination among law enforcement bodies as part of a coherent and all-encompassing government strategy was of vital importance. The impact of legal impediments on information sharing among different law enforcement bodies was significant and should be taken into account when calling for enhanced coordination. He referred in this regard to the numerous measures undertaken by the Government of Australia as part of the national strategy to fight trafficking in persons, forced labour and slavery, including specialist teams in the federal police, specialized offices overseas, regional activities, research and support programmes. Guidance on resource allocation, especially to target particularly vulnerable sectors (such as the sex industry) was a key feature to be taken into account. Social media offered simple and effective tools to raise awareness among young people and persons from culturally diverse backgrounds.
101. The Worker spokesperson emphasized that many countries had established mechanisms for inter-institutional cooperation to combat trafficking in persons, certainly as a result of the detailed provisions of the Palermo Protocol on Trafficking. Coordination was less apparent in action against other forms of forced labour, which confirmed the need for strengthening coordination mechanisms and resources necessary in that field. The police, the judiciary and labour inspection services could have special units dedicated to combating forced labour, as was the case in some countries. Like the Government expert from the United States, the Worker spokesperson recognized that employers' and workers' organizations had a major role to play in this field, but considered that such a role had to complement action taken by the labour inspectorate.
102. The Government expert from the United States also referred to the country's interagency Task Force to Monitor and Combat Trafficking in Persons, composed of officials from the Department of Labor, as well as officials from the Departments of Justice, Immigration and Customs, and Health and Human Services and others, as an important tool to combat trafficking. The Government expert from the Philippines indicated that enforcement measures required the most strategy-driven action, implemented at local, national and cross-border levels. The labour inspection regime was an important tool to fight all forms of forced labour. She emphasized the need to adopt new guidelines that would reinforce the infrastructures empowered to combat forced labour. In this regard, she specified that, in her country, the newly adopted Expanded Anti-Trafficking in Persons Act mandated the creation of an inter-agency secretariat to coordinate strategy, policy, research and information exchange. In addition, the Worker expert from Nepal indicated that a recent example from his country illustrated that coordination among government authorities and the possibility to act without procedural delay were essential to ensure effective

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enforcement. On 15 January 2013, 64 Indians victims of debt bondage in the brick kilns in the Siraha district were rescued as a result of the issuance of an order by the Supreme Court of Nepal (triggered by a letter from one of the victims) to the Attorney-General and the police.

### **Training for law enforcement entities**

- 103.** The Worker spokesperson stressed the need to provide appropriate training for the various parties concerned (labour inspectorate, magistrates and police) with regard to applicable legislation. The Worker expert from Mauritania also considered it essential to strengthen training. Many countries now had appropriate legal instruments but the latter were often not applied. Mauritania, the Gulf States and the countries of West Africa in general had ratified many of the ILO Conventions but the courts referred to other texts, including religious dogma justifying the use of forced labour. Hence the police, magistrates and local administrators in rural areas refused to implement the legal instruments and preferred to turn a blind eye due to certain religious dogmas. It was therefore essential to train magistrates and other judicial entities in order to make them more aware of laws applicable in the field of forced labour and of the obligations arising from the ratification of international Conventions.

### **Other enforcement measures**

- 104.** The Worker expert from Malaysia stated that his country had 277 registered recruitment agencies, of which 42 private recruitment agencies were on a Government watchlist. Most of them outsourced people to enterprises, which allowed for many work permits to be issued in the names of recruitment agencies rather than the employer. The outsourcing had sparked a growth in trafficking. In reference to the definition of trafficking in the Palermo Protocol on Trafficking, he pointed out that it was difficult for the prosecutor to establish whether the employer or the outsourcing agency was the responsible perpetrator for the trafficking offence.
- 105.** In conclusion, the Chairperson emphasized that features specific to individual nations were visible in the various measures put forward by the experts. The proposals that would emerge from the Meeting therefore needed to take account of those specific features and be flexible enough to allow each national system to be effective and to ensure the implementation of ratified international instruments.

## **Point 6. Policy coherence and coordination and international cooperation**

*Should a potential new instrument(s) include the adoption of action plans against forced labour?*

*Should a potential new instrument(s) contain provisions relating to cooperation, as well as policy coherence and coordination at the national, regional and international levels? For example, should international cooperation include: mobilizing resources for national and international programmes for the elimination of forced labour; judicial and technical assistance; and exchanging information?*

*Should a potential new instrument(s) provide that the relevant policy measures should be designed and implemented in consultation with the employers' and workers' organizations?*

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- 106.** The Secretary-General recalled that the Committee of Experts had emphasized the importance of adopting national plans or strategies with a view to ensuring that comprehensive and concerted action was taken by the various public agencies responsible for combating forced labour. In this regard, the report highlighted that many countries had adopted action plans or programmes focused specifically on trafficking in persons, but much fewer countries had adopted plans against forced labour generally. The report concluded that improved coordination among stakeholders and institutions might be needed, as well as greater cooperation at the regional and international levels, to comprehensively address forced labour. In this regard, the value added of consultation with employers' and workers' organizations was emphasized.
- 107.** The Employer spokesperson, the Worker spokesperson and most Government experts reaffirmed the importance of policy coherence, coordination and international cooperation in ensuring that the measures taken to combat forced labour were consistent and complementary. In this regard, they considered all measures proposed under Point 6 of the discussion relevant to this end.

### ***National action plans against forced labour***

- 108.** The Employer spokesperson indicated that action plans had been implemented by various countries to give effect not only to the words of Convention No. 29, but also to its spirit and intent. One example of such a plan of action was the National Human Rights Action Plan of Australia, which addressed forced labour, as well as other issues. The development of such plans of action was a practical way for governments, regardless of their levels of development and capacity, to implement measures, by providing focus and informing the various government agencies of their respective responsibilities. The Worker spokesperson also underlined the importance of adopting action plans at the national level in order to contribute to better implementation of the adopted legislation. To that end, it was important to have more information on examples of effective action plans and directives in terms of prevention, protection and compensation of victims, and of combating trafficking for labour exploitation. In this regard, the Government expert from the Philippines emphasized that the efficient formulation of national action plans was essential. The Government expert from the United States concurred, adding that national action plans needed to be specific concerning the issues to be addressed, the outcomes to be achieved and the relevant timeline.
- 109.** The Worker expert from Brazil wished to share his country's enriching experience resulting from the setting up of the National Commission for the Eradication of Slave Labour (CONATRAE). This inter-institutional tripartite commission had participated in the preparation of the national plan of action and was giving support to the implementation of related measures. CONATRAE thus ensured that the country had a permanent and effective entity for the coordination of all action to be taken in the context of the National Plan of Action. Lastly, the Government expert from Nigeria expressed concern that national action plans were generally linked to trafficking in persons and not to all forms of forced labour, and that adequate recognition was not given to the labour inspectorate in the inception phase of these plans. Specialized agencies created to fight trafficking developed these programmes, excluding labour inspectorates. He therefore stressed the need for a comprehensive approach that ensured the synergy of instruments and cooperation between agencies in the development of national prevention and protection systems for victims of forced labour and trafficking for labour exploitation.

### ***Cooperation, policy coherence and coordination***

- 110.** As regards coordination at the national level, the Employer spokesperson, recalling that resources were finite, reiterated the importance of an approach involving the whole of

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government. He referred to the establishment in Australia of the Anti-People Trafficking Interdepartmental Committee, which had been effective in coordinating between 12 separate governmental agencies, including through a working group focused on issues of implementation. Such a model could be useful in establishing coordination mechanisms in other countries. The Government expert from the Philippines added in this respect that coordination as well as inter-agency, multisectoral and multipartite responses could also ensure the efficiency of national action plans.

- 111.** The Worker spokesperson recalled that policy coordination was vitally important and policy coordination at international level was the very essence of the ILO. The preamble to the ILO Constitution stated that "... the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries ...". That meant, according to the thinking of the ILO founders, that if a given country failed to eliminate inhumane conditions of labour, such as forced labour, it could obstruct the efforts of other countries to eradicate such conditions. Although progress had been made towards eliminating forced labour, especially at the legislative level, the challenge remained, and it was essential to identify mechanisms that would enable effective national and international coordination among the various national and international players, and also between the ILO and other international institutions. It was also a question of ensuring coherence in the whole multilateral system, and that had to begin at national level. To that end, the tripartite structures for the discussion of international labour standards provided for under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), might serve as a basis for examining issues of forced labour. Ministries other than the Ministry of Labour might be associated with these structures, such as the Ministry of Foreign Affairs, the Ministry of Finance or the Ministry of Trade, and also the bodies responsible for multilateral policy coordination with the International Monetary Fund or the World Bank.
- 112.** The Worker spokesperson also stressed the need for strengthening regional and international cooperation, particularly among the national authorities of workers' countries of origin and countries of destination. Cooperation needed to be systematic in areas where there were substantial movements of workers. It would be useful to establish national focal points dealing with issues of forced labour in order to ensure a better exchange of information on forced labour and organize regular international meetings, under the auspices of the ILO, with the participation of the different entities and agencies concerned with economic and social questions. Similarly, the Employer spokesperson considered that programmes of judicial and technical assistance, as well as relevant training programmes, were valid and important measures to tackle forced labour. He also recalled that many countries were currently assisting other countries in their region in implementing programmes to combat forced labour, and that the ILO was at the forefront of building capacity and offering assistance in this regard. As an example of bilateral cooperation, the Government expert from the United States referred to the Memorandum of Understanding signed between her country and Brazil on labour issues, including forced labour and child labour. This type of collaboration facilitated the sharing of best practices and also enabled States to learn from the initiatives undertaken by other countries.
- 113.** As a general remark, the Government expert from the Philippines believed that international cooperation should be undertaken within the context of specific national competencies and capacities taking into account that different constituents were at different stages in the response to forced labour. The Worker spokesperson stressed that, even though the question of resources depended on the national capacity of each country, it should not disguise the fact that the countries worst affected by the scourge of forced labour were often those that had limited resources for combating it. The fight against forced labour should nevertheless constitute a priority. It was not a question of multiplying measures but of supporting the countries, in the context of international cooperation, which

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were experiencing the greatest problems in that respect. It was for the ILO to play a key role in that regard.

- 114.** With respect to policy coherence, the Government expert from the Philippines emphasized that the collective fight against forced labour could only be effective if there was coherence and consistency. Several countries including the Philippines had recently developed or were developing rules and regulations, and it was the right time to forge policy coherence in the international campaign against forced labour. Policy coherence was a crucial part of the response, as was ensuring that the interpretation of laws was congruent with their intended objective. The Government expert from the United States agreed that policy coherence was important from both a national and international point of view.

### ***Consultations with the social partners***

- 115.** The Employer spokesperson stated that a consensus had been reached at the global level that any action to reduce forced labour should be underpinned by social dialogue, and that all policy measures adopted or implemented in this regard should involve consultations with workers' and employers' organizations. Moreover, other civil society groups should be invited to participate in the development and implementation of national action plans. The Worker spokesperson also underlined the importance of involving all of the social partners in the adoption of action plans. Similarly, the Government expert from the Philippines emphasized that the strengthening of social dialogue structures was essential in the context of the adoption of national action plans. The Government expert from the United States concurred.

### **Point 7. Value added of new ILO instrument(s)**

*Would there be any added value with the adoption of new instrument(s) to fill the gaps identified in paragraphs 133 to 142 of the report?*

*Would there be the need for the adoption of other complementary measures to strengthen the fight against forced labour, including trafficking in persons?*

- 116.** The Secretary-General recalled that the term “instruments” encompassed: (i) international labour standards, which consisted of Conventions, Protocols and Recommendations; (ii) declarations, which could be adopted by the ILC or by the Governing Body; and (iii) other forms of action such as codes of practice or guidelines adopted by tripartite meetings of experts and subsequently published with the authorization of the Governing Body. Conventions and Protocols were binding after ratification, and member States were subject to reporting obligations on their application in national law and practice and to the complaints procedures of the ILO supervisory bodies. Recommendations were not open for ratification, but contained guidance for member States.
- 117.** The Chairperson emphasized that at this stage the mandate given to the Meeting should be kept in mind. The issue of the fight against forced labour was a fundamental human right and was also at the core of the ILO Declaration on Fundamental Principles and Rights at Work of 1998. The forced labour figures highlighted that forced labour was not simply a secondary effect of globalization that could be easily addressed, but rather a problem that concerned all. If the ILO was inactive, other regional or international organizations would act. For example, the Organisation for Economic Co-operation and Development's Guidelines for multinational enterprises and the Ruggie principles would be challenged, and it was feared that the existence of diverging rules depending on the region would lead to distortions of competition in markets. Finally, it was necessary to emphasize the need

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for coherent action, taking into account the needs of national and international cooperation among the actors concerned, and in particular of employers' and workers' organizations.

- 118.** The Worker spokesperson placed into historical perspective the recent actions of the ILO concerning fundamental rights. From the 1990s onwards, the market economy model had prevailed with the promise that it would foster employment, wealth creation and poverty reduction. In 2004, the ILO had established the World Commission on the Social Dimension of Globalization, which had contradicted the optimistic forecasts concerning the impact of globalization on growth and had revealed growing inequality, highlighting that the wealth created had not been to the benefit of too many countries nor too many people. Moreover, from 2008 onwards, the financial crisis had taken hold and in 2009 the ILO had responded quickly by adopting the Global Jobs Pact, which underlined the need to strengthen respect for fundamental rights at work, recalling that it was necessary to “increase vigilance to achieve the elimination and prevention of an increase in forms of forced labour, child labour and discrimination at work ...”. In June 2012, the question of fundamental rights had been examined by the Committee for the Recurrent Discussion on the Strategic Objective of Fundamental Principles and Rights at Work, which had given particular attention to forced labour. Among fundamental rights at work, the elimination of forced labour was particularly symbolic since it was a universal aspiration, a historic struggle and a peremptory norm. However, in view of the harsh reality of forced labour, it had been proposed to hold the present Meeting of Experts, the remit of which was precisely to decide whether standard setting was needed to complement the ILO Conventions on forced labour by giving consideration to prevention and the protection of victims, including compensation for them, and to the fight against trafficking in persons for labour exploitation.
- 119.** The Worker spokesperson added that, even with almost universal ratification of Convention No. 29, the discussion had shown that many member States looked to the ILO for guidance and that a new standard-setting instrument was needed. In the interest of efficiency, a Protocol to Convention No. 29 would be the most appropriate instrument. The Protocol should be short, precise and consolidated, targeting the following fields: trafficking in persons for labour exploitation, prevention, protection and compensation. It might also enable the abolition of the transitional provisions of Convention No. 29, which should no longer form part of the corpus of standards. The Protocol could be accompanied by a Recommendation whose purpose would be to give guidance for action. That would send a strong, high-level signal to States, to the UN and to other multilateral organizations, and would show that the ILO was a responsive organization determined to fulfil its mandate.
- 120.** The Employer spokesperson recalled that Convention No. 29 was one of the most widely ratified ILO Conventions and underlined the global consensus on this important human rights issue, and the fact that most countries had put in place legislation to address this scourge. It was therefore essential that this global consensus not be undermined, in whole or in part, by the outcome of the Meeting. He once again emphasized the open mind of the Employer experts in considering the challenging and complex issues under discussion, and in examining successful initiatives and possible areas for improvement as well as the practical measures that could be undertaken by all countries. The Employer experts wanted to be part of the solution. Convention No. 29 had existed for over 80 years, and forced labour continued to be a problem. It was therefore important to be realistic, and to take steps to change the situation for the better. In examining the three separate issues set by the Governing Body, the Employer experts had identified which action points they supported in principle and which they had difficulties with, particularly due to the plurality of existing legal systems. The discussion had only scratched the surface of the issue of trafficking and it was essential to establish an understanding of this issue in order to implement measures in a manner that did not undermine the established consensus.

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- 121.** The Employer spokesperson emphasized that it was important to assess the various forms an instrument could take, considering both the benefits and the disadvantages of each. There was a benefit in providing specific guidance, particularly regarding what other countries had successfully implemented and what could be realistically implemented in individual countries, taking into account the particular circumstances. Turning to the form an instrument could take, the Employer spokesperson cautioned that, due to the diverse legal systems and national circumstances, there would be problems for some countries in adopting and implementing a Protocol dealing with one or several of the discussed topics. Convention No. 29 was a succinct directive to eliminate forced labour, and this simplicity was one of the reasons it had been so highly ratified. The detailed issues examined, and the relevant solutions, would be different according to the capacities of each country. Although there were some measures of commonality that could be implemented by the majority of countries that had ratified Convention No. 29, others remained much more challenging. If one of the most widely ratified Conventions had the least ratified Protocol, the established consensus would be undermined. As regards a Recommendation, he underlined that such an instrument could be important in providing guidance on one or more of the points discussed, depending on its detail and content. As opposed to other forms of instruments, however, a Recommendation did not allow for rapidly addressing new issues as they emerged in certain countries. The tools under consideration needed to be dynamic as well as capable of being implemented in all member States. Accordingly, the Employer spokesperson would prefer a non-binding instrument such as guidance or a code of conduct. Finally, the Employer spokesperson underlined that the Employer experts had a strong commitment to taking effective action for the elimination of forced labour, and that they were very open to proposals in this regard. He stressed that there was nothing impeding the experts, upon returning to their countries, from conveying some of the proposals that had been discussed at the Meeting, to their respective governments through social dialogue.
- 122.** In reply, the Worker spokesperson reiterated that under its remit, the Meeting had to examine the possibility of standard setting. The Meeting could not be concluded without specific proposals being made on this matter. With regard to the Employer spokesperson's argument that a Protocol ran the risk of undermining the consensus in relation to Convention No. 29, he recalled that the adoption of the Palermo Protocol on Trafficking had not had a negative impact on the ratification of the UN Convention against transnational organized crime, and that both instruments had received widespread ratification. Regarding the argument that a Recommendation was not a sufficiently dynamic instrument to be able to adapt to different forms of forced labour, it should be emphasized that it was a matter of giving fresh impetus, through a very simple Protocol, to Convention No. 29. It would be damaging to the ILO, as a tripartite organization, not to act in a field which came within its mandate, thereby running the risk of having obligations imposed on States by other international or regional organizations outside of the tripartite framework.
- 123.** The Government expert from Zambia recalled that the issue under discussion was not the relevance of Conventions Nos 29 and 105, but whether there were any gaps in the two Conventions. The Worker experts had boldly indicated their preference for a Protocol. The fear that a new instrument might not be highly ratified was irrelevant. This Meeting should examine only the relevance of a new instrument, as it was not its mandate to consider subsequent ratifications. The ratification of a new instrument would be driven by its relevance and added value, which should be the focus of the discussion.
- 124.** The Government expert from Nigeria recalled that country perspectives had come up during the discussions that were helpful in understanding the issues as well as what had, and had not, worked. The objective of the Meeting, however, was to reach a decision on whether or not there was a need for a new instrument, and, if possible, what kind of instrument. There appeared to be agreement that the problem of forced labour was

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growing, that governments needed to address certain issues in order to successfully fight against all forms of forced labour including trafficking in persons, and that there was a need for joint action, collaboration and national action plans. In view of the situation in his country, he agreed with the Worker experts' call for a Protocol. Whether or not such a Protocol would be ratified was not a consideration for this Meeting. In conclusion, he believed that the experts had clearly identified a need for standard setting.

- 125.** The Government expert from the Philippines recalled that there was a consensus that Convention No. 29 was a sound and solid Convention to combat forced labour, which remained responsive to the needs of the international community, and had had a significant impact on the landscape of forced labour. However, as demonstrated by the ILO global estimates, the profile and demographics of forced labour had changed over the past 80 years. There were developments and new patterns of forced labour, which although addressed implicitly in Convention No. 29, needed elaboration, such as the perspective of the social partners, the labour exploitation dimension of trafficking, as well as possible mechanisms to address forced labour, particularly labour administration and the labour inspectorate. There had recently been positive developments in terms of legislation to address forced labour, and, for its effective and efficient implementation, inspiration could be taken from the various initiatives being implemented around the world to fight forced labour. In this context, she underlined that there was an added value in exploring the crafting of a new instrument. Convention No. 29 itself should not be tweaked, as it contained significant wisdom. She expressed her preference for a Protocol or a Recommendation, which would have the benefit of neither requiring ratification nor entailing reporting requirements.
- 126.** The Government expert from Brazil believed that forced labour was both a crime and, as recalled by the Chairperson, a significant labour market distortion which required specifically designed labour market solutions. A pragmatic and meaningful approach would be the adoption of a new instrument. He commended the Committee of Experts for updating the meaning of forced labour for many years and establishing that the concept of trafficking in persons was covered by Convention No. 29. Nonetheless, there remained a need to move forward on the prevention of forced labour and the protection of victims. This was a historic moment not to be missed, and an important opportunity for the ILO to observe and make use of the good practices in different countries. While social dialogue was important, it was not sufficient. Mandatory provisions for governments, employers and trade unions were needed. He fully supported the creation of a new instrument, in the form of at least a Protocol to Convention No. 29.
- 127.** The Government expert from the United States reiterated that, in her opinion, there were no normative or regulatory gaps in Convention No. 29 regarding its scope or content. However, there were definitely some gaps in terms of the application and implementation of the Convention. The requirements of prevention, protection and compensation were implicit in Convention No. 29, and the Committee of Experts had made comments in this regard. This was consistent not only with the actual words of the Convention, but, as the Employer spokesperson had stated, also with the spirit and intent of that Convention. In conclusion, she agreed that there could be value in exploring the possibility of crafting a new instrument and/or other complementary measures to make explicit what was already implicit in Convention No. 29, particularly with regard to measures to prevent forced labour and protect its victims.
- 128.** The Government expert from the Netherlands stated that, from her perspective as a citizen of a country that benefited from the Council of Europe Convention on Action against Trafficking in Human Beings and the directives of the European Union on the issues discussed at this Meeting, she could not see any added value in a new instrument. Yet, she acknowledged that, from an international perspective, there could be some added value of guidance from the ILO. However, since the problem concerned primarily the effective

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implementation of Convention No. 29, she did not support a new international labour standard on forced labour. She expressed a strong preference for a non-binding instrument, such as a code of practice or code of conduct.

- 129.** The Government expert from the Republic of Moldova indicated that the adoption of a new binding instrument supplementing Convention No. 29, clarifying its provisions and encouraging member States to adopt certain measures to address forced labour, would be extremely useful.
- 130.** The Employer expert from Peru recalled that during the discussion of the General Survey on the eradication of forced labour in 2007, the employers had indicated that ILO Conventions Nos 29 and 105 were highly relevant and that there was no need for a Protocol to Convention No. 29. Both Conventions were part of the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and had been elevated to the rank of principles. Convention No. 29 was completely valid, and, in case of difficulties, countries could turn to the Office for assistance.
- 131.** The Worker spokesperson pointed out that the fact that a given country had implemented certain provisions was not sufficient reason to conclude that an international standard was not necessary. On the contrary, as underlined by the ILO Constitution, a country should not be obstructed in its endeavours by lack of effort on the part of another country. It was not a question of wanting a standard for its own sake, but of creating general momentum to put an end to the scourge of forced labour. Regarding the reporting obligations of States, they would not be increased for all countries since some already had detailed obligations in that field. The Worker spokesperson also indicated that the objective of the proposed Protocol was precisely to spell out the need for the implementation of certain measures, specifying the fields of prevention, protection, compensation and trafficking for labour exploitation. A strong signal needed to be sent to the international community regarding the positioning of the ILO in relation to combating forced labour. He emphasized that when discussion of an instrument took place within the ILO, the Employers and the Workers could make full use of the mechanism to express their concerns and defend their interests. In conclusion, complementing Convention No. 29 with a Protocol would make it possible both to target areas in which governments should act systematically and to update the Convention by confirming that the transitional provisions no longer had any *raison d'être*, something that would bring honour to the Organization.
- 132.** The Employer expert from the United States specified that the remit of the Meeting was to conduct a detailed analysis to identify gaps in the coverage of ILO standards with a view to determining whether there was a need for standard setting. There were two types of gaps, normative gaps and implementation gaps. In this regard, there appeared to be agreement that there were implementation gaps with respect to Convention No. 29; however, there appeared to be disagreement as to whether there was a normative gap in the Convention. The Committee of Experts had read a lot into the language of Convention No. 29 and had updated it to take into account certain realities. In order to find that there was a normative gap, one would have to disagree that the Committee of Experts could update a Convention. In his view, it should not be up to the Committee of Experts to update a Convention in that way. He wondered whether the Worker spokesperson would agree that there was a normative gap. The official position of the Employer experts was that some form of action was needed, whether in the form of a standard or another ILO instrument. As regards standard setting, it was not desirable to rewrite Convention No. 29, one of the most ratified ILO Conventions; thus a new Convention was off the table. The Employer experts were concerned that a Protocol would have the same effect. A Recommendation could possibly be an option, but there was disagreement among the Employer experts on this course of action, although they were all in favour of guidance. While there was a consensus among all experts that forced labour and trafficking in persons was a scourge, that something

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should be done and that the ILO should be involved, there was no agreement on the specific action to be taken.

- 133.** The Chairperson noted that there was consensus on the existence of gaps and the need for action to address these gaps. Views differed as to the form of action to be undertaken, with some in favour of normative action in the form of a Protocol or guidelines contained in a Recommendation, and others preferring another type of action. The decisions as regards normative action would be taken afterwards by the political organs of the Organization, namely the Governing Body and the ILC.

## **V. Discussion and adoption of the conclusions of the Meeting**

- 134.** The Drafting Committee met on Thursday 14 February 2013 to prepare the draft conclusions of the Meeting. All experts participated in the work of this Committee, which approved paragraphs 2, 4, 5, 7 to 9, 11, 13, 16, 18 to 21 and 23 to 26 of the draft conclusions. The remaining paragraphs of the draft were examined in plenary.

- 135.** The Employer spokesperson presented amendments to the draft conclusions, which had been agreed to by the Worker spokesperson during informal consultations. These draft amendments included additions and deletions to paragraphs 1, 3, 6, 10, 12, 14, 15, 17 and 22 of the draft conclusions.

- 136.** The Government expert from Brazil expressed his disagreement on the proposed amendment for paragraph 3, particularly the deletion of the sentence “The Experts recalled that the ILO supervisory bodies have considered that Convention No. 29 encompasses all forms of forced labour, including trafficking for the purpose of labour sexual exploitation”. He commended the Committee of Experts for bravely affirming that the concept of forced labour encompassed trafficking in persons and emphasized that this sentence should remain in the conclusions of the Meeting.

- 137.** In this regard, the Employer spokesperson observed that the proposed deletion in paragraph 3 of the draft conclusions had been agreed to by both the Employer and the Worker spokespersons. The result of the earlier informal consultations had been a balance of amendments which constituted a consensus. The Worker spokesperson also explained that, during the discussions that had resulted in an overall consensus on the proposed amendments, it had proven easier to accept the deletion of the first sentence of paragraph 3 instead of trying to reformulate the generally accepted definition of forced labour. However, this did not alter the fact that, on the basis of Convention No. 29, the supervisory bodies examined all forms of forced labour, including trafficking in persons for labour exploitation and sexual exploitation. This deletion should not be interpreted as the willingness of the Worker experts not to recognize this definition.

- 138.** The Government expert from Brazil accepted the consensus, requesting that his reservations be reflected in the report of the Meeting.

- 139.** Paragraphs 1, 3, 6, 10, 12, 14, 15, 17 and 22 of the draft conclusions were accepted.

- 140.** The Chairperson indicated that the last paragraph that still required discussion was paragraph 27, which read as follows:

27. [The Experts agreed that there is no need for a new Convention as there are no normative gaps in the ILO Conventions No. 29 and No. 105.] There was [consensus] [a majority] among the Experts that the implementation gaps should be addressed through standard

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setting. [Standard setting would be aimed at making explicit what is implicit in Convention No. 29 and providing implementation measures to member States.]

- 141.** The Employer spokesperson proposed the following new wording to paragraph 27: “The experts agreed that there is no need for a new Convention. Nevertheless, there was consensus among the experts that the implementation gaps should be addressed through standard setting to advance prevention, protection and compensation measures to achieve the elimination of forced labour”.
- 142.** While emphasizing that in order to be effective, the text of the conclusions must be agreed upon by consensus, the Worker spokesperson considered that the new amendment presented some difficulties, but could be acceptable if, in paragraph 4, the term “significant gaps” was replaced by “significant implementation gaps”.<sup>6</sup>
- 143.** The Government expert from Brazil disagreed with the first sentence of the Employer spokesperson’s amendment which stressed that there was no need for a new Convention. While all experts agreed that there was a need for standard setting, he did not believe that there was a consensus regarding the type of instrument, and the option of a Convention should not be completely excluded. He proposed the following text instead: “The experts agreed that the detected implementation gaps should be addressed through standard setting, which could take the form of a Protocol and/or Recommendation”.
- 144.** The Employer spokesperson stated that he had difficulties with the new wording as, during the discussions, there had not been either an apparent or implicit consensus or majority view that a Convention would be an appropriate instrument to deal with implementation gaps. The new wording was also at odds with the language to which the Employer experts had already agreed.
- 145.** The Worker spokesperson pointed out that according to the mandate entrusted to it, the Meeting must decide not only on whether to adopt a new instrument, but also on the nature of the instrument. For the Worker experts, the most appropriate normative instrument was a Protocol, but there was no consensus on this point. The initial position of the workers had been that a Convention was necessary, but for the sake of arriving at a proposal acceptable to all, the Worker experts had agreed to delete the reference to a Convention and instead insert a reference to normative action in the form of a Protocol and/or Recommendation.
- 146.** Following the suggestion of the Chairperson, a small group was formed to arrive at a formulation for paragraph 27 acceptable to all experts. The new proposal of this group was then read by the Chairperson:

There was consensus among the experts that the implementation gaps should be addressed through standard setting to advance prevention, protection and compensation measures to effectively achieve the elimination of forced labour globally. The experts considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach a consensus. The experts did not retain the option of a new Convention.

- 147.** The Employer and Worker spokespersons approved this text and the Chairperson asked the Government experts to express their positions.

<sup>6</sup> Text of paragraph 4 of the preliminary draft conclusions: “Despite the broad reach of Convention No. 29 and the measures taken to date by member States, the experts considered that significant gaps remain in the effective eradication of forced labour and need to be urgently addressed in terms of prevention, victim protection, compensation, enforcement, policy coherence and international cooperation which are set out below”.

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**148.** The Government expert from the Netherlands reiterated that she was of the opinion that there was no need for standard setting. The phrase “should be addressed through standard setting” was too strong a formulation. With a view to reaching consensus, the wording should be changed to “could be best addressed through standard setting”. If this was not acceptable to the other experts, she proposed changing the term “consensus” to “a majority” in paragraph 27, as it was first worded.

**149.** In light of the above comment, the Secretary-General recalled the meaning of the term “consensus” within the ILO and read paragraph 46 of the Compendium of rules applicable to the Governing Body of the ILO:

The Governing Body, whether meeting in plenary or in committees, takes decisions usually by consensus. The term “consensus” refers to an established practice under which every effort is made to reach without vote an agreement that is generally accepted. Those dissenting from the general trend are prepared simply to make their position or reservations known and placed on the record. Consensus is characterized by the absence of any objection presented by a Governing Body member as an impediment to the adoption of the decision in question. It is for the person chairing the sitting, in agreement with the spokespersons of the respective groups to note the existence of a consensus.

**150.** The Chairperson indicated that if one of the experts had difficulty with a proposal for which there appeared to be consensus, this expert could make a declaration in this regard, which would be reflected in the final report of the Meeting.

**151.** The Government expert from the Netherlands thanked the Chairperson for the clarification but requested nevertheless that the Employer and Worker spokespersons be given the opportunity to respond to her suggested amendment.

**152.** The Worker spokesperson emphasized that, in order to reach a point of agreement which was acceptable to all the experts, each party had had to make concessions. For the Worker experts, the last proposal represented that point of agreement and it would be preferable not to amend it any further. If a vote was taken, it would be a question of a majority proposal imposed on the minority. However, the pursuit of consensus was the established practice in ILO meetings and it was desirable to continue along those lines. The Employer spokesperson indicated that he had already approved the preceding formulation, but if it would mean strengthening the consensus, he would not oppose the amendment proposed by the Government expert from the Netherlands, particularly to change “should be addressed” to “could be addressed”. The Worker spokesperson recalled that any reservations voiced by an expert could be included in the Report of the Meeting. Those reservations should not undermine the consensus achieved with all of the other experts.

**153.** The Government expert from the Netherlands accepted the consensus while regretting that her proposal had not been given adequate consideration.

**154.** Paragraph 27 of the draft conclusions was accepted as amended.

**155.** The Chairperson presented the draft conclusions for adoption, as prepared by the Drafting Committee and amended by the Meeting.

*The conclusions, as amended, were adopted.*<sup>7</sup>

<sup>7</sup> The conclusions of the Meeting are reflected in the appendix.

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## VI. Final remarks

- 156.** The Chairperson stated that while sometimes divergent views had been expressed during the Meeting, the respectful social dialogue which had prevailed had enabled a consensus to be reached, even if it did not necessarily satisfy all the participants. The result of the discussions could now be submitted to the Governing Body for decision. The Chairperson thanked the experts and also the interpreters and the secretariat for the work that had been accomplished.
- 157.** The Government expert from the Netherlands reiterated her position concerning paragraph 27 of the conclusions, emphasizing that there was no need for standard setting. Once again, she expressed regret that her proposal had not been taken into consideration.
- 158.** The Government expert from the United States requested that her comments regarding standard setting be recorded. In this respect, she supported the recommendation to the Governing Body that standard setting to supplement Convention No. 29 be considered in the form of a Protocol and/or a Recommendation to advance the prevention, protection and compensation of forced labour victims.
- 159.** With reference to paragraph 3 of the conclusions, the Government expert from Brazil expressed the firm belief that the position of the supervisory bodies asserting that the concept of forced labour encompassed trafficking in persons was the ultimate and accepted one.
- 160.** The Government expert from Nigeria considered that a Protocol was the most appropriate method to address the issue of forced labour. Referring to the Palermo Protocol on Trafficking, he stressed that, if the ILO proposed anything less than a Protocol, it would undermine the gravity of the issue of forced labour.
- 161.** The Government expert from the Philippines stated that the consideration of the specific type of instrument to be recommended by the Meeting was pragmatic, and included deliberation on the practicality of applying such a new instrument in each of the experts' respective countries. It was important to recall that, after an instrument was adopted by the ILC, each country would have its own national processes to give effect to the new standard. The manner in which a particular standard could be applied in relation to the capacity of a specific government needed to be considered, in addition to the urgency of the situation of forced labour.
- 162.** The Government expert from Zambia thanked the Chairperson and all of the experts for having helped the Meeting of Experts adopt conclusions. He was quite pleased that the Government experts and the social partners had made great efforts to find a common position.
- 163.** The Employer spokesperson gave a round of thanks to the Office, the IOE and the Chairperson, who had built social dialogue throughout the Meeting. He reaffirmed that the central message of the Employer experts was that, although action had been taken to eliminate forced labour, this action had not been enough. It was necessary to send a strong message that new tools and capacities were necessary to eradicate this scourge. The Employer experts had made a commitment towards reaching consensus, and in this regard, had explored all of the available tools. While they had initially indicated a preference for a non-binding instrument, such as guidance or a code of conduct rather than standard setting, they ultimately concluded that the best way forward was a Recommendation, as the most effective tool in assisting with the implementation of Convention No. 29. The Employer spokesperson indicated that although he believed that there was no single pathway in this regard, he expressed the hope that a Recommendation would send a strong message as well

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as providing a practical course of action. Furthermore, guidance material was vitally important, and collaboration with other UN agencies should be pursued, particularly regarding trafficking in persons for forced labour. He hoped that a real difference could be made in this regard, and stated that he was privileged to lead the Employer experts in a Meeting on such an important subject.

- 164.** The Worker spokesperson expressed his deep gratitude to everyone who had contributed for weeks to the preparation of the Meeting, particularly the Office and the interpreters, the ITUC, the Worker experts, and also the Employer spokesperson, the observers who had contributed their experience and the Government experts. He also thanked the Chairperson, who had played a key role in ensuring the smooth progress of the discussions. The discussions and exchanges had been frank, sincere and of a high quality. They constituted an important and essential step for the ILO towards freeing victims from forced labour and preventing other workers from becoming trapped by this scourge. The spokesperson recalled that the Worker experts fully supported the definition of forced labour that emerged from Convention No. 29 and from the examination of its application by the supervisory bodies, namely the inclusion of trafficking for labour exploitation or sexual exploitation. That understanding had received widespread acceptance from various international institutions and organizations throughout the world. Continuing the fight against forced labour by giving the Governing Body the possibility of following up on the conclusions of the Meeting and placing the issue on the agenda of the ILC would enable the role and image of the ILO to be strengthened. The Worker spokesperson concluded the Meeting by recalling that the fight against forced labour conducted under the auspices of the ILO had helped to make it possible for Aung San Suu Kyi to come and speak to an international body, the ILC, in June 2012.

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## Appendix

### Conclusions adopted by the Meeting

#### Context

It is to be recalled that the International Labour Conference at its 101st Session (2012) concerning the recurrent discussion on fundamental principles and rights at work called on the International Labour Office to “conduct a detailed analysis, including through the possible convening of meetings of experts to identify gaps in existing coverage of ILO standards with a view to determining whether there is a need for standard setting to: (i) complement the ILO’s forced labour Conventions to address prevention and victim protection, including compensation; and (ii) address human trafficking for labour exploitation”. On the recommendation of its Officers, the Governing Body approved the agenda of the Meeting, which was to formulate recommendations to the Governing Body as to whether there was scope for standard setting to complement the ILO’s Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The topics to be covered had been identified in the Framework for Action, namely: (i) prevention of forced labour; (ii) victims protection, including compensation; and (iii) human trafficking for labour exploitation.

The experts met in Geneva from 11 to 15 February 2013.

#### Introduction

1. The experts emphasized that freedom from forced labour is a human right. The experts recognized that the ILO’s instruments on forced labour, namely the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), have played an important role in making progress to eradicate forced labour in all of its forms. The high rate of ratification of these Conventions attest to the commitment of ILO member States to the effective eradication of forced labour in all its forms. With regard to countries that have not ratified these Conventions, the Declaration on Fundamental Principles and Rights at Work of 1998 reaffirms the obligation of ILO member States to respect, promote and realize in good faith the principles concerning the fundamental rights in the Conventions concerned. Nevertheless, today, new manifestations of forced labour have appeared and an estimated 90 per cent of the 20.9 million victims of forced labour are exploited by private individuals or employers who operate outside the rule of law, primarily in the informal economy. This is unacceptable and no region of the world is spared. The Global Jobs Pact adopted in 2009 recalled the necessity to increase vigilance to achieve the elimination and prevention of an increase in forms of forced labour. Some populations, such as children, migrant workers, domestic workers, indigenous peoples and workers in the informal economy are particularly vulnerable. Almost half of all victims have migrated internally or across borders. In this rapidly changing world, the challenge of eradicating forced labour is as great as ever before.
2. The experts emphasized that, taking into account Convention No. 29 and Convention No. 105 and the UN Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially women and children, the ILO should pursue complementary approaches in accordance with its mandate and expertise with a view to ensuring the effective eradication of forced labour, including forced labour exacted as a result of trafficking.
3. The ILO should continue to pursue and strengthen its efforts to address the broader manifestations of forced labour today in view of the growing number of children, women and men who are victims of forced labour globally.
4. Despite the broad reach of Convention No. 29 and the measures taken to date by member States, the experts considered that significant implementation gaps remain in the effective eradication of forced labour and need to be urgently addressed in terms of prevention, victim protection, compensation, enforcement, policy coherence and international cooperation which are set out below.
5. The experts stressed the importance of allocating sufficient resources in order to effectively implement measures concerning prevention, victim protection, compensation and enforcement.

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## **Prevention**

The experts reached consensus on the following issues:

6. The vital importance of preventive measures to combat forced labour. Of all the measures to eliminate forced labour, prevention should be systematically considered by national authorities and social partners.
7. The preventive role of labour administration and inspection as well as the need for better coordination with other law enforcement agencies and training programmes for the judiciary, the police, immigration, social workers, and other relevant authorities.
8. The importance of regular awareness-raising activities, such as media campaigns, information brochures and school programmes, targeting people vulnerable to forced labour and other stakeholders.
9. Data collection, knowledge sharing and research are essential to design effective prevention measures and countries should reinforce their efforts in this area.
10. The need to address the trade in goods or services that could be tainted by forced labour.

## **Victim protection and compensation**

The experts reached consensus on the following issues:

11. The identification of forced labour victims needs to be improved, and appropriate measures have to be put in place to protect all victims and suspected victims of forced labour, whether they have been trafficked or not.
12. Strong victim protection measures, such as social services, can have a positive impact on the successful prosecution of cases.
13. Labour-related protection provisions, such as payment of wage arrears, are often neglected while they should be part of a comprehensive and systematic approach to victim protection.
14. Governments should explore the feasibility of different compensation mechanisms, such as setting up a state fund or strengthening provisions to recover compensation from offenders.

## **Enforcement**

The experts reached consensus on the following issues:

15. Appropriate measures should be taken to enhance the capacity of the labour inspectorate to combat forced labour, including trafficking for forced labour, through the allocation of adequate resources and appropriate training.
16. The importance of cooperation and coordination between the labour inspectorate and other law enforcement bodies, including the police, public prosecutors and the judiciary.
17. The need to reinforce the ability of the labour inspectorate to protect the rights of forced labour victims.
18. The need to ensure the transparency of the public prosecutorial bodies, as well as the independence of the judiciary.
19. Victims' access to justice should be facilitated, and all appropriate legal and administrative procedures should be simplified for this purpose.
20. Other means of action to combat forced labour could include strategies to coordinate among various police departments, visa arrangements to ensure that victims of forced labour can stay in the country during the period of investigation and trial, as well as targeted measures to reach out to the most vulnerable groups.
21. The importance of imposing sufficiently effective and dissuasive penalties, in particular penal sanctions, on perpetrators of forced labour and to ensure a strong criminal justice regime.

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## ***Policy coherence, coordination and social dialogue***

The experts reached consensus on the following issues:

22. The promotion of policy coherence is at the heart of the ILO's mandate and it needs to be reinforced with respect to forced labour, including trafficking for forced labour.
23. Cooperation at national, regional and international levels and within the multilateral system is of paramount importance for the effective elimination of forced labour.
24. The usefulness of adopting results-oriented national action plans against forced labour.
25. Social dialogue and the involvement of social partners in the development and implementation of measures to combat forced labour including trafficking in persons, are essential to reinforce national and international action against forced labour.

## ***Value added of new ILO instrument(s)***

26. In light of the consensus reached on the abovementioned issues, the experts considered that 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.
27. There was consensus among the experts that the implementation gaps should be addressed through standard setting to advance prevention, protection and compensation measures to effectively achieve the elimination of forced labour globally. The experts considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach a consensus. The experts did not retain the option of a new Convention.