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It is time to eliminate forced labour

- *An analysis of the Protocol and the Recommendation (2014)
to the ILO Forced Labour Convention*

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Summary

This master thesis examines the Protocol of 2014 to the Forced Labour Convention, 1930 (P029) and the Recommendation on supplementary measures for the effective suppression of forced labour (R203). P029 and R203 contain several innovative approaches regarding the handling of forced or compulsory labour reduction. The whole aim of the instruments is to address implementation gaps and supplement Convention No. 29. Nevertheless, this is not an easy task: the last ILO Global estimate showed that approximately 21 million people are victims of forced or compulsory labour, creating an industry with a profit of 150 billion USD. Convention No. 29 and Convention No. 105, which is the Convention concerning abolition of forced labour from 1957, both establish *who the victim is*; P029 and R203 establish *how the number of victims can be reduced*. Thus, all four instruments depend on one another, without changing their scope. P029 does not try to change the definition of forced or compulsory labour but, rather, reaffirms the existing one.

Implementation is key regarding the practical and theoretical impact that P029 and R203 will potentially have internationally. This is why P029 and R203 being very comprehensive and easily understandable are of great importance. What might be a difference in practice regarding P029 and R203 is the changed focus towards preventive measures and the explicit focus on root causes and early stages such as the recruitment.

Regarding the practical and theoretical impact that P029 and R203 will potentially have nationally in Sweden; firstly, there needs to be a clear differentiation between forced or compulsory labour and trafficking in persons for the purpose of sexual exploitation. The Swedish National Police Agency (SNPA) seems not to be differentiating between both terms, which create further difficulties since the SNPA is the agency in charge of collecting data on this phenomenon. Sweden needs to put extra resources into gathering information and statistics with relevant disaggregation in order to fully be able to adopt the adequate preventive measures that are necessary according to P029. Sweden does not have a national plan of action on forced or compulsory labour and according to the Swedish ILO Committee Statement the lack of a national plan of action seems to be the main obstacle to Sweden ratifying the P029 immediately. However, their conclusion is that Sweden will ratify P029 in the foreseeable future.

Regarding Thailand, the practical and theoretical impact that P029 and R203 will potentially have is an entirely different situation. Looking at Thailand's judicial instrument and policies, Thailand looks like a country that is doing well. However, when looking at Thailand's statistics, it is one

of the worst countries in the world regarding forced or compulsory labour. This makes me question whether or not a ratification of P029 would make a difference on a practical level regardless of how well written it is and how fast Thailand ratifies it. Interviews made with experts Lisa Rende Taylor, Paul Buckley and Marja Paavilainen indicated that Thailand is very conscious about its reputation, and therefore reluctant to acknowledge full scope of the problem in the country, which influences the effectiveness of implementation. With a growing economy and increasing demand for workers Thailand is a key destination of migrant workers in the region. Migrant workers are covered by the P029 regardless of the immigration status; one of the issues in Thailand is the ineffectiveness regarding the documentation of migrant workers. But then again, the implementation needs to be working in order for the migration workers to get these improvements in practice. Nevertheless, the Thai Junta has shown several tendencies on taking the issue of combatting trafficking in persons very seriously. The latest strategy on anti-trafficking looked similar to the structure of P029 and R203 and there is a great possibility that these instruments were studied by the Thai Junta in the process of producing their strategy. This means that P029 and R203 have had great influence indirectly in the Thai legal system.

Sammanfattning

Denna uppsats utforskar Protokoll till Konvention nr 29 (P029) och rekommendation nr 203 om tvångsarbete (R203).¹ P029 och R203 innehåller flertalet innovativa synsätt och förslag till lösningar på problem gällande hantering av tvångsarbete². Syftet med instrumenten är att komplettera samt belysa och bemöta brister i genomförandet av Konvention nr 29. Detta är dock inte en lätt uppgift, ILOs senaste globala rapport visade på att cirka 21 miljoner människor är offer för tvångsarbete, en industri som sammanlagt genererar 150 miljarder USD i vinst varje år. Konvention nr 29 och Konvention nr 105 fastställer "*vem är ett offer*"; P029 och R203 etablerar "*hur antalet offer kan minska*". Detta gör att alla fyra instrumenten är beroende av varandra. P029 försöker inte ändra definitionen av tvångsarbete, istället bekräftar P029 den befintliga definitionen av tvångsarbete i Konvention nr 29.

För att P029 och R203 ska kunna göra en praktisk och teoretisk skillnad internationellt, så måste länderna ha en välfungerande och effektiv implementering. Konceptet bakom P029 och R203 är utformat för att vara omfattande men samtidigt lättbegriplig och framförallt lätt att implementera samt genomföra. En sak som eventuellt kan göra stor skillnad praktiskt sett är den förändrade inriktningen från rena skyddsbestämmelser mot bestämmelser inriktade på förebyggande åtgärder samt ett uttalat fokus på grundorsakerna till tvångsarbete och de tidiga stadierna såsom under rekryteringsprocessen av tvångsarbete.

För att P029 och R203 ska kunna göra en praktisk och teoretisk skillnad i Sverige, så finns det för det första, ett stort behov av ett förtydligande mellan tvångsarbete och människohandel för enbart sexuella ändamål. Den svenska Rikspolisstyrelsens verkar inte skilja på dessa fenomen vilket skapar problem eftersom Rikspolisstyrelsen utför all nationell insamling av data på detta område. Sverige behöver fler resurser för att samla information och statistik³ för att kunna genomföra de förebyggande åtgärder som är nödvändiga enligt P029. Sverige har inte en nationell handlingsplan för tvångsarbete och enligt den svenska ILO kommitténs uttalande så är avsaknaden av en nationell handlingsplan den mest kritiska invändningen mot en svensk omedelbar ratificering av P029. Dock är

¹ Översättning av svenska ILO kommittén

² Det finns ingen svensk etablerad översättning till "forced or compulsory labour", jag kommer att använda mig av frasen "tvångsarbete" eftersom det är denna översättning som används av svenska ILO kommittén

³ Det finns inga insamlade data för Sverige till "forced or compulsory labour", jag kommer att använda mig av frasen "tvångsarbete" eftersom det är denna översättning som används av svenska ILO kommittén

³ med relevant indelning efter kön, ålder, nationalitet etc

slutsatsen att Sverige kommer att ratificera P029 inom en relativt nära framtid.

P029 och R203s påverkan och eventuella praktiska och teoretiska skillnader kommer se annorlunda ut i Thailand från i Sverige. Thailand ser på pappret ut som ett land som hanterar situationen med tvångsarbete väl, men när man tittar på Thailand utifrån statistiken, visar den att Thailand är ett av de värsta länderna i världen gällande tvångsarbete. Detta aktualiserar frågan om en ratificering av P029 skulle göra skillnad på ett praktiskt plan oavsett hur välskriven den är. Intervjuer gjorda med experterna på området visade att Thailand är mycket noga med sitt rykte, vilket gör att Thailand inte fullständigt erkänner Thailand problemet till sin fulla bredd och detta kan vara anledningen till att implementeringen är bristfälligt. Med en växande ekonomi och ökande efterfrågan på arbetare är Thailand en viktig destination för migrerande arbetstagare i regionen. Migrantarbetare omfattas av P029 oavsett invandringsstatus, men att dokumentera migrerande arbetstagare sker väldigt bristfälligt i Thailand. Återigen, måste implementering och genomförande fungera för att migrationsarbetarna ska få förbättringar rent praktiskt med hjälp av P029 och R203. Den thailändska Juntan har visat flera tendenser att de tar frågan angående bekämpning av människohandel på största allvar. Den senaste strategin angående bekämpning av människohandel har en liknande struktur som den i P029 och R203 och med stor sannolikhet har dessa instrument studerats när den thailändska Juntan tog fram sin strategi. Detta innebär att P029 och R203 förmodligen är indirekt påverkande i det thailändska rättssystemet.

Preface

I have not made this thesis on my own, many people are to thank for this achievement. Firstly, a big thanks to my supervisor Lee Swepston for helping me to come up with and defining my thesis subject as well as giving me great advice in combination with great encouragement during my thesis period. I am impressed by your expertise and knowledge on the matter and I am grateful to have had the chance to cross paths with you.

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Lastly, one thanks to Lund, Lyon and Bangkok and all the people I have met during my time as a student in these countries, with an especial thank to Lund for giving me the opportunity to study and practice Human Rights Law all over the world – you have made these six years fantastic!

I am now heading towards a much greater adventure – the working life!

Tova Wetterö,
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Abbreviations

ASEAN	The Association of Southeast Asian Nations
AEC	Association of Southeast Asian Nation Economic Community
CFA	ILO Committee on Freedom of Association
CSR	Corporate Social Responsibility
Convention no. 29/C29	Convention No. 29 concerning forced or compulsory labour, 1930
Convention no. 105/C105	Convention No. 105 concerning abolition of forced labour, 1957
ECHR	European Convention of Human Rights
EU	European Union
GB	International Labour Organization's Governing Body
GCC	Gulf Cooperation Council
GRULAC	Group of Latin American and Caribbean Countries
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
ILC	International Labour Conference
ILO	International Labour Organization
ILOff	International Labour Office
MSDHS	Ministry of Social Development and Human Security
NGO	Non-Governmental Organization
OHCHR	United Nations Office of the High Commissioner for Human Rights
RWI	Raoul Wallenberg Institute
SAARC	The South Asian Association for Regional Cooperation
SNPA	Swedish National Police Agency
The Committee	International Labour Organization Committee of Experts on the Application of Conventions and Recommendations
P029	ILO Protocol of 2014 to the Forced Labour Convention, 1930
R203	ILO Recommendation on supplementary measures for the effective suppression of forced labour, 2014
The SAARC Convention	Convention on Preventing and Combating Trafficking in Women and Children for Prostitution
The Trafficking Act	Anti-Trafficking in Persons act B.E 2551, June 2008
UDHR	The Universal Declaration of Human Rights
UN	United Nations
UN-ACT	United Nations Action for Cooperation against Trafficking in Persons
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollar

1 Introduction

1.1 Introduction

“The Protocol and Recommendation represent a call to action. They go beyond pious words; they are more than text on a piece of paper.”

– Employers’ Spokesperson Ed Potter, 103rd ILC Session, June 2014

21 million men, women and children are today victims of forced labour – they are in situations of debt bondage⁴, trafficking⁵ and other forms of modern slavery⁶. The definition of forced labour according to the International Labour Organization (ILO) Convention No. 29 on Forced or Compulsory Labour is *“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”*⁷. 90% of the victims are exploited in the private economy and a majority of the female victims are subjected to commercial sexual exploitation. However, forced labour is prevalent in many other sectors such as, agriculture, fishing, domestic work, manufacturing, construction and mining. The victims are often hidden in the shadow of the public view and almost half of them have migrated – either internally or across borders. Forced labour generates an illicit profit of 150 billion USD.⁸

The ILO is the primary international expert on labour issues. The ILO Forced Labour Convention (No. 29) was adopted in 1930; the ILO Abolition of Forced Labour Convention (No. 105) was adopted in 1957. Last year, 2014, the Protocol and Recommendation to the Forced Labour Convention were adopted. This thesis will raise and answer the question on what makes the Protocol, and the Recommendation to differentiate from the earlier Conventions and other international and regional instruments related to the subject, and not the least, the biggest question – will it be ratified. What would it take to make this Protocol and Recommendation to difference since the previous instruments have not been sufficient to eliminate forced or compulsory labour?

The background of this thesis is my personal interest in the fight against forced labour. When I started my legal studies in Lund in 2009 † with the

⁴ See Chapter 3.2.4 *“Concepts relating to forced or compulsory labour”* p. 22

⁵ *Ibid.* P. 21

⁶ *Ibid.* p. 22

⁷ ILO Convention No. 29, Geneva, 1930, accessible at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 Art. 2(1)

⁸ ILO Global Estimate Executive Summary, Geneva, 2014, accessible at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf, p.1

mind-set of becoming a judge, I became fascinated by international Human Rights law through voluntary work at Amnesty International in Lund and the interest and engagement have only grown bigger throughout the years. I started my masters in Human Rights Law with a focus on International Labour Law at the Raoul Wallenberg Institute for International Human rights and Humanitarian Law (RWI) through the University of Lund in 2012. Mr. Lee Swepston was my principal professor of International Labour law and made me realise how important international labour law is. International labour laws affect everyone, which makes it an even more intriguing field of law. Mr. Swepston informed the class about the new ILO Protocol that was adopted in 2014 focused on forced labour. On top of that I was offered an internship at the Swedish Embassy in Bangkok, Thailand – a country struggling with its trafficking and forced labour issues, leaving me in perfect conditions to write the master thesis of my life.

1.2 Objective and questions

The objective of this thesis is by reviewing the ILO P029 and R203 to the ILO Convention on forced labour answer the following questions:

- what differentiates the Protocol and the Recommendation from the Conventions 29 and 105 in text and scope;
- what impact will the Protocol and Recommendation have worldwide and nationally in Sweden and in Thailand?

1.3 Delimitations

First, I have chosen to delimit my thesis to only study and analyse written law and answers from interviews with experts on the subject of the ILO Protocol and Recommendation. I will use neither case law nor other aspects of law such as economic or social aspects of law. I will hardly use any doctrine on the matter signed by a specific person simply due to the fact that these Protocol and Recommendation are too newly adopted to have a legitimate amount of doctrine in order to make a trustworthy selection of facts.

Secondly, I have delimited my thesis to two different countries: Sweden and Thailand. Sweden is a country with a legal system and a structure of the society built on a solid ground of human rights. Sweden is a country with a history of strong trade unions and other workers' organizations. Additionally, Sweden is an industrialized country, leaving Sweden with a specific type of forced labour issues. The other country, Thailand, is a sending, transit and destination country of trafficking in victims of labour purposes. Additionally, Thailand does not have a history of strong labour

rights – leaving the two countries with very different issues and probably different views on how to address and use the P029 and the R203.

Finally, another important delimitation of the thesis is that even though the provisions in the Convention No. 29, Convention No. 105, P029 and R203 are closely interlinked with other civil liberties, such as freedom of thought or expression, the focus is solely on the abolition of all forms of forced or compulsory labour and therefore; this thesis will solely be focused on this as well.

1.4 Theory

I will use the preparatory work of the Protocol and the Recommendation as well as research made by different international organizations. Due to the fact that the ILO is the most important international labour organization – making the ILO the main expert on this matter - documents and research will mainly be documents from the ILO. By using classic legal theory I hope to get a deeper knowledge regarding why the Protocol and the Recommendation were needed now and what differentiates the Protocol and the Recommendation from the previous ILO Conventions on forced labour.

I will also use documents describing the current situation of the two countries I have chosen – Sweden and Thailand. Here I will use both ILO reports, due to the already mentioned reasons in a combination with United Nation (UN) reports. All of these reports and documents will be used in order to write in part about the current situation worldwide and nationally in both Sweden and Thailand, as close to the reality as possible.

By having both the deeper information on the Protocol and the Recommendation in combination with the information on the current international situation as well as the national situation of Sweden and Thailand, I will do an analyse of the potential outcome of the Protocol and the Recommendation, and therefore, be able to make a “forecast” on the consequences, as well as the potential ratification made by Sweden and Thailand.

1.5 Methodology

I have mostly used a descriptive explanative and evaluative method, describing explaining and evaluating the important issues in details using the classic legal theory of preparatory work, the text of the Conventions,

the text of the Protocol and the text of the Recommendation, as well as short descriptions of other relevant international and regional legal instruments. I have also used a descriptive method describing the current situation regarding forced labour internationally and nationally in Sweden and in Thailand.

I have used an evaluating method to make an analysis of the potential outcome of the Protocol as well as the Recommendation both in Sweden and in Thailand.

I have used a qualitative and structured interviewing method, where I have interviewed both via telephone, via Skype, and in person, key persons in Thailand and Switzerland with great knowledge of the current situation of the country regarding forced labour and persons with great knowledge of the ILO and the adoption of the ILO P029 and R203. I wanted to interview important persons regarding the situation in Sweden as well, however I did not get any response from the people I asked to interview and I felt satisfied with the information I could find online. The preferable methodology would have been to have all interviews in person to ensure answers would be more fully answered and less misunderstood, however, this was not possible. When analysing the interviews I have however taken those issues into account. The expectation on the qualitative interview method part was to give the thesis a certain depth and understanding that is hard to reach solely through analysis of written documents, of which there is not a large amount due to the nature of the newly adopted Protocol and Recommendation. It is also a way of getting the personal stories of the situation and the acclimatisation of the Protocol and Recommendation from both countries.

2 International Labour Organization

The International Labour Organization or the ILO is the organization that created and wrote the basic C29 and the Protocol to Convention No. 29 and the Recommendation for the Protocol; it is therefore important to understand how this organization works.

2.1 History and structure

The ILO was created in 1919, as a part of the Treaty of Versailles.⁹ At this time there was a pressing need for social justice and protection of workers in industrialized countries as well as an increasing understanding of the need to have global cooperation to be able to obtain similarity of working conditions in the competing markets.

The driving forces for the creation of the ILO ascended from “security, humanitarian, political and economic considerations”¹⁰. This is demonstrated in the preamble of the text of the Constitution of the ILO.¹¹ The ILO started out strong from the beginning having had already during the first International Labour Conference¹² (ILC) adopted six International Labour Conventions¹³. In 1926 a Committee of Experts was set up as a supervisory system of ILO standards. This Committee exists today and is presenting its own report each year to the Conference.¹⁴ In 1944 the delegates of the ILO adopted the Declaration of Philadelphia, which was later incorporated as an annex to the Constitution. The Declaration of Philadelphia constitutes the Charter of aims and objectives of the ILO to this day.¹⁵

In 1949 the ILO became a specialized agency of the, then, newly formed United Nations (UN).¹⁶ During the time of 1948 to 1970 the number of Member States gradually expanded, the budget grew five-fold and the numbers of officials quadrupled which made the Organization become

⁹ ILO website, <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>, *first section*, retrieved on 12th of January 2015

¹⁰ *Ibid.*

¹¹ The preamble of the ILO Constitution, *Versailles 1919*, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_192621.pdf

¹² Held in Washington in October 1919

¹³ Dealing with working hours in industry, unemployment, minimum age for young persons in industry, night work for women, maternity protection and night work for young persons in industry

¹⁴ ILO website, <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>, *section of “Early days”*, retrieved on 12th of January 2015

¹⁵ *Ibid. section of “Depression and war”*

¹⁶ *Ibid.*

universal in character.¹⁷ The ILO, as an organization, won the Nobel Peace Prize in 1969¹⁸ – the same year the Organization celebrated its 50th anniversary.

Already from the beginning, the ILO has had a unique¹⁹ structure; a tripartite structure, meaning that the ILO consists of governments, employers, and workers. This gives the ILO its specific character and expertise on issues and questions.

2.2 Process of a legal document

The ILO researches, drafts, adopts and supervises documents and standards. The ILO realizes its work through three main bodies; the International Labour Conference²⁰ (ILC); the Governing Body²¹ (GB); and the International Labour Office²² (the Office).²³ The ILC and the GB consist of governments', employers' and workers' representatives.

The genesis of a new document is often a growing international concern about a specific issue e.g. the prohibition of forced labour needs to be enhanced. The GB agrees to put an issue on the agenda of a future ILC. The International Labour Office then prepares a report that analyses the laws and practices of Member States regarding the issue. This report circulates among the Member States and workers' and employers' organizations for input and comments. The comments are then analysed by the Office and the proposed conclusion are prepared and the first discussion of the proposed conclusions at the International Labour Conference follows.

¹⁷ ILO website, <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>, section of "The Post-War Years", retrieved on 12th of January 2015

¹⁸ The Nobel prize website, http://www.nobelprize.org/nobel_prizes/lists/all/index.html, retrieved on 12th of January 2015

¹⁹ ILO website, <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>, first section, retrieved on 12th of January 2015

²⁰ The International Labour Conference, often called international parliament of labour, with some 4 000 delegates and participants is hosted annually in Geneva. During this conference, which requires every country to contribute with at least four votes²⁰, (extra footnote notation) usually two from the government, one from the employees and one from the employers, the ILC adopts standards and other instruments, budgets and major policies are set. The ILC is also a forum for discussion of key social and labour question.

²¹ The Governing Body meets three times a year in Geneva and is the executive council of the ILC. The GB takes decisions on ILO policy and establishes the programme and budget, which later on is submitted to the ILC to adopt.

²² The International Labour Office does technical work, research, statistics and assistance. The Office is responsible for the management of details of the policies set at the ILC.

²³ ILO website, <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm>, retrieved on 17th of January 2015

After the discussion the Office prepares a report with a summary of the discussion and drafts an instrument. This report is then sent to Member States, employers' and workers' organizations for comments. Further on, the Office prepares a revised draft instrument. This leads to the second discussion in the ILC, but this time of the draft instrument. The ILC votes about the adoption of the instrument, which requires a two-thirds majority; this makes the adopted standards an expression of universally acknowledged principles.²⁴

The ILO Member States are required to submit any Convention (or Recommendation) adopted at the ILC to their national authority for a decision about ratification or implementation. Normally, an adopted Convention comes into force for a given country 12 months after being ratified, and it comes into force generally after receiving a second ratification.²⁵

In order to ensure that the Member States are implementing the Convention or Protocol they have ratified the ILO has a supervisory system that is unique at the international level.²⁶ There are two kinds of supervisory mechanisms within the ILO: the regular system of supervision and the special procedures. The regular system of supervision is an examination by two ILO bodies. It is an examination of periodic reports sent by the member state on the application in law and practice or a report on observations sent by the workers' organization and/or the employers' organization.²⁷ Regarding the special procedures, they are based on submission of a representation or a complaint. There are three special procedures; the procedure for representation²⁸; the procedure for complaints²⁹; and the special procedure for complaints regarding freedom

²⁴ ILO website, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm>, retrieved on 18th of January 2015

²⁵ *Ibid.* section "ratification", retrieved on 18th of January 2015

²⁶ ILO website, <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>, retrieved on 17th of January 2015

²⁷ ILO website, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>, retrieved on 17th of January 2015

²⁸ Governed by Articles 24 and 25 of the ILO Constitution. It grants a group of employers or of workers the right to present to the Governing Body a representation against any Member State that has "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". ILO website, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/representations/lang--en/index.htm>, retrieved on 18th of January 2015

²⁹ Governed by Articles 26 to 34 of the ILO Constitution. It grants a Member State the right to make a complaint against another Member State – if both Member States have ratified the Convention the complaint is about. ILO website, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm>, retrieved on 18th of January 2015

of association³⁰.³¹ The ILO is willing to assist the Member States through social dialogue as well as technical assistance.

³⁰ Governed by the Committee on Freedom of Association (CFA). CFA examines complaints about violation of freedom of association, no matter if the country has ratified the convention or not. ILO website, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm>, retrieved on 18th of January 2015

³¹ ILO website, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang-en/index.htm>, retrieved on 18th of January 2015

3 Convention No. 29 concerning forced or compulsory labour, 1930

3.1 Background, scope and method of application

The Convention³² concerning Forced or Compulsory Labour or *Convention No. 29* was adopted in Geneva, Switzerland, on the 28th of June 1930 during the 14th ILC session. It entered into force on the 1st of May 1932 and is still a used instrument. This Convention is considered to be one of the fundamental conventions of the ILO. A total of 177³³ out of the 185 ILO Member States have ratified the Convention³⁴, however, among the States that have not ratified are China³⁵ and the United States^{36 37}.

3.2 Content

3.2.1 Definition of forced or compulsory labour

Article 2(1) of Convention No. 29 defines forced or compulsory labour as:

“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”³⁸

³² ILO Convention No. 29, *Geneva, 1930*, accessible at ILO website, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

³³ States that have not ratified the Convention; Afghanistan, Brunei Darussalam, China, Republic of Korea, Marshall Islands, Palau, Tuvalu and United States

³⁴ as of 29th of January 2015

³⁵ China has ratified Convention no 182 – Worst Forms of Child Labour Convention from 1999, but no other Forced Labour Convention
http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404

³⁶ Nevertheless, The United States has ratified the Convention no 105 – Abolition of Forced Labour Convention from 1957 and the Convention no 182 – Worst Forms of Child Labour Convention from 1999
http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871

³⁷ ILO website,
http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174 and
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INST_RUMENT_ID:312174:NO, retrieved on 29th of January 2015

³⁸ C29 Art. 2(1)

The definition is intentionally wide in order to not let the Member States be able to interpret the Convention in a way that will limit the scope. By using the wording *all work or service*³⁹ Convention No. 29 has included work regardless of industry or sector. This wording even includes the informal sector; the term *any person* includes all human beings regardless of sex, age, or nationality⁴⁰. *Voluntarily offer* refers to the freely given consent of workers to enter into employment and to leave it at any time with notice of reasonable length.⁴¹ The two main elements of the definition of forced or compulsory labour are the lack of valid consent – “*has not offered himself voluntarily*” and the threat of penalty – “*under the menace of any penalty*”.⁴²

3.2.2 Exceptions to the definition of forced or compulsory labour

The Convention No. 29 establishes some exceptions to Article 2(1) in Article 2(2). The exceptions are; compulsory military service⁴³; normal civic obligations⁴⁴; work as a consequence of a conviction in a court of law⁴⁵; cases of emergency⁴⁶; minor communal services⁴⁷; imposition of labour for

³⁹ ILO General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B), “Giving globalization a human face”, Geneva, 2012, accessible at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf, para. 262, this should be distinguished from “education or training”

⁴⁰ *Ibid.* para. 262, meaning that the Convention is applicable to migrant workers as well

⁴¹ *Ibid.* para. 271

⁴² ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 1 – “the international legal definition”, retrieved on 17th of March 2015

⁴³ C29, Art. 2(2)(a) “any work or service exacted in virtue of compulsory military service laws for work of a purely military character”

⁴⁴ *Ibid.* Art. 2(2)(b) “any work or service which forms part of the normal civic obligation of the citizens of a fully self-governing country” This should be understood in a very restricted way according to General Survey, para. 277. There are three kind of normal civic obligations; compulsory military service, work or service in cases of emergency and “minor communal services”

⁴⁵ C29, Art. 2(2)(c) Compulsory labour of convicted persons is excluded from the scope of the Convention only if it is “carried out under the supervision and control of a public authority” and such persons are not “hired to or placed at the disposal of private individuals, companies or associations” the two conditions apply cumulatively. It is permissible to perform work during the time spent in prison, however, the consent to this should be free and informed without subjected to pressure, consequently this consent should be in writing as explained in General Survey, para. 279

⁴⁶ *Ibid.* Art. 2(2)(d) “any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population” this applies in restricted circumstances, the

public works or services and other specified purposes⁴⁸; national service obligations⁴⁹.

3.2.3 Freedom of workers to terminate employment and its restrictions

One of the prerequisites for a job not to be considered as forced or compulsory labour is the freedom of the worker to be able to terminate the employment, which is not mentioned explicitly in the Convention No.29. Nevertheless, the Committee of Experts on the Application of Conventions and Recommendations (hereafter *the Committee*) of the ILO General Survey from 2012 has laid down some provisions regarding this; the worker needs to give a notice with reasonable length⁵⁰, which also includes military services in peacetime.⁵¹ The most vulnerable workers regarding the abuse of their freedom of termination employment are within the domestic sector and migrant workers. The Committee has

enumeration in the Convention is an indication of the restricted character as noticed in General Survey, para. 280

⁴⁷ *Ibid.* Art. 2(2)(e) minor communal services are excluded from the scope of the Convention if “performed by the members of the community in the direct interest of the said community” and “can therefore be considered as normal civic obligations incumbent upon the members of the community” and “that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services”. The Committee of Experts on the Application of Conventions and Recommendations (hereafter, *the Committee*) has drawn attention to some criteria which determines the limit of this exception; the services must relate to primarily to maintenance work and the service needs to be “communal service” performed “in the direct interest of the said community” and not benefit a wider group and the members of the community must “have the right to be consulted in regard of the need for such services”. All of these criteria are noticed in the General Survey, para. 281

⁴⁸ The Committee noted in 2007 General Survey that the view of some compulsory labour on the population could be called up for a limited period of time, e.g. for construction work and maintenance work of public buildings and roads, bridges etc – this is said in General Survey, para. 282. Regarding compulsory cultivation (such as using compulsory labour for purposes of economic development) the Committee has considered, according to General Survey, para. 283, to fall outside of the Convention as an emergency measure – making compulsory cultivation incompatible with both C29 and C105. Some states claims that some compulsory work needs to be done due to public interest; “where the mobilization of civilian population may be ordered in the event of serious economic crisis” General Survey, para. 284) this is however, is, in most cases, considered to be breaching the two Conventions. In all cases compulsory work due to emergencies should be terminated by a formal and public decision after a short period of time. During 2007 and 2012 the Committee has struggled especially with Burma/Myanmar with its imposing compulsory labour on the population – including children, see General Survey, para. 286-287.

⁴⁹ As regards “national service obligations” imposes outside emergency situations. The practice of this is that these non-military national service activities applies only in cases of emergency “or in respect of vocational training” as explained in General Survey, para. 288. This should clearly be reflected in the national legislation.

⁵⁰ What is reasonable length differentiates from State to State, General Survey, para. 290

⁵¹ General Survey, para. 290

requested governments to adopt provisions to ensure these specific groups protection in this matter.⁵²

3.2.4 Concepts relating to forced or compulsory labour

It is important to clarify definitions of different concepts closely related to forced or compulsory labour. Firstly, forced or compulsory labour should not be confused with exploitative work conditions or other labour law violations. The working conditions can be very bad without being classified as forced or compulsory labour. To be considered to be forced or compulsory labour the elements of a lack of valid consent and a threat of penalty must exist^{53 54}.

The concepts of trafficking in persons and forced or compulsory labour are closely linked. Trafficking in persons is best described in the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children *or the Trafficking Protocol*.⁵⁵ This definition also includes cases that do not involve any labour e.g. forced marriage and illegal organ trade.⁵⁶ Trafficking as such is not mentioned in Convention No. 29, however, when discussing forced labour arising from trafficking the Committee is using the definition of trafficking in persons as in the Trafficking Protocol.⁵⁷ The combination of the Trafficking Protocol and Convention No. 29 makes it clear that trafficking in persons for the purpose of labour exploitation is to be seen as within the scope of Article 1(1) of Convention No. 29. Since trafficking in persons are closely linked with Article 1(1) of the Convention No. 29 makes Article 25 applicable as well – stating that trafficking in persons should be seen as a penal offence. Most countries that have ratified the Convention have national penal legislation that is sufficient.⁵⁸ The prevention of trafficking in persons and the protection of the victim is necessary in order to eliminate trafficking in

⁵² General Survey, para. 290, footnote 664 explaining the issue regarding the national legislation of Kuwait excluding domestic workers from the scope and protection of their Labour Code.

⁵³ Read more about this in Chapter 3.2.1 "Definition of forced or compulsory labour" p. 18

⁵⁴ ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 1 "Forced labour and sub-standard or exploitative working conditions", retrieved on 17th of March 2015

⁵⁵ Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, *New York*, 2000, accessible at: <http://www.osce.org/odihr/19223?download=true> or

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, read more about this in Chapter 7.1.2.1 "International instruments" p. 45

⁵⁶ General Survey, para. 299

⁵⁷ *Ibid.* para. 297,

⁵⁸ General Survey, para. 298, some countries are in the process of adopting such laws that prohibits trafficking in persons, either through a criminal code or a specific anti-trafficking code

persons, this makes it crucial for State to adopt national legislation. Protocol of 2014 to the Forced Labour Convention, 1930 or P029 was adopted in 2014, and it reaffirms the definition of forced and compulsory labour contained in Convention No. 29 but with the difference that it is emphasizing the fact that trafficking in persons is part of the definition by stating that the measures taken under the Convention “shall include specific action against trafficking in persons for the purpose of forced or compulsory labour”⁵⁹.

Slavery and slavery-like practices are another form of forced or compulsory labour. One situation of slavery is that the conditions are transmitted by birth to individuals, who are being forced to work for their “master(s)”. All forms of slavery and slavery-like practices are forms of forced or compulsory labour.⁶⁰ Almost every national legislation has criminalized slavery and slavery-like practices; nevertheless, some slavery-like practices are hard to get rid of, since slavery often is rooted in long-held traditions and often affects certain ethnic groups e.g. the Committee in the ILO General Survey have struggled with the situation in Nigeria, where the national anti-slavery legislation does not dislodge to the strong cultural patterns where slavery is transmitted by birth to individuals – forcing certain ethnic groups to work without payment.⁶¹

Debt bondage is also a form of forced or compulsory labour. Often the situation of bonded labour begins with the worker borrowing money from the employer and agrees to work off the debt in exchange. Usually the work is very low paid or the debt is inflated, making the worker forced to continue work for that employer. In some cases the debt is inherited from the workers parents.⁶² This practice is widespread and is affecting a significant number of persons, and most of them are the poorest in society.⁶³ The Committee in the ILO General Survey have consequently “requested governments concerned to take all the necessary measures to identify, release and rehabilitate bonded labourers and to punish perpetrators, by strengthening labour inspection and law enforcement machinery, conducting a nationwide statistical survey on bonded labour and imposing adequate penal sanctions”⁶⁴. To impose adequate penal

⁵⁹ ILO Protocol of 2014 to the Forced Labour Convention, 1930, *Geneva*, 2014, Article 1.3, on ILO website, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

⁶⁰ ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 1 “Master and slave case”, retrieved on 17th of March 2015

⁶¹ General Survey, para. 293 and footnote 678

⁶² ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 1 “Forced labour and bonded labour”, retrieved on 17th of March 2015

⁶³ General Survey, para. 294

⁶⁴ *Ibid.* para. 294

sanctions is mandatory according to Article 25 of Convention No. 29. The most vulnerable to debt bondage is members of indigenous communities.⁶⁵

Continuously, forced or compulsory labour can happen to children as well, according to ILO's most recent global estimate of forced labour, a total of 26 % of all forced or compulsory labour victims are children under the age of 18.⁶⁶ In the case of child labour and forced or compulsory labour some special considerations are required: the consent of the parents (on the child's behalf); the penalty can be imposed on parents, rather than directly on the child; and children may be in forced or compulsory labour as a result of their parents' forced labour situation. It is important to know that all child labour is not considered to be forced or compulsory labour.⁶⁷

The last concept to be addressed in this brief introduction of definitions is forced or compulsory labour in regards to prison labour. Prison labour is not considered to be forced or compulsory labour if the person was convicted in a court of law, the person's work is supervised by a public authority *and* the person is not forced to work for private individuals or companies without a free, informed and formal consent from the worker.⁶⁸ If any of these prerequisites are not fulfilled the prison labour is considered to be forced or compulsory labour.

3.2.5 Law enforcement

By ratifying the forced labour Conventions⁶⁹ States are obliged not to engage in certain types of actions and obliged to adopt certain measures⁷⁰. Additionally, Article 25 of Convention No. 29 states:

*"The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced."*⁷¹

Meaning that states are obliged enforce the prohibition of forced or compulsory labour through three requirements: by criminalising forced labour; by imposing adequate penalties; and by strictly enforcing the

⁶⁵ General Survey, para. 294

⁶⁶ ILO Global Estimate of Forced Labour "Results and Methodology", Geneva, 2012, accessible at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf

⁶⁷ ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 1 "Forced labour of children", retrieved on 17th of March 2015

⁶⁸ *Ibid.*

⁶⁹ C29 and C105

⁷⁰ Both in law and in practice

⁷¹ C29, Art. 25

penalties.⁷² Most countries have national prohibitions of forced or compulsory labour, however the penalties must be adequate and reflect the seriousness of the crime. According to the Committee, sanctions consisting of fines or short prison sentences do not constitute an effective penal sanction.⁷³ The Committee emphasises the importance of having precise penal provisions since penal law in general is interpreted in a strict way.⁷⁴ In order to have effective penal sanctions, States need to have effective law enforcement bodies, mainly through public authorities such as the police and judiciary. Labour inspection is one effective way, if the inspectors are able to travel rapidly, effectively and safely over the national territory.⁷⁵ Other important actors are the law enforcement entities and the investigatory authorities i.e. when being able to conduct rapid, effective and impartial investigations and initiating prosecutions when noticing violations. This is particularly important regarding migrant workers and domestic workers.⁷⁶

It is essential to stress the importance of the prohibition of forced or compulsory labour including prosecution under criminal law for the perpetrators.⁷⁷ In order to ensure the whole procedure of effective penal sanctions it is additionally important to have national courts apply “effective sanctions strictly against persons who exact forced labour”⁷⁸ stressed on obtaining statistical data and other important information regarding these judicial proceedings. The Committee considers that freedom-limiting sentences, e.g. imprisonment, are of symbolic value.⁷⁹

⁷² ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 2 “How does Forced Labour Convention influence national law?” retrieved on 17th of March 2015

⁷³ General Survey, para. 319

⁷⁴ *Ibid.* para. 320

⁷⁵ *Ibid.* para. 321

⁷⁶ *Ibid.* para. 322

⁷⁷ ILO website, <http://apflnet.ilo.org/elearning/m1/player.html>, section 2 “National law and criminal law”, retrieved on 17th of March 2015

⁷⁸ General Survey, para. 323

⁷⁹ General Survey, para. 323

4 Convention No. 105 concerning abolition of forced labour, 1957

4.1 Background, scope and method of application

The Abolition on Forced Labour Convention or *Convention No. 105* was adopted in Geneva, Switzerland, on the 25th of June 1957 during the 40th ILC session. The Convention No. 105 entered into force on 17th of January 1959 and is still an up-to-date instrument. ILO Convention No. 105 is, just as Convention No. 29, seen as one of the fundamental Conventions of the ILO. Out of the 185 ILO Member States, 174⁸⁰ have ratified the Convention⁸¹, which makes the Conventions No. 29 and No. 105 some of the most widely ratified ILO instruments.⁸² Convention No. 105 was designed to supplement Convention No. 29; this is why it is important to evaluate them together in order to get the full scope. However, notably is that, Protocol 29 is an amendment solely on Convention 29. Convention No. 105 is broadening the scope of the prohibition of forced and compulsory labour to include the use of “any form of forced or compulsory labour [...] as a sanction, as a means of coercion, education or discipline, or as a punishment within the meaning of Article 1(a), (c) and (d).”⁸³.

4.2 Content

The aim of both Convention No. 29 and No. 105 is to guarantee freedom from forced labour in all its forms.⁸⁴

4.2.1 Expression of political views

Article 1(a) of Convention No. 105 prohibits forced or compulsory labour as a sanction against someone’s expressed political view.

⁸⁰ As of 4th of February 2015. States that have not ratified the Convention; Brunei Darussalam, China, Japan, Republic of Korea, Lao People's Democratic Republic, Marshall Islands, Burma/Myanmar, Palau, Timor-Leste, Tuvalu and Viet Nam

⁸¹ ILO website,

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312250:NO and

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250 retrieved on 4th of February 2015

⁸² General Survey para. 252 and 908 et seq.

⁸³ *Ibid.* para. 300

⁸⁴ *Ibid.* para. 253

*“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour— (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;”*⁸⁵

This Article includes a range of activities, which must, according to the 2012 ILO General Survey, “be protected from punishment involving forced or compulsory labour thus comprises the freedom to express political or ideological views [...] as well as various other generally recognized rights, such as the right of association and of assembly”⁸⁶. Most national legislation worldwide contain freedoms of expression, thought, peaceful assembly, association as well as the right to a fair trial; however, some limitations must be accepted as normal safeguards against their abuse.⁸⁷ Nevertheless, the measures, which are legal to take against Article 1(a), must be restricted to a limited time and scope and should overall only be used in a strict sense of term during an emergency.⁸⁸ In many parts of the world freedom of expression still remains subject to sanctions involving compulsory labour, a common restriction of freedom of expression is “public interest”.⁸⁹ Freedom of expression is not an absolute right and it is therefore possible for states to limit the scope of the freedom. It is when the sanctions related to freedom of expression are forced or compulsory labour that they fall within the scope of Convention No. 105.

4.2.2 Economic development

Article 1(b) of Convention No. 105 explicitly prohibits the use of forced or compulsory labour as a method of mobilizing economic development.

*“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour— (b) as a method of mobilising and using labour for purposes of economic development;”*⁹⁰

Due to the wording “mobilising” and “economic development” the scope of this Article is limited to circumstances where recourse to forced or compulsory labour has a certain quantitative significance and is used for

⁸⁵ ILO Convention No. 105, Geneva, 1957, accessible at ILO website, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105 Article 1(a)

⁸⁶ General Survey, para. 302

⁸⁷ E.g. hate speech, incitements of violence, force majeure etc. more explained in General Survey, para. 303-304

⁸⁸ General Survey, para. 304

⁸⁹ *Ibid*, para. 304, 306

⁹⁰ C105 Art. 1(b)

economic ends.⁹¹ During the last decades progress has been made in decreasing forced or compulsory labour for the purpose of economic labour. However, it is still possible to find national legislation regarding mobilising compulsory labour referring to the needs of economic development.⁹²

4.2.3 Labour discipline

Article 1(c) of Convention No. 105 prohibits the use of forced or compulsory labour as a mean of labour discipline, meaning that an employer is not permitted to force an employee to work under forced or compulsory labour circumstances as a countermeasure of breaches of labour discipline.

*“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—
(c) as a means of labour discipline;”*⁹³

In previous ILO General Surveys it has been observed that a large majority of states have “no legal provisions permitting recourse to forced or compulsory labour as a mean of labour discipline”⁹⁴. Breaches of labour disciplines usually give rise to disciplinary sanctions or other kinds of sanctions e.g. monetary sanctions, not obligations to execute additional labour. The scope of the Article does not cover other sanctions than those involving forced or compulsory labour. Forced or compulsory labour as a labour discipline is still used, especially in specific sectors e.g. public service and merchant shipping.⁹⁵ Many of the public service labour disciplines are connected to the protection of public interest.⁹⁶ Therefore, the Committee of Experts on the Application of Conventions and Recommendations has distinguished between penalties “imposed to enforce labour disciplines as such” and “imposed for the protection of a general public interest”.⁹⁷ The Committee have decided that Convention No. 105 does not prohibit “the imposition of sanctions (even involving compulsory labour) on persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of essential services, or which are committed either in the exercise of functions that are essential to safety or in circumstances where life or health are in danger. Consequently, penal

⁹¹ General Survey, para. 308

⁹² *Ibid.* para. 308

⁹³ C105 Art. 1(c)

⁹⁴ General Survey, para. 309

⁹⁵ *Ibid.* para. 310

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

provisions of this kind are not incompatible with the Convention.”⁹⁸. Regarding merchant shipping, the Committee noted in previous ILO General Surveys that a “considerable number of countries” have legal provision permitting the imposition of sanctions of labour disciplines involving compulsory labour.⁹⁹ Again, the Committee have made a distinction between provision relating to acts tending to endanger the ship or the life or health of persons¹⁰⁰ and the provisions related to labour discipline breaches as such¹⁰¹. The latter is prohibited according to Convention No. 105, however, it still exists.¹⁰²

4.2.4 Participation in strikes

Article 1(d) of Convention No. 105 prohibits sanctions involving any form of forced or compulsory labour due to participation in strikes:

*“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—
(d) as a punishment for having participated in strikes;”*¹⁰³

Importantly, Convention No. 105 does not prohibit sanctions due to breaches of public order committed in connection with strikes; any¹⁰⁴ sanction related to this falls outside the scope of Convention No. 105.¹⁰⁵ It should be noticed that Convention No. 105 is not an instrument to regulate strikes in general, Convention No. 105 is only applicable in the sense of forced or compulsory labour as a sanction in relation to strikes.

4.2.5 Discrimination

Article 1(e) of Convention No. 105 prohibits the use of forced or compulsory labour as a means of certain kinds of discrimination:

*“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—
(e) as a means of racial, social, national or religious discrimination.”*¹⁰⁶

⁹⁸ General Survey, para. 310

⁹⁹ *Ibid.* para. 312

¹⁰⁰ Which are not covered by the scope of Convention No. 105

¹⁰¹ Which are covered by the scope of Convention No. 105 and therefore, prohibited accordingly

¹⁰² General Survey, para. 312

¹⁰³ C105 Art. 1(d)

¹⁰⁴ Even involving compulsory labour

¹⁰⁵ General Survey, para. 313

¹⁰⁶ C105 art. 1(e)

This provision gives certain groups in society, to which forced or compulsory labour is used more frequently, protection where Articles 1(a), (c) and/or (d) otherwise would not cover.¹⁰⁷ Of note, Convention No. 105 does not deal with the substance of issues of discrimination as such. The purpose is solely to limit the use of forced and compulsory labour as sanctions for specific groups. The phenomenon of using forced or compulsory labour as a sanction and a means of discrimination seems to be rare nevertheless it still exists.¹⁰⁸

¹⁰⁷ General Survey, para. 316

¹⁰⁸ *Ibid.* para. 316

5 Protocol of 2014 to the Forced Labour Convention, 1930

5.1 Background, scope and method of application

Protocol of 2014 to the Forced Labour Convention, 1930 (hereinafter P029) was adopted in Geneva, Switzerland, on the 11th of June 2014 during the 103rd ILC Session. The Protocol needs to be ratified by two ILO Member States in order to enter into force. This is yet to come¹⁰⁹ since the Protocol is newly adopted, however, P029 got its first ratification on the 14th of May 2015 by Niger. P029 is a supplement to Convention No. 29 and therefore it is only possible for ILO Member States that already ratified Convention No. 29 to ratify P029.¹¹⁰ The purpose of P029 is to adapt and partly change Convention No. 29 to be more relevant in the fight against the modern issues of forced or compulsory labour.¹¹¹ The aim of the instrument is to “establish standards and provide guidance to Member States regarding prevention, victim protection and compensation for forced labour, and other relevant measures to address implementation gaps.”¹¹² P029 was adopted together with the Recommendation on supplementary measures for the effective suppression of forced labour (hereinafter R203). The nature of the P029 and the R203 was decided after a questionnaire, approved by the ILO Governing Body, structured by the ILO Office and presented to Member States, showed that most Member States was positive to the form of a legally binding protocol with obligations together with a non-binding recommendation to provide guidance regarding legislation, law enforcement, practises and national policies.¹¹³ This setting of form was decided by the ILC at its 103rd Session in June 2014.¹¹⁴ The Protocol supplements a fundamental ILO Convention, which means that ratifying Member States will be required to submit a report every three years regarding the implementation and measures taken in order to

¹⁰⁹ As of this date 22th of May 2015,

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672

¹¹⁰ ILO brochure *Strengthening the global fight against all forms of forced labour – THE PROTOCOL to the Forced Labour Convention, Geneva, 2015* p. 2

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_321414.pdf, retrieved on 26th of February 2015

¹¹¹ ILO Report IV (1) *Strengthening action to end forced labour*, International Labour Conference 103rd Session, Geneva, 2014 p. 67

¹¹² Report IV (1) p. 68

¹¹³ *Ibid.* p. 67

¹¹⁴ Protocol of 2014 to the Forced Labour Convention, 1930, Geneva, 2014, accessible at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029, retrieved on 26th of February 2015, preamble

implement P029 and the ILO supervisory body will examine these reports. Since the Protocol is supplementing a fundamental ILO Convention, non-ratifying ILO Members States are required to participate in the annual reporting and review process of the Protocol that is set out in the follow-up to the ILO Declaration of 1998 on fundamental principles and rights at work.¹¹⁵

5.2 Content

Together, P029, R0203, Convention No. 29 and Convention No. 105 aim to provide all actors with a “comprehensive strategy and a set of tools to address forced labour in a modern-day context”.¹¹⁶ The structure of P029 is set to have a very comprehensive approach.¹¹⁷ The main provisions of P029 are; effective measures¹¹⁸; prevention¹¹⁹; protection¹²⁰; and remedies¹²¹. These provisions are decided upon in order to address gaps in implementation of Convention No. 29.¹²² The definition of forced or compulsory labour of Convention No. 29 is reaffirmed in P029. However there is an explicit emphasis on the fact that trafficking in persons for the purpose of forced or compulsory labour is within the scope of Convention No. 29 by saying in Article 1(3) that “measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour”.¹²³ Marja Paavilainen¹²⁴ explained in an interview that it is important to address forced labour and trafficking in persons in a coordinated manner. The labour approach introduced in the P029 is important in addressing structural factors that sustain forced labour and trafficking in persons.¹²⁵

¹¹⁵ ILO Declaration on Fundamental Principles and Rights at Work, *Geneva*, 1998, accessible at: http://www.ilo.org/declaration/info/publications/WCMS_095898/lang-en/index.htm, retrieved on 14th of March 2015, and the ILO brochure, p. 3

¹¹⁶ ILO Special Action Programme to combat Forced Labour (SAP-FL) High-Lights, Issue February 2015 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_343802.pdf p. 3, retrieved on 26th of February 2015

¹¹⁷ From my interview with Alix Nasri, ILO Geneva Headquarter, Technical Officer with Focal point Laws and policies and the Fair Recruitment Initiative, on the 25th of February 2015

¹¹⁸ P029 Art. 1 (1)

¹¹⁹ *Ibid.* Art. 2

¹²⁰ *Ibid.* Art. 3 and 4 (2)

¹²¹ *Ibid.* Art. 4 (1)

¹²² *Ibid.* preamble

¹²³ *Ibid.* Art. 1 (3)

¹²⁴ Chief Technical Adviser at the ILO Decent Work Technical Support Team for East and South-East Asia and the Pacific

¹²⁵ Interview with Marja Paavilainen, on the 21st of April, 2015

5.2.1 Effective measures

P029 requires states to take effective measures to prevent and eliminate forced or compulsory labour, to provide victims protection and access to effective remedies, and to sanction perpetrators. Article 1 also requires ILO Member States to develop a national policy and plan of action to suppress forced and compulsory labour:

“1. In giving effect to its obligations under the Convention to suppress forced or compulsory labour, each Member shall take effective measures to prevent and eliminate its use, to provide [¹²⁶] to victims protection and access to appropriate and effective remedies, such as compensation [¹²⁷], and to sanction the perpetrators of forced or compulsory labour.

*2. Each Member shall develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers’ and workers’ organizations, which shall involve systematic action by the competent authorities and, as appropriate, in coordination with employers’ and workers’ organizations, as well as with other groups concerned.[¹²⁸]
[...]¹²⁹*

Article 5 of P029 provides that:

“Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.”¹³⁰

This provision is emphasising the importance and the inevitable adaptation to globalisation by requiring Member States to cooperate in order to prevent and eliminate forced or compulsory labour.

¹²⁶ The Government member of Greece, speaking on behalf of EU Member States introduced a sub amendment to add after the terms “provide...protection” the term “effective and sustained” to reflect on Art. 25 of C029, however, the Government member of United Arab Emirates, speaking on behalf of the Gulf Cooperation Council (GCC) commented that its wording already existed in C029 and therefore did not need to be mentioned in P029 since the objective of the protocol was to “promote action to address implementation gaps”, 103rd ILC Session para. 255 and 272

¹²⁷ The Government member of Brazil, speaking on behalf of Group of Latin American and Caribbean Countries (GRULAC) suggested to insert the words “by those found responsible by the State” after “compensation”, this suggestion was not adopted, 103rd ILC Session para. 252

¹²⁸ The Government member of the United Arab Emirates, speaking on behalf of the GCC, proposed to delete this paragraph, however, both the Worker and the Employer Vice-Chairperson as well as several other Government members opposed this suggestion since this is a main role of having a protocol to Convention No. 29 was to bridge the implementation gaps and this provision provided the framework for implementation.

¹²⁹ P029 Art. 1 (1) and (2)

¹³⁰ *Ibid.* Art. 5

5.2.2 Prevention

The ILO prepared in 2014 a summary on the law and practices in the ILO Member States in a report called “Report IV (1): Strengthening action to end forced labour” (hereinafter called the Report IV (1)) for the preparation of the 103rd ILC session. This Report IV (1) emphasises the importance of attacking the root causes with effective prevention strategies rather than only treating the symptoms. Further, prevention is widely recognized as being crucial for the sustainable elimination of forced labour. Without solving the root causes the problem will never be solved simply because there will constantly be a new person replacing the released one.¹³¹ Convention No. 29 implies the necessity of prevention but it is not explicitly mentioned. P029, however, explicitly mentions prevention as one of the main provisions. The prevention provision is very thorough which made some¹³² Government members sceptical of it and submitted an amendment to delete it.¹³³ The Worker Vice-Chairperson strongly opposed this amendment since prevention measures are one of the main purposes of the Protocol and therefore should be mentioned in the text. The Employer Vice-Chairperson did not agree with the amendment and neither did the Government members of Brazil representing (GRULAC), Greece representing (EU Member States) nor Namibia representing (Africa Group). The amendment was not adopted.¹³⁴ In total, Article 2 is divided into six subparagraphs:

“The measures to be taken for the prevention of forced or compulsory labour shall include:

- (a) educating and informing people, especially those considered to be particularly vulnerable^[135], in order to prevent their becoming victims of forced or compulsory labour; ^[136]

¹³¹ Report IV (1) p. 23

¹³² United Arab Emirates wanted to delete the provision, while India and Sri Lanka wanted to delete it because they believed that Article 2 was too detailed and the details should be included in R203 instead

¹³³ Provisional Record of 103rd ILC Session, Geneva, May-June 2014 “*Fourth item on the agenda: Supplementing the Forced Labour Convention, 1930 (No. 29), to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour*” para. 365

¹³⁴ *Ibid.* para. 366 – 370

¹³⁵ The Government member of Australia introduced the amendment to change “especially at risk” to the current “considered to be particularly vulnerable” in order to enlarge the protection, since “at risk” indicates identification of specific groups due to inherited characteristics that are already exposed to that risk, while “considered [...] vulnerable” encompassed groups that might be exposed to forced labour due to a combination of factors, *Ibid.* para. 371

¹³⁶ The Government member of Egypt proposed an amendment to add “according to the capacity of each country” in order to ensure a progressive manner – this amendment was not seconded and therefore not considered, 103rd ILC Session para. 374 – 375

- (b) [¹³⁷] educating and informing employers^[138], in order to prevent their becoming involved in forced or compulsory labour practices;
- (c) undertaking efforts to ensure that:
 - (i) the coverage and enforcement^[139] of legislation relevant to the prevention of forced or compulsory labour, including labour law^[140] as appropriate, apply to all workers and all sectors of the economy; and
 - (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened^[141];
- (d) protecting persons^[142], particularly migrant workers^[143], from possible abusive and fraudulent practices during the recruitment and placement process;
- (e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour^[144]; and

¹³⁷ The Workers Vice-Chairperson introduced the second subparagraph of Article 2 of P029, explaining that the targeted group for knowledge should be victims and potential victims however, it is also important to educate the employers and especially domestic workers' employers since they are often unaware of the possible indicators of forced labour, *ibid.* para. 376

¹³⁸ The Employer Vice-Chairperson introduced a sub amendment to add "all employers in both the formal and informal sector" to make the wording more encompassing, this was not adopted since this could send the wrong message since most forced labour does not occur in the private sector in the formal economy. The Worker Vice-Chairpersons clarified that the "private employers", that was the initial proposal of the Workers' group, was to refer to employers of e.g. domestic workers. The Governmental member of the United States supported the amendment put forward by the Workers' group as such, however, the sub amendment proposed by the Employers' group raised some questions and difficulties with the possibility to fulfil the obligation. The Government member of India preferred a general reference to "all employers" without any specific focus, which several States was too much obligations to be effective, the governmental member of Australia suggested to only keep "employers" without the "all", this was agreed on, 103rd ILC Session para. 377 – 378, 380, 383, 390, 394 – 401

¹³⁹ The insert of "and enforcement" was presented by the Worker vice-Chairperson, the Employer Vice-chairpersons supported this, as did the Government member of the United States, however the Government member of Indonesia did not agree since this would require changes in national legislation and the Government member of Canada did not agree since she believed it was unnecessary and already covered, *ibid.* para. 402 – 406

¹⁴⁰ The secretariat explained that "labour law" meant that the Member States could apply a broad range of legislation in giving effect to the provision of the Protocol, however labour law (in various forms) was the most suitable legislation to regulate workers' rights, *ibid.* para. 417

¹⁴¹ The Government member of Greece, that was speaking on behalf of EU Member States proposed to have the wording "whenever necessary" in the end of the sentence to allow flexibility at a national level. This was supported by Sweden and Ireland. Regarding Sweden this was "extremely important" as there was no labour inspectorate in Sweden, however the Worker Vice-Chairpersons expressed that the wording "undertaking efforts to ensure that" in the beginning of the subparagraph provided that balance without having the necessity to have the wording "whenever necessary", *ibid.* para. 440 – 441

¹⁴² Changed from workers to persons by an amendment introduced by the Government member of the United States since some individuals might not yet have become workers, 103rd ILC Session para. 447

¹⁴³ The original text was "protecting workers" the initiative to change the wording to "particularly migrant workers" came from the Employers Vice-Chairperson and it was supported by the Workers' group, *ibid.* para. 443 – 444

(f) addressing the root causes and factors that heighten the risks of forced or compulsory labour^[145].¹⁴⁶

Article 2 of P029 is focused solely on preventive measures. According to Alix Nasri¹⁴⁷, the prevention article is innovative in several aspects; the provision on due diligence, the prevention measure in the recruitment process and the focus on the root causes. The first aspect mentioned was the due diligence by the public and private sector, which means that states should now ensure that due diligence is conducted. This means that states should verify that through companies supply chains, all their contractors and all their sub-contractors are free from abusive practices and forced labour practises, this is a key challenge in the 21st century. The underlying spirit of subparagraph (e) is the UN Guiding Principles on Businesses and Human Rights¹⁴⁸ (UNGP), which sets out that the primary duty to protect is essentially a State duty.¹⁴⁹

The due diligence provision is important because the layers of liabilities in the current world are extremely complex. Contractors have subcontractors in many different countries, which makes it important to set international labour standards applicable to companies as well. However, since companies are not able to sign international treaties and other international instruments, the national State needs to ratify, implement

¹⁴⁴ The first draft of the subparagraph was introduced by the Employer Vice-Chairperson and said " Each Member shall undertake national assessments to determine whether forced or compulsory labour exists in their country, and support similar assessments in the private sector, and shall take action to prevent, protect and remedy any forced or compulsory labour that is found" after informal discussions the final wording of the text was introduced by the Government member of the United States and it was supported by Government members of Greece, on behalf of EU Member States, Namibia, on behalf of the Africa group, and the United Arab Emirates, on behalf of the GCC, as well as the Government members of Canada, New Zealand and Sudan, *Ibid.* para. 459 – 463

¹⁴⁵ This was introduced by the Government member of the United States together with the Government member of New Zealand, both the Employer and Worker Vice-Chairpersons stated that they saw no difficulties with the text but they saw no added value either. The Government member of New Zealand stressed that the subparagraph addressed more fundamental issues, the Government member of Turkey and the Government member of Brazil, speaking on behalf of GRULAC supported this amendment, The Government member of Namibia speaking on behalf of the Africa group and the Government of the United Arab Emirates agreed with the Workers' and Employers' groups saying that they did not see the value of this subparagraph, in the end the Workers' and Employers' groups changed their minds and thought it should be part of the paragraph and the amendment was adopted, 103rd ILC Session para. 465 – 477

¹⁴⁶ P029 Art. 2

¹⁴⁷ Technical Officer for the ILO Special Action Programme to Combat Forced Labour

¹⁴⁸ United Nations Guiding Principles on Business and Human Rights - implementing the United Nations "Protect, Respect and Remedy" Framework, *New York*, 2011, accessible at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.df, retrieved on the 14th of March 2015

¹⁴⁹ 103rd ILC session, para. 459

and apply international labour standards. This is why it is important that the due diligence provision is in the Protocol. P029 provides for due diligence¹⁵⁰ one reasonable interpretation of this provision could result in a situation where Contractor A has a Sub-Contractor B in a different country and Sub-Contractor B is violating provisions of P029, and Contractor A can be held responsible for the actions of Sub-Contractor B. This might be a possible scenario since P029 requires that States take measures to ensure that Contractor A can hold Sub-Contractor B responsible. The provision focuses on trying to tackle the different layers of liability issues.¹⁵¹ The second innovative provision is the fair recruitment initiative.¹⁵² The ILO is acknowledging the importance of a fair recruitment by explicitly mentioning this stage of labour in P029. Alix Nasri says that recruitment is a key step in the vulnerability process of forced labour. There are concerns about unscrupulous private employment agencies deceiving workers about their working conditions and wages.¹⁵³ Another current issue is with numerous recruitment agencies charging illegal recruitment fees, meaning that the worker has to pay an unreasonable or illegal fee in order to get the employment. This is sometimes being used in a way to gain power over the workers and many of them will end up in debt bondage situation. The fair recruitment initiative launched by the ILO in 2014 is a multi-stakeholder endeavour aimed at improving the recruitment process, preventing situations of forced labour and reducing the costs of labour migration.¹⁵⁴

The last of the innovative aspects of Article 2 is the stressed focus on the root causes.¹⁵⁵ The idea behind this Protocol is to not only treat the “symptoms” of forced or compulsory labour but to make a sustainable suppression of forced or compulsory labour there is a need to deal with the root causes by trying to direct increased interventions at the early stages of the process, and the underlying causes to forced or compulsory labour. This is important to address but it is not always referred to in international instruments, and according to Paavilainen, international instruments

¹⁵⁰ P029 Art. 2(e) “supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour”

¹⁵¹ Interview with Alix Nasri, on the 25th of February 2015, however P029 does not oblige any companies directly, there are only the parties (i.e. States) to the Protocol that have obligations

¹⁵² P029 Art. 2(d) “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”

¹⁵³ ILO has a convention on this issue – Private Employment Agencies Convention, *Geneva*, 1997 (No. 181), accessible at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C181,/Document, retrieved on 21st of April 2015, which more specifically identifies what a private employment agency is and what measures Member States shall take in order to ensure a safer work environment when it comes to private employment agencies

¹⁵⁴ Interview with Alix Nasri, on the 25th of February 2015

¹⁵⁵ P029 Art. 2(f) “addressing the root causes and factors that heighten the risks of forced or compulsory labour”

addressing these issues are mostly soft law and that the innovative aspect of P029 and R203 is that they are showing both *what to do* and *how to do it* in a combination of P029 being hard law.¹⁵⁶ Finally, another important part of the prevention article is the stressed focus on the knowledge capacity building in combination with the strengthening of labour inspection and other services responsible for implementation of adequate laws.¹⁵⁷

5.2.3 Protection

Article 3 is the protection provision of P029; the text of the provision follows:

“Each Member shall take effective measures for the identification, release, protection^[158], recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.^[159]”¹⁶⁰

Article 3 aims to provide the ILO Member States with the effective measures for identification, release, protection, recovery and rehabilitation of victims as well as protecting victims from punishment for unlawful activities that they were compelled to commit. An interesting aspect of the protection provision is the measures that need to be taken in terms of identification of victims, release, protection and rehabilitation. There is a big issue with victims of forced or compulsory labour that are illegally detained. Most of these issues are related to migrant workers. Migrant workers are in many ways in an especially vulnerable situation, since they often are in a foreign country where they might not understand the language, the legal system and they are not aware of their legal rights as workers e.g. in the Middle East many migrant workers are in a direct legal link with their employer through their work permits. This is what the ILO calls a “system of sponsorship”, meaning that as soon as the migrant worker leaves his or her employer the migrant worker is immediately

¹⁵⁶ Interview with Marja Paavilainen, on the 21st of April 2015

¹⁵⁷ Interview with Alix Nasri, on the 25th of February 2015

¹⁵⁸ The current wording with “protection” was introduced by the Worker Vice-Chairperson with the purpose to add the element of protection, 103rd ILC session para. 459

¹⁵⁹ The Government member of Greece speaking on behalf of EU Member States suggested to add “paying special attention to children, women and other persons at risk” in the end of Article 3, since this would go in line with the Trafficking in Persons Protocol, The Employer Vice-Chairperson on the other hand suggested to add “in their national context including whether they are a sending, transit or receiving country, recognizing that a country could be one or more of these categories at the same time” at the end of Article 3 in order to emphasise that the remedies were depending on the national situation, none of these suggestions was adopted since the all victims of forced or compulsory labour should be covered and there should not be a risk of anyone being subjects to derogation whatsoever *Ibid.* para. 500 – 501, 503

¹⁶⁰ P029 Art. 3

considered to be a criminal under the immigration law since normally the migrant worker needs to obtain the previous approval of the employer to leave the situation. Therefore, migrant workers that are abused by their employer cannot easily leave since they will immediately be seen as criminals under the national immigration laws. This is why this provision exists, in order to force the ILO Member States to consider these people as victims of forced or compulsory labour under the penal code or under the national anti-trafficking laws, depending on legal system. Due to this inherited contradiction this provision aims to make the ILO Member States discuss with the ILO how to effectively protect the victims of forced or compulsory labour and not put the victims in detention due to contradictory provisions in the legal framework, inefficient identification and referral procedures.¹⁶¹

Article 3 should be read together with Article 4(2):

“Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.”¹⁶²

One innovative aspect of this protection provision is that victims should not be punished for the unlawful activities that they were compelled to do in the process of forced or compulsory labour. Currently, victims are being criminalised for activities that they were compelled to do, one of the most common illegal activities that forced or compulsory labourers are forced to do is within sexual exploitation¹⁶³. This is why this provision is important and in combination with the R203 on how to form a legal system in which victims can come forward and not be threatened by the legal system when they complain about violations, makes this provision in theory both innovative and potentially successful.¹⁶⁴

5.2.4 Remedies

Article 4 (1) is the remedy provision of P029; the provision is ensuring victims’ access to appropriate and effective remedies with the wording:

¹⁶¹ Interview with Alix Nasri, on the 25th of February 2015

¹⁶² P029 Art. 4(2)

¹⁶³ e.g. in countries where prostitution is forbidden by law and often punished by the penal codes some victims that were forced to prostitute themselves are punished by the authorities for prostituting themselves and not recognised as victims

¹⁶⁴ Interview with Alix Nasri, on the 25th of February 2015

“Each Member shall ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation.”¹⁶⁵

According to Alix Nasri, this is the first time that an international legally binding instrument on forced labour is calling on States to ensure effective and appropriate access to remedies, such as compensation. This remedy provision is therefore, a key innovation, since access to justice and remedies for victims of trafficking is very challenging, in practice. Additionally, R203 gives guidance and suggestions through provisions to guide states on how to improve the victims’ of forced or compulsory labour access to remedies.¹⁶⁶

¹⁶⁵ P029 Art. 4 (1)

¹⁶⁶ Interview with Alix Nasri, on the 25th of February 2015

6 Recommendation on supplementary measures for the effective suppression of forced labour, 2014

6.1 Background, scope and method of application

The Recommendation on supplementary measures for the effective suppression of forced labour or R203 was adopted in Geneva, Switzerland, on the 11th of June 2014 during the 103rd ILC session. The Recommendation is a non-binding instrument and, therefore, not open for ratifications.¹⁶⁷ R203 is a supplement to both Convention No. 29 and P029. The purpose of R203 is to give proposals on *how* to address gaps in the implementation of Convention No. 29. The Recommendation provides a practical guidance regarding; prevention; protection; remedies; enforcement; and international cooperation.¹⁶⁸

6.2 Content

The Recommendation recommends Member States to establish national policies and plans of action with a child- and gender-sensitive approach with time-bound measures in order to achieve effective elimination of forced or compulsory labour, or if such policies and plans already exist in the country, the Recommendation states that these should be strengthened.¹⁶⁹ The R203 recommends competent authority¹⁷⁰ to ensure the “development, coordination, implementation, monitoring and evaluation of the national policies and plans of action”.¹⁷¹ Another general provision states that ILO Member States should, on a regular basis, collect, analyse and make reliable and detailed information and statistical data with several disaggregates facts.¹⁷² R203 is realistic in a way that it is adapted to each national progression in the work in eliminating forced or compulsory labour by using wordings like “taking into account their

¹⁶⁷ ILO brochure p. 2

¹⁶⁸ *Ibid.*

¹⁶⁹ Recommendation on supplementary measures for the effective suppression of forced labour, Geneva, 2014, accessible at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3174688:NO, Para. 1, 1(a)

¹⁷⁰ such as labour inspectorates, judiciary and national bodies or other institutional mechanisms

¹⁷¹ R203 Para. 1(b)

¹⁷² by relevant characteristics such as sex, age, nationality – naturally in regard of the right to privacy, *Ibid.* Para. 2(b) and 2(a)

national circumstances” in order to adjust to each and every ILO Member State.

6.2.1 Prevention

ILO Member States should take preventive measures, as required by the Protocol, Article 2. The Recommendation sets out, in Paragraph 3, what the preventive measures should include. The list contains; respecting and promoting fundamental principles and rights at work; promotion of freedom of association and collective bargaining; programmes to combat discrimination; initiatives to address child labour and promote educational opportunities for children; and taking steps to realize the objectives of the P029 and the Convention No.29.¹⁷³

The Recommendation gives several suggestions on implementable preventive measures e.g. addressing the root causes of workers’ vulnerability to forced or compulsory labour; targeting awareness-raising campaigns¹⁷⁴; skill training programmes¹⁷⁵; make steps to ensure national laws and regulations concerning the employment relationship covers all sectors of the economy¹⁷⁶; having a national social protection floor with basic social security guarantees¹⁷⁷; information for migrant workers before departure and upon arrival¹⁷⁸; making the relevant policies coherent¹⁷⁹; promotion of coordinated efforts with other States to facilitate safe migration¹⁸⁰; elimination of the charging of recruitment fees¹⁸¹; providing guidance and support to employers and businesses to identify, prevent,

¹⁷³ R203, Para. 3

¹⁷⁴ especially capacity building and awareness-raising, but also how to gain access to assistance if needed, for those who are most at risk of becoming victims of forced or compulsory labour, *Ibid.* Para. 4(b) but also to raise awareness about sanctions for violating the prohibition on forced or compulsory labour, *Ibid.* Para. 4(c)

¹⁷⁵ especially for the at-risk population groups in order or them in increase their employability, *Ibid.* Para. 4(d)

¹⁷⁶ The important and relevant information on the terms and conditions of employment should always be specified in way that it is easily understandable, the preferable is to have all employment relationships through written contracts in accordance with national laws, regulations or collective agreements, *Ibid.* Para. 4(e)

¹⁷⁷ *Ibid.* Para. 4(f), this is in order to reduce vulnerability to forced or compulsory labour, also see the ILO Social Protection Floors Recommendation, 2012 (No. 202), *Geneva*, 2012, accessible at:
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524

¹⁷⁸ R203, Para. 4(g) in order for the migrant workers to be more prepared to work and live in another country, this is especially important since migrant workers belongs to one of the vulnerable society groups

¹⁷⁹ *Ibid.* Para. 4(h) e.g. migration labour and employment policies in order to reduce the risk of incompatible policies leaving some people without any protection

¹⁸⁰ *Ibid.* Para. 4(i) to prevent trafficking in person, this preventive measure also includes “regulate, license and monitor labour recruiters and employment agencies”

¹⁸¹ *Ibid.* Para. 4(i) in order to prevent debt bondage and other forms of economic coercion

mitigate and account for how they address the risk of forced or compulsory labour¹⁸².

6.2.2 Protection

R203 provides the ILO Member States with recommendation and guidance regarding how to protect potential victims of forced or compulsory labour. R203 states that targeted efforts should be made to identify and release victims, protective measures should be provided to victims¹⁸³, and steps may be taken to encourage victims to help in the identification and, through the identification help with the punishment of perpetrators.¹⁸⁴

The R203 states that ILO Member States should take the necessary measures to ensure that competent authorities “are entitled not to prosecute or impose penalties”¹⁸⁵ on forced or compulsory labour victims for their involvement in national illegal activities that the victims have been compelled to do as a direct effect of them being victims of forced or compulsory labour e.g. many countries have a prohibition of prostitution however the R203 encourages all ILO Member States the victims of forced or compulsory labour from other labourers and not prosecute the victims of forced or compulsory labour.¹⁸⁶

The ILO Member States are encouraged by the R203 to recognize the role and capacities of workers’ organizations to support and assist victims of forced or compulsory labour.¹⁸⁷

In order to create a legitimate protection safety net R203 states that ILO Member States should take measures to eliminate abusing practices by labour recruiters and recruitment agencies, supplementing Convention No. 29. The R203 offers some explicit examples on measures to eliminate these types of practices; by eliminating the charging of recruitment fees; by requiring transparent contracts¹⁸⁸; by establishing adequate, accessible and functioning complaint mechanisms; by imposing adequate penalties for crimes against the prohibition of forced or compulsory labour; and by regulating or licensing these services.¹⁸⁹

¹⁸² R203, Para. 4(j) in their operations or in products, services or operations to which they may be directly linked i.e. their supply chain

¹⁸³ and these measures should not be conditional “on the victim’s willingness to cooperate in criminal or other proceeding” *Ibid.* 5(2)

¹⁸⁴ *Ibid.* Para. 5

¹⁸⁵ *Ibid.* Para. 7

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.* Para. 6

¹⁸⁸ contract that clearly explains the terms of employment as well as the conditions of work

¹⁸⁹ R203, Para. 8

R203 provides for the need of all victims to get immediate assistance as well as long-term recovery and rehabilitation.¹⁹⁰ This could include reasonable efforts to appropriate safety protection for the victims as well as their families from intimidation; adequate and appropriate accommodation; health care¹⁹¹; material, social¹⁹² and economic assistance; protection of privacy and identity.¹⁹³

The protection measures for child victims of forced or compulsory labour needs to take into account their special needs and the best interest of the child. These should include access to education¹⁹⁴; the appointment of a guardian; a presumption of minor status¹⁹⁵; and efforts to reunite the child with its family.¹⁹⁶

R203 encourages ILO Member States to take the most effective protective measures regarding migrant workers irrespective of their legal status in the national territory.¹⁹⁷

6.2.3 Remedies

According to R203, all ILO Member States should take measures to ensure that all forced or compulsory labour victims have access to justice and other remedies¹⁹⁸ by; ensuring that all victims have effective access to courts, tribunals and other resolution mechanisms; providing that victims can pursue compensation from perpetrators¹⁹⁹; ensuring access to appropriate and adequate existing compensations schemes; providing information and capacity spreading about victims' legal rights and the service available²⁰⁰; providing that all victims can pursue appropriate administrative, civil and criminal remedies^{201, 202}.

¹⁹⁰ R203, Para. 9

¹⁹¹ including both physical and mental assistance

¹⁹² including educational and training as well as access to decent work

¹⁹³ R203, Para. 9

¹⁹⁴ for both girls and boys

¹⁹⁵ when the person's age is not possible to establish and the person might be under 18, this person should be seen and treated as being under the age of 18

¹⁹⁶ R203, Para. 10

¹⁹⁷ *Ibid.* Para. 11

¹⁹⁸ such as compensation for personal and material damages

¹⁹⁹ such as unpaid wages and unpaid social security benefits

²⁰⁰ in a language that the victims understand and the access to legal assistance should preferably be free of charge

²⁰¹ irrespective of their legal status in the State

²⁰² R203, Para. 12

6.2.4 Enforcement

ILO Member States are encouraged to take action to strengthen the enforcement of national laws and regulations by; giving relevant authorities the mandate, resources and knowledge in order to allow them to effectively enforce the law; providing for the imposition of adequate penalties²⁰³; ensuring that legal persons can be held responsible and liable for violation of the prohibition of forced or compulsory labour²⁰⁴; strengthening efforts to identify victims^{205 206}.

6.2.5 International cooperation

R203 highlights the importance of international cooperation by encouraging the strengthened cooperation between ILO Member States and with relevant international as well as regional organizations. International cooperation is important in order to achieve a sustainable suppression of forced or compulsory labour. R203 gives examples on how international cooperation could suppress forced or compulsory labour by; strengthening labour law enforcement institution; mobilizing resources for national action programmes; having mutual legal assistance; addressing and preventing the use of forced or compulsory labour through diplomatic personnel; and having mutual technical assistance including the exchange of information and sharing good practices.²⁰⁷

²⁰³ and penal sanctions such as confiscation of profits of forced or compulsory labour

²⁰⁴ in applying C029, Para. 25

²⁰⁵ this includes developing indicators to use to determine forced or compulsory labour

²⁰⁶ R203, Para. 13

²⁰⁷ *Ibid.* Para. 14

7. Legislation

In order to fully understand the legal situation regarding forced labour it is important to look into the legislation internationally and nationally in Sweden and Thailand.

7.1. International

The prohibition of forced or compulsory labour in all its forms is considered to be customary international law. Therefore, in theory, national prohibitions on forced or compulsory labour are redundant since it is an international prohibition that concerns all States regardless of their national policies, cultural preferences, history or religion. However, the most effective way to eliminate forced or compulsory labour is to adopt legal instruments on a national level and above all – implement these provisions and having an effective enforcement. Therefore there exists several legal instruments regarding this subject, both fundamental instruments that are mentioning it as well as whole instruments specialised on the prohibition on forced or compulsory labour.

7.1.1. International instruments

Several international legal instruments recognise the prohibition of forced or compulsory labour. One of the most fundamental human rights instruments is the Universal Declaration of Human Rights²⁰⁸ (UDHR). It prohibits slavery and servitude in Article 4 as well as states that there is a right to free choice of employment in Article 23 (1). The prohibition of slavery is further elaborated in Article 8 of the International Covenant on Civil and Political Rights²⁰⁹ (ICCPR), and the right to work is further

²⁰⁸ The Universal Declaration of Human Rights, *New York*, 1948, accessible at UN website: <http://www.un.org/en/documents/udhr/>, retrieved on the 4th of March 2015, the wording of Article 4 follows:

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

The wording of Article 23 (1) follows:

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

²⁰⁹ The Covenant on Civil and Political Rights, *New York*, 1966, accessible at UN website: <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>, retrieved on the 4th of March 2015, the wording of Article 8 follows:

“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour”

elaborated in Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights²¹⁰ (ICESC).²¹¹

Regarding slavery and slave-like practices there are two main instruments that cover the issue; the Slavery Convention²¹²; and the Supplementary Convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery²¹³.

When it comes to trafficking in persons, there are a wide range of instruments addressing this issue, e.g. a large number of international treaties focused on the prohibition of trafficking in women and children for prostitution and other sexual purposes were adopted during the years 1904 to 1949.²¹⁴ However, in 2000 the trafficking in persons instruments witnessed an upswing when the UN adopted; the Protocol to prevent, suppress and punish trafficking in persons, especially women and children²¹⁵ (The Trafficking Protocol), supplementing the UN Convention

²¹⁰ The International Covenant on Economic, Social and Cultural Rights, *New York*, 1966, accessible at UN website: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, retrieved on the 4th of March 2015, the wording of Article 6 (1) follows:

"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

²¹¹ Other UN instruments (such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *New York*, 1990, Art. 11 (2) and the Convention on the Rights of Persons with Disabilities, *New York*, 2006, Article 27 (2)) address the prohibition of forced and compulsory labour as well.

²¹² The Slavery Convention, *Geneva*, 1926, accessible at UN website: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>, retrieved on the 4th of March 2015, Art. 1 (1) defines slavery as:

"the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."

²¹³ The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Geneva*, 1956, accessible at on UN website: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>, retrieved on the 4th of March 2015, this instrument outlaws specified slavery-like practices, such as debt bondage, servile forms of marriage and the exploitation of children, important to notice is that all these forms of slavery and slave-like practices are not to be seen as forced or compulsory labour; forced marriage is for example not seen as forced or compulsory labour regarding to C029

²¹⁴ Report IV (1) p. 10

²¹⁵ Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, *New York*, 2000, accessible at: <http://www.osce.org/odihr/19223?download=true> retrieved on the 4th of March 2015, or <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, retrieved on the 4th of March 2015, the purposes of the Protocol are stated in Art. 2:

"(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

against Transnational Organized Crime²¹⁶ (UN-CTOC). This Protocol, together with two other protocols²¹⁷ that were adopted to supplement the UN-CTOC, stipulate the so-called Palermo Protocols. The Trafficking Protocol creates different levels of obligation, those that are mandatory provisions, those that States *should* consider to apply, and those that are completely optional.²¹⁸ Nevertheless, there is a minimum requirement to criminalize trafficking²¹⁹, which is mandatory to implement.

The Trafficking Protocol was followed by a non-binding recommendation made by the United Nations Office of the High Commissioner for Human Rights (OHCHR) on principles and guidelines on human rights and human

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.”

The definition of trafficking in persons in the Trafficking Protocol is very broad in order to involve as many people as possible; it seeks to address “all aspects of trafficking in persons” and consent of a victim is always irrelevant. The definition is stated in Art. 3 of the Trafficking Protocol and it consists of three elements:

“(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons [first element], by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person [second element], for the purpose of exploitation [third element]. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;”

In the case of children an “act” committed for the “purpose” of exploitation is considered to constitute trafficking in persons even if none of the specified means is used and a child is any person under the age of 18 years old. This definition of trafficking is broader than trafficking in persons for the purpose of forced or compulsory labour since it also covers removal of organs.

²¹⁶ United Nations Convention against Transnational Organized Crime, *New York*, 2000, accessible at UN website: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, retrieved on the 4th of March 2015

²¹⁷ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, *New York*, 2000, and the Protocol against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, *New York*, 2000, both are accessible at UN website: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, retrieved on the 4th of March 2015

²¹⁸ Report IV (1), p. 11

²¹⁹ The Trafficking Protocol, Art. 5:

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:”

trafficking²²⁰ in 2002. The OHCHR recommendation provided guidance on *how to* incorporate a human rights perspective into all efforts regarding anti-trafficking.²²¹

7.1.2. Regional instruments

There are many efforts to eliminate forced and compulsory labour not least on a regional level. Some of the fundamental binding instruments, that are addressing the prohibition of forced or compulsory labour are: the European Convention of Human Rights²²² (ECHR); the American Convention on Human Rights²²³; the African Charter on Human and Peoples' Rights²²⁴; the Convention on Human rights and Fundamental Freedoms of the Commonwealth of Independent States²²⁵; and the Arab Charter on Human Rights²²⁶. Another non-binding, nevertheless important, instrument is the

²²⁰ United Nations Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, *Geneva*, 2002, accessible at UN website: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>, retrieved on the 4th of March 2015

²²¹ Report IV (1), p. 11

²²² Convention for the Protection of Human Rights and Fundamental Freedoms, *Rome*, 1950, 4.XI, accessible at: http://www.echr.coe.int/Documents/Convention_ENG.pdf, retrieved on the 4th of March 2015, Article 4 states:

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour."

²²³ American Convention on Human Rights, *San Josi*, 1969, accessible at: http://www.hrcr.org/docs/American_Convention/oashr.html, retrieved on the 4th of March 2015, Article 6 states:

" 1.No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2.No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner."

²²⁴ African Charter on Human and Peoples' Right, *Banjul*, 1981, accessible at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf, retrieved on the 4th of March 2015, Article 5 states:

"All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

²²⁵ Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, *Minsk*, 1995, accessible at: <http://www.refworld.org/docid/49997ae32c.html>, retrieved on the 4th of March 2015, Article 4 states:

"1. No one shall be held in slavery or servitude.

2. No one shall be constrained to perform forced or compulsory labour."

²²⁶ Arab Charter on Human Rights, 1994, accessible at: <http://www.refworld.org/docid/3ae6b38540.html>, retrieved on the 4th of March 2015, Art. 31 states:

Association of Southeast Asian Nations' (ASEAN) Human Rights Declaration²²⁷ that provides normative guidance.

There are several regional legal instruments that focuses more specifically on trafficking in persons; e.g. the Inter-American Convention on International Traffic in Minors²²⁸; the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution²²⁹ as well as the Council of Europe Convention on Action against Trafficking in Human Beings²³⁰ together with the EU Directive²³¹ on preventing and combating trafficking in human beings and protecting its victims.

7.2. National: Sweden

Sweden has been a member of the ILO since its creation in 1919. Sweden ratified both Convention No. 29 and Convention No. 105 within a year of their adoption²³² and signed the Trafficking Protocol in 2000 with subsequent ratification in 2004 without reservations.²³³ The labour history

“The freedom to choose employment is guaranteed, and forced labour is prohibited. Forced labour does not include compelling a person to carry out work in execution a judicial decision.”

²²⁷ ASEAN Human Rights Declaration, *Jakarta*, 2012, accessible at ASEAN website: http://www.asean.org/images/2013/resources/publication/2013_ASEAN%20Human%20Rights%20Declaration.pdf, retrieved on the 4th of March 2015, Art. 13 states:

“No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.”

²²⁸ Inter-American Convention on International Traffic in Minors, *Mexico D.F.*, 1994, available at: <http://www.refworld.org/docid/3de4ba054.html>, retrieved on the 4th of March 2015

²²⁹ SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution, *Kathmandu*, 2002, accessible at: <http://www.saarc-sec.org/userfiles/conv-traffiking.pdf>, retrieved on the 4th of March 2015

²³⁰ Council of Europe Convention on Action against Trafficking in Human Beings, *Warsaw*, 2005, accessible at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>, retrieved on the 4th of March 2015

²³¹ Directive on preventing and combating trafficking in human beings and protecting its victims, *Strasbourg*, 2011, accessible at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:jl0058&qid=1425696932760>, retrieved on the 4th of March 2015

²³² ILO website: http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102854 and http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102854, both retrieved on 17th of March 2015

²³³ UN website: <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>, retrieved on 17th of March 2015

in Sweden includes a lot of involvement of powerful and member-strong Swedish trade unions. This has led to Sweden not having as many labour regulations as many other states and the minimum wage, working hour regulations, certain social safety net provisions etc. are regulated on a trade union to employers' organization basis. Nevertheless, many labour laws exist in Sweden and in 2002²³⁴, legislation came into force making all forms of trafficking in person; including trafficking within national borders, both for sexual purposes and forced labour, a criminal offence.²³⁵ Additionally, in 2008, the Swedish government adopted a national action plan for combating trafficking for sexual purposes.²³⁶ Sweden has a specific anti-human trafficking unit within the police force and a national rapporteur on trafficking in persons.²³⁷ In order to prevent foreign work force to be exploited with bad working conditions and without payment under the influence of threats and slavery-like practice the Swedish national police started to cooperate with the Swedish Migration Board, the Swedish Tax Agency and the Swedish Work Environment Administration. Together they presented some guidelines specific for businesses vulnerable in deal with victims of trafficking in persons.²³⁸ Sweden has its upcoming regular report on Convention No. 29 and Convention No. 105 in 2016.²³⁹

7.3. National: Thailand

Lately, there have been substantial developments in anti-trafficking in persons policies and structures, which demonstrates the intention to reduce the problem of trafficking in persons in Thailand. Several efforts have been made to combat trafficking for labour exploitation in Thailand e.g. through enhanced monitoring of implementation at high-risk workplaces. However, there is recognition that the implementation has not been very effective. Even though there has been an increase of victims identified as well as offenders convicted, the numbers are still small.²⁴⁰ In

²³⁴ However, the law was extended in 2004 and in 2010

²³⁵ Svensk Författningssamling 4 kap 1 a § Brottsbalken (2010:371)

²³⁶ Skr. 2007/08:167 "Handlingsplan mot prostitution och människohandel för sexuella ändamål" published 16 July 2008, <http://www.government.se/sb/d/9761/a/108621> there might be a new action plan coming up, <http://www.aklagare.se/Media/Nyheter/Handlingsplan-fran-regeringen-i-arbetet-mot-exploatering-av-barn1/>, retrieved on 17th of February 2015

²³⁷ United Nations Office on Drugs and Crime's (UNODC) Global Report on Trafficking in Persons, published February 2008, p. 184

²³⁸ e.g. employment agencies that employs berry pickers from other countries to pick berries during berry season, Swedish Police progress report, p. 9

²³⁹ ILO website, http://www.ilo.org/dyn/normlex/en/f?p=1000:14000:0::NO:14000:P14000_COUNTRY_ID:102854, retrieved on 17th of March 2015

²⁴⁰ Thailand migration report, p. 151

2011 Thailand's "national policy on strategy and measures to prevent and suppress trafficking in persons" started operating and it will continue until 2016. Additionally, there have been efforts to tackle the issues of undocumented migrant workers; the Royal Thai Government e.g. introduced in the 1990's a registration process to provide the migrant workers with some documentation and health insurance. However, this registration did not change the migrant workers' immigration status and many migrant workers continue to be very vulnerable to abuse and exploitation.²⁴¹

The most important national legal instrument in Thailand regarding trafficking in persons is the Anti-Trafficking in Persons Act²⁴² (The Anti-Trafficking Act). Since this act was adopted, in 2008, there has been an increase of convictions of human trafficking.²⁴³ The anti-trafficking in persons act defines trafficking in persons according to the definition used in the UN Trafficking Protocol.²⁴⁴ There are two key national committees that is working with addressing trafficking in persons under the Anti-Trafficking Act through governing and overseeing Thailand's overall counter-trafficking response: The Anti-Trafficking in Persons Committee²⁴⁵ and the Committee on Coordinating and Monitoring of Anti-Trafficking in Persons Performance^{246, 247}.

Apart from the adopted national instruments on anti-trafficking in persons Thailand has ratified several international instruments regarding anti-trafficking and forced or compulsory labour e.g. Convention No. 29, Convention No. 105, and The Trafficking Protocol.²⁴⁸

²⁴¹ Thailand migration report, p. 14

²⁴² Anti-Trafficking in Persons act B.E 2551, June 2008, accessible at: http://www.no-trafficking.org/resources_laws_thailand.html

²⁴³ Thailand migration report, executive summary and p. 151 – 152, numbers of convictions: 2009 – 40, 2010 – 46, 2011 – 55, 2012 – 49 and 2013 – 225, in 2013 there was a recognition that trafficking largely occurs within the flows of migrants workers and several new efforts to combat trafficking in persons were enhanced, amongst them the ratification of the Trafficking Protocol

²⁴⁴ The Trafficking Protocol was ratified in 2013, Thailand migration report, p. 155

²⁴⁵ This committee is chaired by the Prime minister and it is composed of Ministers from Defence, Tourism and Sports, MSDHS, Interior, Justice and Labour, the role of the Committee is to recommend policies and strategies in order to implement effective anti-trafficking interventions under the Anti-Trafficking Act

²⁴⁶ this committee is chaired by the Deputy Prime Minister and is responsible for the implementation and monitoring of the anti-trafficking in persons efforts

²⁴⁷ Thailand migration report, p. 154

²⁴⁸ http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102843 and <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>

8 Current situation on forced or compulsory labour

After this review of legal framework and of how ILO works, it is time to begin the second half of this thesis, looking at how the situation of forced and compulsory labour is in reality. Forced or compulsory labour is a term that is used to describe the situation in which a person is made to work against their will. This includes a wide spectrum of different situations the worker might be coerced by the employer through violence and/or threats of violence or by accumulated debts, identity papers or threats of denunciation to national immigration authorities.²⁴⁹ Forced or compulsory labour includes many different forms of work, including debt bondage, trafficking²⁵⁰ and other forms of modern-day slavery.²⁵¹ Today, forced or compulsory labour is universally banned.²⁵²

8.1 International

It is not easy to estimate an exact number of people found in a situation of forced or compulsory labour since these people often are hidden and kept in the shadows. However, the ILO has used a new method²⁵³ to make an estimation of the current situation, resulting in an estimated number of 20.9 million victims of forced labour internationally.²⁵⁴ Resulting in a figure claiming “three out of every 1,000 persons worldwide are in forced labour

²⁴⁹ The ILO 2012 Global Estimate of forced labour Executive Summary http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf, p.4, retrieved on 22 of January 2015

²⁵⁰ Human trafficking is defined in the UN Convention on Transnational Organised Crime as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”

²⁵¹ ILO website, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>, retrieved on 22 of January 2015

²⁵² ILO General Survey, 201 para. 260

²⁵³ The method relies on collection of reported cases of forced labour. These reported cases are from all over the world and over a ten-year period (2002-2011). The reported cases indicated where and when the activity took place and how many were involved. These reported cases could be found in various sources of information such as NGO reports, articles from news papers, official statistics etc. Two teams of researchers collect all the cases during 13 weeks, working strictly separated from each other. This method is called “captured-recaptured”. The ILO finds its result by comparing the results of the two teams and see which cases have been “captured” by both teams. These cases would be the one classified, as cases of forced labour. The ILO 2012 Global Estimate p.5

²⁵⁴ ILO Global Estimate, p.1

at any given point in time”²⁵⁵. Out of these 20.9 million persons, women and girls represent the biggest share with a total of 11.4 million, or a total of 55 per cent of the total amount of people, leaving the men and boys with 9.5 million victims and a 45 per cent of the total share of people being victims to forced labour. Continuing with statistics, adults represent 74 per cent and are thus more affected than children aged 17 and below, who represent 26 per cent of the total amount of people.²⁵⁶

The majority, 18.7 million or 90 per cent, of the victims are exploited in the private sector. The remaining 2.2 million or 10 per cent are in state-imposed forms of forced labour²⁵⁷. Out of the total amount, 14.2 million or 68 per cent are victim of forced labour exploitation in economic activities²⁵⁸, out of these, 4.5 million or 22 per cent of the total amount are victims of forced sexual exploitation.²⁵⁹

Regarding the regional distribution, the Asia-Pacific region is the platform for most of the forced labourers with 11.7 million or 56 per cent of the international total based here. The second highest number of forced labourers is in Africa with an amount of 3.7 million or 18 per cent of the total amount. This shows that the major issue of forced labour is located in the Asia-Pacific region..²⁶⁰

International law demands for forced or compulsory labour to be seen as a crime punishable with penalties that reflect the seriousness of the crime. Many national legal systems reflect this international view of forced labour. Nevertheless, the issue of forced or compulsory labour still exist and extensively all over the world.²⁶¹

In total, this is the world’s second largest criminal industry with an estimated illegal profit of 150 billion USD each year.²⁶²

8.2 National: Sweden

Regarding forced labour in Sweden, the research and results are limited.²⁶³ A reason for this might be that Sweden is a country with a long history of

²⁵⁵ ILO Global Estimate, p.1

²⁵⁶ *Ibid.*

²⁵⁷ Such as work in prisons, work imposed by the state military or by rebel armed forces, *ibid.*

²⁵⁸ Such as agriculture, construction, domestic work or manufacturing, *ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.* p. 1-2

²⁶¹ *Ibid.* p. 4

²⁶² *Ibid.* p. 1

strong trade unions as well as an extensive focus on labour rights, making Sweden a country with a solid foundation of labour rights with less room for exploitation, nevertheless exploitation happens. The most noticed form of forced labour in Sweden is trafficking.²⁶⁴ This might be due to the fact that there is no commonly used Swedish translation of the term “forced labour”. The result of this is a definition of forced labourers as part of victims of trafficking in persons i.e. the same definition as used by the UN in the Trafficking Protocol.²⁶⁵ The ILO definition of forced labour is broader than the definition of trafficking. This means that the Swedish national legislation does not cover all persons that they are obliged to protect according to Convention No. 29. Regarding trafficking, Sweden is a destination country, meaning that Sweden is a country that is the end station for the trafficking victims. Trafficking in persons for the purpose of sexual exploitation represented 30 per cent of the reported police reports of trafficking in persons in 2012.²⁶⁶ It is important to keep in mind is that it is difficult to estimate the total number and percentage of trafficking in persons victims in a State. Nevertheless, the information that the Swedish police received during 2012 showed that the absolute majority of the victims of trafficking in persons for sexual purposes were girls and women from East- and South of Europe²⁶⁷ and Nigeria. The purchase mostly happens through the Internet and the traffickers²⁶⁸ are usually from the same country as the victims.²⁶⁹ Regarding the issue of trafficking in persons

²⁶³ This may very well be because forced labour is not a big issue in Sweden. On the ILO website there is no information available regarding Forced Labour statistics in Sweden, http://www.ilo.org/gateway/faces/home/polareas/forcedLab?locale=EN&countryCode=SE&track=null&policyId=12®ionId=5&_af.ctrl-state=2181b1cin_123 the same applies to Human Rights Watch (HRW), an organization that makes shadow reports and other reports of the human rights situation in all countries around the world, the HRW does not have any reports on Sweden and forced labour and trafficking: <http://www.hrw.org/publications/reports?topic=717®ion=215> , retrieved on 17th of February 2015

²⁶⁴ Working Lives Research Institutes, Responses to Forced Labour in the EU, Country report of Sweden <http://workinglives.org/fms/MRSite/Research/wlri/Sweden%20Responses%20to%20Forced%20Labour%20in%20Europe.pdf>, published on 5 June 2013, p.2, retrieved on 17th of February 2015

²⁶⁵ Which will exclude many victims of forced or compulsory labour

²⁶⁶ The latest statistics presents that the Swedish National Police Agency reports of trafficking in persons for the sexual purposes were 21 and the police reports of trafficking in persons for non-purposes were 48, statistics from the Swedish National Police Agency progress report on trafficking in persons for the purpose of sexual exploitation from 2014 “*Människohandel för sexuella och andra ändamål*” Lägesrapport 14, RPS Rapport 2014, accessible at: https://polisen.se/Global/www%20och%20Intrapolis/Rapporter-utredningar/01%20Polisen%20nationellt/M%C3%A4nniskohandel/Lagesrapport_14_Man_niskohandel.pdf, p. 7

²⁶⁷ Mostly from Romania, Bulgaria, Lithuania and Poland, Swedish Police progress report, p. 7

²⁶⁸ The perpetrators of trafficking in persons, not perpetrators of buying the girls/women

²⁶⁹ Swedish Police progress report, p. 7 – 8

for non-sexual purposes the most common situations are the cases of migrant workers being forced to work, forced to beg or forced into criminal operations.²⁷⁰

8.3 National: Thailand

There are no adequate data or statistics regarding forced or compulsory labour in Thailand. However, there has been a fair amount of research compiled regarding trafficking in persons and migrant workers. Migrant workers and victims of trafficking in persons are as already mentioned in an especially vulnerable position and a high-risk group of forced or compulsory labour. Therefore, this chapter will focus on these two situations regarding forced or compulsory labour since they usually have a close connection. Thailand is a country of origin, transit and destination for men, women and children subjected to trafficking in persons.²⁷¹ The lead government agency for anti-trafficking coordination in Thailand is the Ministry of Social Development and Human Security (MSDHS) it is also the MSDHS that is responsible for the coordination of victim protection.²⁷² In addition Thailand has eight other government ministries and offices dealing with and responsible for anti-trafficking in persons' efforts in Thailand.²⁷³ Regarding prosecution, Thailand has three specialist units

²⁷⁰ Swedish Police progress report, p. 8, in total 69 filed police report on trafficking in persons, out of those 48 reports were on trafficking in persons for non-sexual purposes and report from the Swedish Work Environment Administration "Arbetsmiljöverket" Rapport 2012:14, "Migrantarbete inom den gröna näringen," 2012, accessible at: http://www.av.se/dokument/aktuellt/kunskapsöversikt/RAP2012_14.pdf, retrieved on 17th of March 2015, International Trade Union Confederation's website <http://www.ituc-csi.org/sweden-forced-labour-for> "Sweden: Forced Labour for Cameroonian Migrant Workers" Published on 29 January 2013, retrieved on 17th of February 2015, The RPS report 2014, p. 14 and 2014 US Department of State trafficking in Persons Report <http://www.state.gov/documents/organization/226848.pdf> p.364, retrieved on 17th of February 2015

²⁷¹ United Nations Thematic Working Group on Migration in Thailand – "Thailand migration Report 2014", Bangkok, 2015 accessible at: <http://th.iom.int/index.php/activities/migration-research>, executive summary

²⁷² Thailand migration report, p. 154

²⁷³ The Ministry of Labour – formulates and enforces recruitment and labour protection legislation, the Ministry of Foreign Affairs – responsible for providing assistance to Thai people that have been/are victims of trafficking in persons abroad, Ministry of Tourism and Sports – working with the countering of sexual exploitation within tourism, Department of Special Investigation – responsible for the investigation of trafficking in persons cases, Ministry of Education – responsible for awareness-raising campaigns, preventive measures and anti-trafficking in persons advocacy, the Royal Thai Police – responsible for law enforcement and bringing offenders to justice, the Office of Attorney General – responsible for prosecuting the cases related to trafficking in persons, and the Royal Thai Navy – responsible of conducting inspections of fishing vessels in order to identify forced labour and child labour, *ibid.* p. 154

regarding the investigation and the prosecution of trafficking in persons cases: the Anti-Trafficking in Persons Division²⁷⁴, the Department of Special Investigation²⁷⁵, and the Office of the Attorney General²⁷⁶.

8.3.1 Country of destination

In total there is an estimate of two to three million migrant workers in Thailand.²⁷⁷ The majority of migrant workers, and also the majority of trafficking victims since trafficking largely occurs within the flows of migrant labour in Thailand, are from neighbouring countries.²⁷⁸ However, an increased number of Thai victims have been identified as victims of trafficking in persons during the last years.²⁷⁹ Thailand is currently at a stage where the country is rapidly developing economically due to cheap labour and has a great amount of resources, which in turn creates a great demand for cheap labourers, willing to do the type of work that Thai people are no longer willing to do. This situation makes Thailand dependent on the migrant workers to keep filling the shortage of cheap work force, in order to be able to uphold Thailand's economic development.²⁸⁰

As mentioned there is no exact number of how many migrant workers are living and working in Thailand, however, there is an estimate of 3.5 million to 4.0 million foreigners living in Thailand, whereas, more than 3 million of these foreigners are estimated to be working.²⁸¹ Most of these are migrant workers working with a so-called "3D job"²⁸² which includes agriculture, manufacturing, construction and fisheries.²⁸³ A significant part of the victims of forced labour in Thailand are exploited in the fishing industry and

²⁷⁴ have the authority to investigate trafficking in persons cases and bring perpetrators to justice, Thailand migration report, p. 159-160

²⁷⁵ is responsible for investigating trafficking in persons cases and "special cases", *Ibid.* p. 160

²⁷⁶ responsible for prosecuting trafficking in persons cases, primarily through its International Affairs department, *Ibid.* p. 160

²⁷⁷ 2014 US Department of State trafficking in Persons Report, p. 372

²⁷⁸ i.e. Burma/Myanmar, Lao PDR and Cambodia, about 2,7 million of the migrants working are from these three countries, Thailand migration report, p. 151

²⁷⁹ Numbers from the Thai government revealed that there are an increasing number of formally identified victims that had been trafficked for sexual purposes, the statistics showed an increase in Thai nationals and also an increase in underage victims, *Ibid.* executive summary and p. 154

²⁸⁰ Thailand migration report p. 162 and interviews with Lisa Rende Taylor on the 12th of March 2015 and with Paul Buckley, Regional Technical Coordinator at the Southeast Asia Regional management office at the United Nations Action for Cooperation against Trafficking in Persons (UN-ACT) on the 26th of March 2015

²⁸¹ Thailand migration report, executive summary

²⁸² Dirty, Dangerous and Demanding

²⁸³ Thailand migration report, p. 13

it has been highlighted during recent years to be a “particularly vulnerable industry”²⁸⁴ both onshore and offshore.²⁸⁵ Undocumented migrant workers constitute a large part of the workforce on many fishing boats and during a recent research it turned out that 16.9 per cent met the ILO definition of forced labour.²⁸⁶ Another big industry where Thailand is a destination country is the sex industry.²⁸⁷ Knowledge of trafficking in persons and capacity building on how to reduce risk situations related to trafficking in persons is carried out in Thailand in several formats and is translated into the languages of the most common victims of trafficking in persons in Thailand²⁸⁸ and distributed to the migrant communities. Resources have been used to raise an understanding of trafficking in persons amongst relevant government officials and labour inspectors.²⁸⁹

The Thai police conduct victim screening on-site or at a secure location. The persons who show signs of abuse or respond positively when asked about being tricked or deceived into working are taken to a secure and appropriate location away from the site. Officials from the MSDHS conduct further victim identification. The head investigation officer or the responsible police unit submits a query to the Provincial Operation Centre on Prevention and Suppression on Human Trafficking to consider and make recommendations regarding the situation. Investigative officers conduct interviews with the potential victims about their experiences to determine which kind of assistance is most appropriate or to change the initial screening and declare the persons not a victim of trafficking in persons. The repatriation and reintegration of foreign victims of trafficking in persons are carried out in close cooperation with the source country through government-to-government mechanisms.²⁹⁰

8.3.2 Country of transit

In the case where Thailand is a transit country, many persons from neighbouring countries use Thailand as a passage to reach other countries.

²⁸⁴ Thailand migration report, p. 152

²⁸⁵ Many of the victims of forced labour within the fishing industry is forced to work 16 to 20 hours a day seven days a week and are paid very little, numerous of the victims remain at sea for several years and has to endure physical violence, 2014 US Department of State trafficking in Persons Report, p. 372 – 3

²⁸⁶ The majority were from Burma/Myanmar, Thailand migration report, p. 152, there has been discussion on starting a Labour Coordination Centre especially for workers in the fishing industry, in order to reduce the role of brokers and provide the workers with information, training and support, Thailand migration report, p. 161

²⁸⁷ 2014 US Department of State trafficking in Persons Report, p.372 and interview with Lisa Rende Taylor, on the 12th of March 2015

²⁸⁸ i.e. Chinese, Khmer, Lao, Burma/Myanmar, Thai and Vietnamese, Thailand migration report, p. 160

²⁸⁹ Thailand migration report, p. 160

²⁹⁰ Thailand migration report, p. 157 – 159

However, there are reports regarding corrupt officials on both sides of the border that facilitates the smuggling of migrants e.g. the situation of many Rohingya²⁹¹ asylum seekers.²⁹² The Rohingyas come from Burma/Myanmar or Bangladesh and often transits through Thailand in order to reach Malaysia or Indonesia. Due to the corruption many of these asylum seekers have been sold into forced labour through exploitive and organized brokers.²⁹³ Several international institutions and media reports have highlighted the situation of the Rohingyas being victims of trafficking in persons; however, the Thai government has defined the situation of smuggling and highlighted the political sensitivity.²⁹⁴ Thailand is additionally a transit country for victims from many other countries in the region.²⁹⁵

8.3.3 Country of origin

The migration from Thailand is significant. According to the Ministry of Foreign Affairs an estimate of one million Thais are residing in countries other than Thailand.²⁹⁶ In the case of Thailand as a source country, foreign migrant workers, ethnic minorities, and stateless persons in Thailand are at the greatest risk of being trafficked.²⁹⁷ These groups are highly vulnerable due to their lack of legal status. Many Thai victims are recruited for employment abroad, are deceived into large debts to pay broker and recruitment fees, and children are being forced to work within domestic services, beg and sell flowers. Thai victims are according to official statistics from 2012 primarily trafficked for sexual purposes in several countries²⁹⁸ across the world. The victims normally travel by plane with a tourist visa

²⁹¹ The Rohingya people are an indigenous people living in the north-western part (Arkan) of Burma/Myanmar and in Bangladesh. They have a distinct culture and a civilization of their own, tracing back to the 7th century AD. There are about 3.5 million Rohingyas (in total – both in the Arkan province and as refugees elsewhere. Due to large-scale ethnical cleansing and genocide actions against the Rohingyas, more than 1.5 million Rohingyas were forced to leave Arkan). The Rohingyas are Muslims. <http://www.rohingya.org/portal/index.php/learn-about-rohingya.html>, retrieved on 17th of February 2015

²⁹² 2014 US Department of State trafficking in Persons Report, p. 372

²⁹³ 2014 US Department of State trafficking in Persons Report, p. 373 and Thailand migration report, p. 152

²⁹⁴ Thailand migration report, p. 152

²⁹⁵ "China, Burma/Myanmar, Pakistan, Democratic People's Republic of Korea, and Viet Nam destined for such third countries such as Indonesia, Malaysia, the Republic of Korea, Russian Federation, Singapore, the United States and countries in Western Europe", *Ibid.* p. 153

²⁹⁶ Thailand migration report, executive summary

²⁹⁷ 2014 US Department of State trafficking in Persons Report, p. 373

²⁹⁸ Australia, Bahrain, Brunei, China, Denmark, Indonesia, India, Japan, Malaysia, Saudi Arabia, South Africa, Switzerland, the United States of America and several other countries, 2014 US Department of State trafficking in Persons Report, p. 373 and Thailand migration report, p. 153

and/or a fake passport. There are also signs of a pattern developing of domestic trafficking within the borders of Thailand in labour both for sexual purposes and other labour purposes.²⁹⁹ Thailand has pre-departure training for Thai workers that are migrating to work abroad, additionally several Thai embassies and consulates abroad raise further awareness about trafficking in persons among the Thais living abroad.³⁰⁰

²⁹⁹ Thailand migration report, p. 153

³⁰⁰ *Ibid.* p. 160

9 Issues and potential measures of forced or compulsory labour

9.1 International

There are solid international legal frameworks on forced labour, however, the industry still blossoms. Most issues and measures are best recognised and stressed in a regional or national context, however, there are several issues that can be seen as international patterns of issues.

The ILO has in the ILO 2012 Global Estimate of forced labour Executive Summary³⁰¹ stressed two points that might be expanding the issues of forced or compulsory labour. The first was the lack of knowledge regarding forced or compulsory labour in general as well as lack of knowledge regarding the impact of forced or compulsory labour. Governments and their partners should be required to have capacity building regarding the nature and extent of forced or compulsory labour in order to be able to create and sustain effective devices/institutes and strong policies to combat forced or compulsory labour. The second point made in the ILO Global Estimate was the whole nature of forced labour, since it is a criminal activity, this is kept in the dark making it hard to research and quantify the national problems. The absence of solid national data is an international problem that needs to be solved. Regarding this point it is important to have relevant disaggregation in forms of sex, gender, age, ethnicity, nationality and other important elements to receive a deeper knowledge of the issue and to be able to adapt the preventive measures to be as effective as possible.³⁰²

The ILO report on Profit and Poverty, 2014 stresses the importance of strengthening national legislation and to have adequate penalties for those profiting from forced or compulsory labour in relation to the grievousness of the crime. In addition, it is important not to underestimate the power of normative pressures and the importance of a deeper knowledge of the socio-economic root causes of the issue of forced or compulsory labour.³⁰³ The ILO Global Estimate showed that 90 per cent of forced or compulsory labour was pursued within the private, informal and formal sector. This proves the importance of working globally with private businesses and that

³⁰¹ ILO Global Estimate Executive Summary

³⁰² *Ibid.*

³⁰³ ILO report on Profit and Poverty: The Economics of Forced Labour, *Geneva*, 2014, accessible at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_243391/lang--it/index.htm, p. iii

the private sector has an important role in addressing trafficking in persons where it occurs within businesses and their supply chains.³⁰⁴

Another important aspect is being highlighted in the Swedish Police progress report from 2014; the issues relating to globalisation and the expansion of the Internet and technical development to ease the forced labour business around the world. The Internet makes it easier for the perpetrators to prepare the crime/the illegal business, gather greater information regarding adequate markets, mapping the situation, recruit victims, advertise the business and its services, to keep threatening the victims, and to erase evidence.³⁰⁵ This situation aggravates the control of crime and it is important that the legal instruments are adapted to this aspect of how to conduct crimes.

9.2 National: Sweden

The P029 and R203 were adopted during the 103rd ILC Session in Geneva. The Swedish government member, the Swedish workers' representative and the Swedish employers' representative all voted for the adoption of the P029 and the R203.³⁰⁶ The Swedish ILO Committee was assigned to make a statement regarding the P029 and the R203. The Committee made a translation of the English text and submitted the text for comments from several Swedish entities³⁰⁷. The three trade unions that were approached to make a statement believed that Sweden did not fulfill the requirements

³⁰⁴ Thailand migration report, p. 155

³⁰⁵ Swedish Police progress report p. 16

³⁰⁶ Statement from the Swedish ILO committee regarding ILO Protocol to Convention no. 29 and Recommendation no. 203 on forced labour "Yttrande angående ILO:s protokoll till konvention nr 29 och rekommendation nr 203 om tvångsarbete", Swedish Department of Labour, statement 2015-02-17,11/2014, accessible at: <http://svenskailo-kommitten.se/wp-content/uploads/2015/02/20150220095448.pdf>, p. 1

³⁰⁷ Swedish agency for Government Employers (Arbetsgivarverket), the Work Environment Administration (Arbetsmiljöverket), the Swedish employment office (Arbetsförmedlingen), the Children's ombudsman (Barnombudsmannen), the National Council for Crime Prevention (Brottsförebyggande rådet), Crime Victim Compensation and Support (Brottsoffermyndigheten), the Swedish Social Insurance Administration (Försäkringskassan), the Equality Ombudsman in Sweden (Diskrimineringsombudsmannen, DO), the National Court Administration (Domstolsverket), the County Administrative Board of Stockholm county (Länsstyrelsen i Stockholms län), the Swedish Migration Board (Migrationsverket), the National Police Agency (Rikspolisstyrelsen), Swedish International Development Cooperation Agency (Sida), the Swedish Health and Human Services Department (Socialstyrelsen), the Swedish Law Society (Sveriges Advokatsamfund), Swedish municipality and county council (Sveriges Kommuner och Landsting, SKL), the Confederation of Swedish Enterprise (Svenskt Näringsliv), Swedish Trade Union Confederation (Landsorganisationen i Sverige, LO), the Civil Servant's Central Union (Tjänstemännens Centralorganisation, TCO) and the Swedish Academic Central Union (Sveriges Akademikers Centralorganisation, Saco)

laid down in Article 1(2) of the P029 regarding a national strategy plan and plan of action. The Swedish Crime Victim Compensation and Support reflected on the fact that Sweden might need to change some regulations regarding legal authority of the Swedish Work Environment Administration in order to fulfill the requirements of Article 2(c)(ii) of the P029 concerning labour inspections. The County Administrative Board of Stockholm highlighted that the current Swedish provisions are focused on the rehabilitation of trafficking in persons who are victim of sexual exploitation and not on forced or compulsory labour, this made the Board believe that the Article 3 of the P029, regarding the protection and rehabilitation of all victims of forced or compulsory labour would be difficult to fulfill with the current Swedish legal provisions on this issue. The Swedish Health and Human Services Department found it to be uncertain whether or not Sweden was fulfilling the obligations of Article 3 in the P029. The Swedish ILO Committee believed that there were reasons to review whether Sweden is currently fulfilling Article 1(2) regarding a national plan of action and strategy plan as well as the requirements of Article 3 regarding protection and rehabilitation. However, the Swedish ILO Committee believed that Article 2(c)(ii) regarding the requirements of labour inspections is fulfilled with the current Swedish system of trade unions in combination with the Swedish Work Environment.³⁰⁸

Concerning the R203 many of the institutions that were approached stressed the fact that the Recommendation is not a binding document and does not oblige any Swedish measures. However, the approached trade unions believed that the starting-point should be for Sweden to follow the recommendations of the R203. The Swedish Crime Victim Compensation and Support highlighted the fact that there are no requirements of authorization necessary in starting a private staffing company and no surveillance of these types of companies. Additionally, the Swedish Crime Victim Compensation and Support stressed the fact that it is not possible, according to Swedish law, to adjudicate penal liability on judicial persons. However, the National Court Administration did not see the requirement of changing the Swedish law in order to be in compliance with the due diligence and the responsibility of judicial person's provision of the R203, since the Recommendation is a non-binding instrument. The Swedish Health and Human Services Department found some difficulties regarding Article 9 of the R203. They stressed that there is no support in Swedish law to provide victims of forced or compulsory labour with adequate and appropriate accommodation, as stated in Article 9(b) of the R203. According to the current Swedish law this is only possible in emergency situations; the same applies to Article 9(c), where adult asylum seekers are only entitled to health care in emergency situations or in maternity situations. Therefore, the Swedish Health and Human Services Department

³⁰⁸ Swedish ILO Committee Statement, p. 2 – 3

found it to be uncertain whether Sweden was complying with Article 9(b) and (c) of the R203. The Swedish ILO Committee believed that Sweden is fulfilling the obligations regarding the labour inspection and agrees with the National Court Administration that the Recommendation is a non-binding instrument and therefore should not demand its enforcement in order to ratify the Protocol. However, the Swedish ILO Committee deemed the issues addressed by the Swedish Health and Human Services Department to be important to investigate further.³⁰⁹

Regarding the issue of ratification, all institutions approached believed the Protocol should be ratified except the Swedish National Police Agency (SNPA), with the explanation that most of the obligations of the Protocol were already fulfilled due to the adoption and implementation of EU Directive on preventing and combating trafficking in human beings and protecting its victims, 2010. The SNPA expressed its concern of the fact that the definition of forced and compulsory labour might make the definition of sexual exploitation to be seen as forced or compulsory labour and Sweden should therefore not ratify the Protocol.³¹⁰ The Swedish ILO Committee on the other hand believed that Sweden should ratify the P029.³¹¹

The Swedish National Police Agency made its own situation report in 2014 regarding the situation of trafficking in persons for the purpose of sexual exploitation and other purposes.³¹² An analysis of the results of the report showed several practical and legal measures that should be taken in order to reduce the amount of trafficking in persons victims in Sweden. Initially, the SNPA found it useful for them to continue to be the official national rapporteur regarding trafficking in persons. Their assignment as national rapporteur is to gather information³¹³ about the magnitude of the problem, analyze the situation, give recommendations on prevention and protection, and to make an annual report.³¹⁴ In the last report the SNPA concluded that there was an issue regarding few convictions on trafficking in persons in Sweden. The SNPA stressed several potential sources to this. The first potential source could be the fact that the legal provisions on trafficking in persons are complicated and difficult to apply, additionally, there is a high level of proof required in order to demand legal liability.

³⁰⁹ Swedish ILO Committee Statement. p. 3 – 4

³¹⁰ This was expressed already by the Swedish Government member in the 103rd ILC Session, this was also supported by the Government member of Ireland, Spain, Austria, France, Italy, Namibia and Uruguay (speaking on behalf of the GRULAC) as well, 103rd ILC Session, para. 138 – 139

³¹¹ Swedish ILO Committee Statement, p. 5 – 6

³¹² Swedish Police progress report, front-page

³¹³ That is disaggregated into sex, age, nationality/heritage, ethnicity and economic background, this is important in order to be able to see patterns and to adapt the preventive measures to be as effective as possible

³¹⁴ Swedish Police progress report, p. 36

Secondly, many victims change their stories in the court, from the original story provided in the police interrogation, which reduces the victim's credibility. Thirdly, it could be difficult for the court to visualize the psychological mechanisms that is behind trafficking in persons. Fourthly, some perpetrators have changed their methods and tend to use less violence and more promises of better working conditions and a better wage, which in turn makes the victims more loyal to the perpetrators. These four reasons are put forward by the SNPA as to why there are such a low numbers of convictions regarding trafficking in persons.

The SNPA described several suggestions on measures to be taken e.g. competence and knowledge capacity building³¹⁵ to be carried out regularly within all relevant institutions; several administrative measures³¹⁶; increased collaboration between the judicial system and non-governmental organizations (NGOs) to receive a greater knowledge about the victim's situation, background, need of remedies, as well as protection and support; a bigger budget to ensure that the victims have access to a competent translator; public competence and knowledge capacity building to create a greater understanding of the victim's situation in order to bring the public's awareness and report to the police in a greater extend when noticing trafficking in persons victims as well as their own personal criminal liability when using these types of labourers; create a plan of actions on trafficking in persons for other purposes other than sexual exploitation; and make a thoroughgoing evaluation of the legal provision regarding the establishment of unserious employers and criminal networks in Sweden.³¹⁷

According to Transparency International, Sweden has a low index of public sector corruption and is ranked on fourth place in the world with an index of 87 out of 100 regarding corruption.³¹⁸

9.3 National: Thailand

Thailand is a country of origin, transit and destination; this means that Thailand is facing a lot of different issues regarding forced or compulsory labour. During the discussions of the adoption of P029, the Government member of Thailand stressed that forced or compulsory labour is not only a national problem, but also an international problem and regardless

³¹⁵ Especially regarding trafficking in persons for other purposes than sexual exploitation where there is a great lack of knowledge, Swedish Police progress report, p. 37

³¹⁶ e.g. the imposition of labour inspectors, changing the routines of work permits

³¹⁷ Swedish Police progress report, p. 37 – 41

³¹⁸ Corruption perceptions index 2014 brochure, *Berlin*, December 2014, Made by Transparency International accessible at:

http://issuu.com/transparencyinternational/docs/2014_cpibrochure_en/12?e=2496456/10375453

whether a country has stringent public policies in place, the eradication would only be possible through collaboration between public authorities, the private sector and social partners at a national level.³¹⁹

In the beginning of 2014 Thailand was downgraded from tier two to tier three, which is the lowest of grades in the “Trafficking in Persons Report, 2014” issued by the United States of America Department of State. This was a breakdown for Thailand since this implied that the efforts of combatting trafficking in persons have been inadequate.³²⁰ Thailand has some serious challenges regarding implementation and the actual impacts of the adopted anti-trafficking in persons instruments and policies for the victims. On the 9th of April 2015 the Ministry of Social Development and Human Security (MSDHS) held a public media forum “to combat human trafficking” where they presented the new strategies for the anti-trafficking in persons in Thailand. The MSDHS also presented the “2014 Thailand Situation and Progress Report on Prevention and Suppression of Trafficking in Persons” a country report published by the MSDHS as a “response to the U.S TIP June 2014”.³²¹ The report is a study on the progress and development in 2014. It is divided into sub-categories of; policy, policy implementation and mechanisms; prosecution; protection; prevention; partnership; and response to the U.S TIP Report June 2014 Recommendations. The whole report is proof of what Thailand has been doing, rather than proof of further commitments on what to do and how to address other challenges. However, the Thai Junta is making a clear statement of commitment in the elimination of forced or compulsory labour in Thailand, which is an important step.

Continuously, there are a lot of difficulties regarding migrant workers. Firstly, there is no proper documentation of migrant workers in Thailand and there is no systematic estimate of the number of migrants in Thailand³²². Some estimates show figures of a probability of more than one million undocumented migrant workers in Thailand.³²³ There have been several attempts from the Thai Government to deal with the issue of migrant workers by campaigns and the establishment of institutions to document and create a better work situation for as many migrants as possible, however, studies show that the efforts have made little practical difference for the migrant workers in Thailand.³²⁴ ASEAN Economic Community (AEC) aims to be a regional economic integration by the end of

³¹⁹ 103rd ILC Session, para. 43

³²⁰ Thailand migration report, introduction

³²¹ 2014 Thailand Situation and Progress Report on Prevention and Suppression of Trafficking in Persons, *Bangkok*, 2015

³²² Thailand migration report, introduction

³²³ *Ibid.* executive summary

³²⁴ *Ibid.*

2015³²⁵, one of the economic pillars of the AEC demands a free movement of skilled workers; even though most of the migrant workers are working with 3D-jobs, the free movement of skilled workers ought to have an impact on the labour market in all ASEAN Countries.³²⁶ To meet the upcoming ASEAN objectives, migration policies in Thailand need to become much more comprehensive and coherent.³²⁷ In order for this to work the neighbouring countries need to be able to cooperate, as for now, Marja Paavilainen, Chief Technical Adviser at the ILO Decent Work Technical Support Team for East and South-East Asia and the Pacific, recently described that the countries in the South-East Asia region country of destination emphasize the responsibility for protection of migrant workers' rights on the country of origin and the country of origin emphasize the responsibility on the country of destination, leaving no one taking full responsibility.³²⁸

Secondly, there is no adequate complaint mechanisms provided to the migrant workers. Research and analysis have shown that the current available channels for migrant workers to file a complaint about their situation and common forms of abuse have been largely ineffective.³²⁹ In addition migrant workers are reluctant to pursue remedy for abuses, due to fears of discrimination, which results in a situation where many migrant workers keep a low profile rather than strive for their entitled rights.³³⁰ Lisa Rende Taylor stresses the issue of deep-rooted discrimination and racism in the Thai society as one of the key factors of the spread of forced or compulsory labour. She believes that the discrimination justifies the perpetrators actions in their own eyes and in the eyes of the Thai society and this also makes many of the perpetrators oblivious to the fact that they are committing a very serious crime.³³¹ Thirdly, the recruitment channels in Thailand dealing with migrant workers are not enough transparent enough and many recruitment channels are very expensive which makes it increasingly easier to abuse the migrant workers and for the migrant workers to become victims of debt bondage.³³² Finally, regarding issues with migrant workers, there is a lack of a longer-term national plan or policy for migrant workers.³³³ It is very important that Thailand implements a long-term plan that meets the needs of industry

³²⁵ With the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy,
<http://www.asean.org/communities/asean-economic-community>

³²⁶ Thailand migration report, executive summary

³²⁷ *Ibid.* introduction

³²⁸ Interview with Marja Paavilainen, on the 21st of April, 2015

³²⁹ Thailand migration report, p. 143

³³⁰ *Ibid.* p. 144

³³¹ Interview with Lisa Rende Taylor, 12th of March 2015

³³² Thailand migration report, p. 22

³³³ *Ibid.* p. 152

and at the same time provides corresponding labour protection. Even more effectively would be to have targeted policies to address specific areas of forced or compulsory labour, e.g. targeted policies and efforts in the fishery industry to be able to reduce vulnerability and implement remedies.³³⁴

Regarding the issues Thailand is facing with forced or compulsory labour, additionally, there are low numbers of police reports, prosecutions and convictions. The increase of prosecutions in coordination with investigation efforts on brokers and employers of forced or compulsory labour is a necessity in order to reduce the victims of trafficking in persons.³³⁵ Lisa Rende Taylor³³⁶ expressed her concern about the fact that there are very few prosecutions and the ones being made are not impartially prosecuted.³³⁷ This is closely connected with issues of corruption that Thailand is facing. Reports of corruption associated with forced or compulsory labour have also received significant attention in recent years and although the government has reported some action to address this, the results have been nominal.³³⁸ The corruption issues in Thailand were in 2014 big enough to make the US Department of State Trafficking in Persons Report of 2014 state that even though the Government of Thailand improved its anti-trafficking data-collection and other anti-trafficking in persons law enforcement efforts, it still remained insufficient compared with the size of the corruption problem in Thailand, which has at all levels hampered the success of these efforts.³³⁹ Lisa Rende Taylor believes that many NGO's are scared to raise the issue of corruption with the justification that they are able to do more human rights work if they do not "irritate" the Thai government.³⁴⁰ Paul Buckley³⁴¹ is recommending, in the Thailand Migration Report, that Thailand needs to increase the anti-corruption efforts with both criminal justice and suppression strategies.³⁴²

Thailand, just as every other country in the world, has difficulties on regulating the actions of forced or compulsory labour within the private

³³⁴ Thailand migration report, p. 162

³³⁵ Thailand migration report, p.162

³³⁶ Lisa Rende Taylor, Director, Project Issara, on the 12th of March 2015, interview made in person, Project Issara Regional Office, Bangkok, Thailand

³³⁷ Interview with Lisa Rende Taylor, 12th of March 2015, Even though, the number of prosecution and convictions are generally low, have been increasing since 2008, (Numbers of prosecutions: 2009 – 530, 2010 – 509, 2011 – 279, 2012 – 592, 2013 – 1020; Numbers of convictions: 2009 – 40, 2010 – 46, 2011 – 55, 2012 – 49 and 2013 – 225, in 2013) Thailand migration report, executive summary and p. 151

³³⁸ Thailand migration report, p. 152

³³⁹ 2014 US Department of State trafficking in Persons Report, p. 372

³⁴⁰ Interview with Lisa Rende Taylor, 12th of March 2015

³⁴¹ Regional Technical Coordinator at the Southeast Asia Regional management office at the United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)

³⁴² Thailand migration report, p. 162

sector, however, this type of work with businesses turns out to be very effective according to Lisa Rende Taylor, Anti-Slavery International has been working with business on a grass root level for many years. Lisa Rende Taylor explained that many big businesses are interested in a sustainable development and when the businesses are willing to be analysed and take on-board capacity building regarding forced or compulsory labour, then policies and standards are made quickly and implemented effectively. Lisa Rende Taylor explained the procedure as: "this allows the business to keep their workers, workers get to keep their jobs, and workers are no longer exploited, it is a win-win situation"³⁴³. On a practical level the Anti-Slavery International uses the forced or compulsory labour indicator tools³⁴⁴ made by the ILO to establish whether or not there is a situation of forced or compulsory labour. However, since the P029 is an international instrument, Lisa Rende Taylor does not believe that it will make a difference in Thailand on a grass root level. She further did not believe the P029 would make a greater difference in Thailand at all since the implementation system is not adequately working.³⁴⁵

In Thailand, reputation is very important and Lisa Rende Taylor, Paul Buckley and Marja Paavilainen stressed this as an important factor of the issues regarding a reduction of forced or compulsory labour. Paavilainen said that in order for Thailand to become better in forced or compulsory labour reduction, Thailand must acknowledge the fact that they – like other countries in the region – have big structural issues in the labour market making migrant workers vulnerable to exploitation, and this is not easy for a country this concerned about reputation to do.³⁴⁶ The Thai seafood industry has been strongly criticized in media and many discoveries on forced labour connected to the fishing industry have been exposed. In March 2015, the Thai Junta, that seized power of Thailand through a *coup d'état* in May 2014, demanded the press to think twice before publishing anything negative about the Thai fishing industry, that "the people who published the news will have to be held responsible" and that the journalist from Channel 3, Thapanee Letsrichal, who reported on dilemma of forced or compulsory labour in the Thai fishery industry will be facing consequences.³⁴⁷

³⁴³ Interview with Lisa Rende Taylor, 12th of March 2015

³⁴⁴ Read more about these tools here: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

³⁴⁵ *Ibid.*

³⁴⁶ Interview with Marja Paavilainen, 21st of April 2015

³⁴⁷ General Prayuth Chan-ocha, the leader of the Thai Junta warned, "The media should consider the impact the news will have on the country," he continued. "It may cause problems, and affect national security ... If this news gets widely published, [it could raise] problems of human trafficking and IUU [Illegal, Unreported and Unregulated Fishing]." General Prayuth also announced that "Let me tell you now, Thapanee will have to come see officials". Khaosod English Newspaper, published on the 25th of March, 2015, accessible at:

<http://www.khaosodenglish.com/detail.php?newsid=1427268620§ion=11&typecate=06>, retrieved on the 10th of April 2015

10 Analysis

As stated in chapter 1.2, this master thesis began with the two questions, *what differentiates the Protocol and the Recommendation, in text and scope, from the Conventions No 29 and No 105; and what impact will the Protocol and Recommendation have worldwide and nationally in Sweden and in Thailand?* This analysis strives to find and provide the answers to these two questions. The aim of this chapter is to enlighten the potential requirement that the P029 and the R203 is filling and declare which difference and outcome will be visible in general worldwide, national in Sweden and national in Thailand.

10.1 Difference in text and scope

There are several natural reasons why Convention No. 29, Convention No. 105, P029 and R203 differ regarding text and scope. Firstly, Convention No. 29 was written in the 1920's, Convention No.105 was written in the 1950's, and P029 and R203 were written in the 2010's. It is only natural that they are written differently; books written in the 1920's do not use the same language as a book written in today's society, 2015. Another natural impact of the text is the change in society. In 1920's the world looked very different than it does today, the society of 1920 was a society between two world wars with a lot of international tension and few global institutions and cooperation. At that time, the globalisation of the world that exists today and dynamic impact of technology in modern times, such as the Internet, were unimaginable. Naturally, the laws were not written to be adapted to our future situation, they were adapted to regulate the society of the 1920's. The text of Convention No. 29 was not adapted to the new type of labour, the exploitative private sector and the massive migration of workers that is the reality today. The third cause of the difference in text is that in the 1920's and 1950's there was a different way of addressing and trying to prevent problems thereby creating a different style in the wordings and the usage of text. It is noticeable that both Convention No. 29 and Convention No. 105 are written in a way that tries to define forced or compulsory labour. Both mentioned instruments are focused and written in a very descriptive way. P029 is not trying to change the definition of forced or compulsory labour; it reaffirms the definition. The aim of the new instrument is to address implementation gaps and supplement Convention No. 29. The result is that the scope of Convention No. 29 is unchanged and P029 does not concern a wider aspect of persons than Convention No. 29 or Convention No. 105 does. P029 focuses rather on *how* to make the implementation more effective. In other words, P029 and R203 are focused on the outcomes of the implementation. P029 and R203 are focused on the outcomes of the implementation. Convention No. 29 and Convention No. 105 are both establishing *who is the victim*; P029

and R203 are establishing *how can we reduce the number of victims*. This makes all four instruments dependent on one another, however the scope is not changed. P029 and R203 are both divided into sub-categories of prevention, protection and remedies. This is a pedagogic structure in order to be as implementation friendly as possible. The Recommendation is logically containing stricter demands than the Protocol, since this is a non-binding instrument. It is easier for an international organization to get through with their demands in a non-binding instrument, since the Member States are not obliged to follow the provisions; it is easier to sign it.

P029 is adapted to the new types of forced labour and it is based on the ILO Global Estimate from 2012 that showed that 90 per cent of the victims are within the private sector. When Convention No. 29 was written most known usage of forced or compulsory labour was within the public sector. This makes the due diligence provision in Article 2(e) of the P029 a very important contribution to the new legal discourse. Corporate social responsibility has been discussed for several years now however, the most influential instrument is the United Nations Guiding Principles and this is a non-binding instrument. This makes the P029 a very important and potentially very influential legally binding instrument.

Another important addition to the P029 and the R203 is the explicit saying that P029 covers all forms of forced labour whether or not they originate in trafficking. However P029 (Article 4(1)) and R203 (Article 4(g) and (i)) is the first ILO instrument to explicitly approach trafficking as a causal factor, since this phenomenon often results in forced labour. One different aspect of the notion trafficking in persons being a part of the definition of forced or compulsory labour is that trafficking in persons is closely connected with sexual exploitation, even though the data show that in fact only a minority of trafficked persons are in sexual exploitation, and therefore many of the trafficking in persons legal instruments are focused solely on women and children e.g. the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. It is true that most victims of trafficking in persons for the purpose of sexual exploitation are women, however, many victims of trafficking in persons for the purpose of labour are men. The explicitly announced connection of forced or compulsory labour and trafficking in persons might change policies, preventive measures and the view on trafficking in persons to also include men. Many victims of trafficking in persons are falling into loopholes of the legal system since it is focused on women, even though in reality almost half of the victims are men. Another difficulty is the fact that many victims of forced or compulsory labour are dealt with purely as undocumented migrants, which of course many of them are, and this description defines entirely how they are treated in most cases. What the new instruments do

is to add a dimension to their treatment that goes beyond the one-dimension approach of law enforcement.

One very important difference with the P029 and R203 is that they are focused heavily on the preventive measures. Many already existing international instruments are focusing rather on defining forced or compulsory labour and/or focusing on the protection of the victims. This results in a situation where the international legal society is telling the states to focus on treating the symptoms rather than the actual root causes. What the last ILO Global Estimate showed was that despite all these international instruments, which have been in force for a long time now, the situation remains the same and there are approximately 21 million victims of forced or compulsory labour. It is difficult to say whether there is an increase or a decrease from other years since ILO recently started using this new system of estimating forced or compulsory labourers. What is possible to establish is that there are still a lot of victims and the number needs to be reduced. There is therefore an opportunity for P029 and R203 to provide the ILO Member States with the standards, tools and guidance to address and eliminate the existing implementation gaps, which have resulted in e.g. low prosecution numbers.

10.2 Impact in practice

P029 and R203 contain several innovative approaches regarding the handling of forced or compulsory labour reduction. The whole aim for both instruments is to make implementation easier and more effective. Nevertheless, this is not an easy task. Additionally, the profit of the industry of forced or compulsory labour is of the magnitude of 150 billion USD. Thus the solution to eliminate the use of human trafficking and forced or compulsory labour, which makes the solution even harder to reach.

10.2.1 International

Studies have shown that 90 per cent of the victims of forced or compulsory labour work within the private sector, this is where the efforts on reduction needs to be focused. The due diligence provision in P029 and R203 are absolutely necessary in order to put pressure on the ILO Member States to enforce judicial regulations on the responsibilities of businesses. However, the private sector is hard to reach since they are not involved in the signing of the Protocol. Implementation is key here and that is why the concept of P029 and R203 being very comprehensive and easily understandable might be a successful conception that will make a clear impact. Since the other instruments regarding this are non-binding, this might make a difference in practice that P029 and R203 are pushing. However, the notion of corporate social responsibility or CSR is not a notion that P029 and R203 created and several other international and

regional instruments are moving towards this direction of judicial responsibilities on sustainable development for corporations. This makes it hard to distinguish whether or not P029 and R203 made the difference; most probably the instruments can be considered to be an effective component of an evolution towards legal responsibilities of corporations but not the final and much needed effort to push it over the edge of national implementation.

It is important that trafficking in persons was explicitly clarified to often be a form of forced or compulsory labour, however, trafficking in persons is already mentioned by a great number of international, regional and national instruments. Moreover, since trafficking in persons usually involves moving, and usually crossing borders, makes this an international issue by the way trafficking in persons operates, and therefore, it is important with clear international and regional instruments regarding this. What might be an impact regarding P029 and R203 is the changed focus towards the preventive measures and the explicit focus on root causes. One specific situation that needs highlighting in the chain of trafficking in persons is the recruitment process. This is an innovative part of P029 and R203 where they stress the issue as well as gives hands on suggestions and guidance on how to create a safe recruitment without exploitation. There are other international instruments, e.g. ILO Convention No. 181 on private employment agencies³⁴⁸ addressing this issue, however, P029 and R203 gives advice on *how to* implement provisions on fair recruitment, which might have great impact regarding this issue.

There are discussions how much difference an international instrument actually makes. In order to get an international instrument adopted and later ratified by Member States – the instrument needs to be adapted to the whole world with different cultures, religions, customs, State developments and different ways of wanting to deal with a problem. This easily makes the text and wordings of an instrument “weak” since they need adaptation to be accepted around the world. However, the wording also needs to be adaptable to different regions and nations in order to be effective regardless of which country it is applied to. The actual result of the international instrument will not show until the State implements the regulations and provisions into their national system. However, international instruments are important as policy makers and to create international norms, regardless of the national implementation.

³⁴⁸ ILO Convention No. 181, *Geneva, 1997*, accessible at ILO website, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C181,%2FDocument

10.2.2 National: Sweden

There is room for improvement regarding Sweden and how Sweden is dealing with forced or compulsory labour. Firstly, there is a substantial need for clarification between forced or compulsory labour and trafficking in person for the purpose of sexual exploitation. The SNPA seems to have a big issue with what is defined as what, and this is an important issue since the SNPA are specially chosen to cover all data regarding this issue. Sweden appears to struggle along with many other countries in the world with regard to trafficking in persons and where Sweden is up to this date³⁴⁹ and mostly focused on trafficking in persons for the purpose of sexual exploitation despite evidence shown in the latest report made by the SNPA showed that 66 per cent of the police reports were regarding trafficking in persons for other purposes than sexual exploitation. Sweden needs to put extra resources into gathering information and statistics with relevant disaggregation in order to be fully be able to adopt the adequate preventive measures that is necessary according to P029.

Up to this date³⁵⁰ there was no Swedish national plan of action or strategy plan on forced or compulsory labour, what exists is a national plan of action regarding sexual exploitation. The lack of a Swedish plan of action on forced or compulsory labour is something that both the trade unions³⁵¹ addressed and the Swedish ILO Committee stressed in the submission of comments made by the Swedish ILO Committee approached by the Swedish government. The Swedish ILO Committee stated that it is a necessity to have a ready national plan of action and strategy made by the Swedish government before ratifying the P029, because right now Sweden is not fulfilling its obligations towards P029. There are several other aspects of the P029 that is questionable regarding whether or not Sweden is fulfilling its obligations, however, according to the Swedish ILO Committee Statement the lack of a national plan of action regarding forced or compulsory labour seems to be the critical opposition of Sweden ratifying the P029 immediately. At the same time, the P029 is created for ILO Member States to improve regarding their way of preventing, protecting and dealing with remedies regarding forced or compulsory labour, this means that no ILO Member State is supposed to already have everything in order for ratification. The whole point of the P029 is to make changes in legislation and practice for the better. In addition, P029 will not come into force until one year after ratification, which is intended to allow countries to take measures to meet their obligations before they are legally bound.

³⁴⁹ 22th of May 2015

³⁵⁰ 22th of May 2015

³⁵¹ Swedish Trade Union Confederation, the Civil Servant's Central Union and the Swedish Academic Central Union

10.2.3 National: Thailand

Looking at Thailand from its legal instruments and policies, Thailand gives the impression of a country that is doing well, however, looking at Thailand from a statistical point of view, Thailand is one of the worst countries in the world on forced or compulsory labour. Then what is the issue? After my research for this thesis the answer seems to be – deep rooted corruption at all levels of officials and deficient implementation. This makes me question whether or not a ratification of P029 would make a difference on a grass root level regardless of how well written it is.

What may prove that international and regional legal instruments makes a difference regardless of the implementation is the fact that Asia and specifically Southeast Asia has the highest amount of forced or compulsory labourers in the world, the ILO Global Estimate has shown that showed that 56 per cent of all the victims are in this region. Southeast Asia is also one of few regions without a solid cooperation between the states. The most prominent regional cooperation is the Association of Southeast Asian Nations (ASEAN), which was established in Bangkok, Thailand in 1967.³⁵² ASEAN is expected to elaborate on a binding instrument on trafficking in persons, which is expected to be adopted this autumn, leaving Thailand for now without a regional legal instrument on forced or compulsory labour and trafficking in persons. This means that Thailand and Southeast Asia have international instruments and national instruments, what they are lacking however are regional instruments. Nevertheless, a well-functioning regional system should not be necessary for a well-functioning implementation of the international and national legal instruments, which rather also shows that it might rather have to do with a lack of implementation than a lack of regional system against forced or compulsory labour. However, a well-functioning regional system might help the process of well-functioning implementation.³⁵³ P029 and R203 will most probably not have any impact regarding this aspect of the issue, what it might do is push Thailand further to strive to get more legislation and one area of focus might be closer cooperation in the region and finally a regional, comprehensive, implementable instrument that will make a difference in practice in a foreseeable future.

This takes the thesis to the next matter that is the fact that Thailand is very concerned about its reputation. The interviews carried out with experts Lisa Rende Taylor, Paul Buckley and Marja Paavilainen indicated that

³⁵² <http://www.asean.org/asean/about-asean>, retrieved on the 25th of April, 2015

³⁵³ Unfortunately, an adoption of an anti-trafficking convention from ASEAN will most probably not be the sole solution, the implementation will probably not be very well-functioning since corruption is a big problem in almost all ASEAN countries, https://www.transparency.org/news/feature/why_asean_needs_to_confront_corruption_in_southeast_asia, published 24th of April, 2015, retrieved on the 26th of April 2015

Thailand is very conscious about its reputation, and therefore reluctant to acknowledge the full scope of the problem in the country, which influences the effectiveness of implementation and this might be one reason why the implementation is deficient. If reputation is the driving force rather than the improvement of life and situation better for the victims; the ratification is more important than the implementation. This makes it important for international organizations such as the ILO to approach Thailand in a way that will truly affect them, one suggestion could be to conduct more unannounced inspections to put pressure on Thailand from public reports and other ways to show how the situation in Thailand really is. P029 and R203 are both stressing the importance of labour inspections and reporting, however, this is providing that the authorities are independent and trustworthy.³⁵⁴ The current situation of Thailand questions the impact made by P029 and R203 in this aspect.

Thailand is a key destination of migrant workers in the region, with a growing economy and increasing demand for workers. Migrant workers are covered by the P029 regardless of the immigration status; one of the issues in Thailand is the insufficiency regarding documenting migrant workers. By implementing P029 all migrant workers that are subjects to forced or compulsory labour in Thailand would be entitled to greater social security and more rights. But then again, the implementation needs to be working in order for the migration workers to get these improvements in practice and not only on paper.

The Thai Junta has shown several tendencies on taking the issue of combatting trafficking in persons very seriously. This might make great changes in the situations of many victims of forced or compulsory labour and their newly released strategy of anti-trafficking in persons is presented in a concept of; prevention; protection; and remedies. This is very familiar to how both P029 and R203 is founded and built. Since many of their strategies on how to reduce the number of victims of forced or compulsory labour looks similar to the P029 and R203 there is a great possibility that these instruments have been studied when the MSDHS produced the strategy. This makes P029 and R203 very influential in the Thai strategy of anti-forced or compulsory labour. Additionally, the P029 and R203 hopefully will indirectly make an impact in a foreseeable future. However, the same month as the MSDHS published their report on the progress on prevention and suppression of trafficking in persons, the leader of the Thai Junta threatened the media not to write anything bad about the fishery industry and think about the reputation of Thailand.

³⁵⁴ The ILO labour inspections can only be done if the State are explicitly inviting the ILO to conduct the labour inspections, as long as Thailand is unwilling to admit they are having structural issues of conducting the labour inspections on their own, ILO will not be able to help on a more practical level

11 Conclusion

The aim of P029 and R203 is not to review, duplicate or question already existing international standards – the aim is to complement, supplement and strengthen them. This is why the scope of P029 and R203 is not very different from Convention No. 29 and Convention No. 105. However, some clarifications regarding the definition of forced or compulsory labour might have been useful. My conclusion is that definition is very important. There are many difficulties that would not exist if there was an internationally known and accepted definition of forced or compulsory labour, or rather a clearer understanding of the definition of trafficking in persons. I believe that the issue lies in the fact that trafficking in persons and forced or compulsory labour are treated like two different issues but at the same time often involves the same type of victims. It would have been easier if the P029 had consisted of a clearer definition part than “the definition of forced or compulsory labour contained in the Convention is reaffirmed, and therefore the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour” to be more specific and clear in regard of the definition. The trafficking in persons definition set in the Trafficking Protocol does not involve all victims of forced or compulsory labour and therefore needs to be seen as insufficient in the battle of forced or compulsory labour. The Trafficking Protocol does not have a supervisory body that is able to clarify the definition, which makes the definition of trafficking in persons inconveniently static. The definition of forced or compulsory labour is a better definition than the definition of trafficking in persons, nevertheless, many countries are using the trafficking in persons definition set in the Trafficking Protocol rather than the definition of forced or compulsory labour in Convention No. 29. As long as it states this, and has this focus there will be people that are not fully covered by the national judicial protection and there will continuously be confusions between the notions. It is of my opinion that the P029 and R203 have not straighten this question mark out and therefore will not be as effective as it could have been.

In the end these instruments might not make a great difference in practice in the international context or the national context. Marginal differences will arise - Sweden is already good and will become marginally better, Thailand is relatively bad will become marginally better, however, little else will depend on precisely P029 and R203 e.g. regarding Thailand's part, it seems to appear more about their reputation and image, rather than the will to do what is right and treat people with respect. These are important documents because it seems as though they pull together the various threads created since the 1920's regarding forced or compulsory labour and how best to work against it. They pull together the loose threads and

above all, I believe they are very important documents, since in my opinion, ILO requires this put in order to get back in the middle of the arena when it comes to forced or compulsory labour. These documents will hopefully give the ILO an extra push and show the world that forced or compulsory labour needs to be eliminated.

Sweden has a broad recognition of ratifying and implementing ILO, and other international and regional, instruments; the Swedish government has already sent out the ILO adopted text of P029 and R203 on a submission of comments and all except one of the approached Swedish authorities, institutions and organizations believed it was a good idea for Sweden to ratify the P029. Therefore, it is likely to presume that Sweden within a foreseeable future will adopt the P029 and implement it into national Swedish legislation and that the P029 and R203 are going to make practical difference in Sweden in a foreseeable future.

Thailand is not in need of more legislation, more policies or instruments on forced labour, these already exist. Thailand is in need of a society with less corruption and better implementation. P029 and R203 are both instruments to ease the implementation and make it more comprehensive, however they are not stronger than the society that is going to implement it. If nothing is going to pass through the doors of ministries in Bangkok, no matter how pedagogic the instrument is, the victims of forced or compulsory labour on a construction site in the countryside or on a fishing boat in the bay of Thailand will not feel the difference. My conclusion is that Thailand will most probably not ratify P029 in a foreseeable future, the Thai legal system is working hard right now in order to create new strategies, policies and instruments in of reducing forced or compulsory labour due to the embarrassment of the downgrading to tier three in the Trafficking in Persons Report issued by the United States of America Department of State. However, P029 and R203 might make a difference in practice indirectly through other national strategies influenced by the P029 and R203. However, I have a sincere concern that if the US Department of State would grade Thailand to a tier two, they would stop making progress and go back to how it used to be. My belief is that the actions being made in Thailand now is because of the bad reputation Thailand currently has - not because of the will to do better.

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