Business and Human Rights: Enhancing Accountability and Access to Remedy

Project 2: Roles and Responsibilities of Interested States

OHCHR Working Paper # 1

Cross-border regulation and cooperation in relation to business and human rights issues: a survey of key provisions and state practice under selected ILO instruments

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I. Introduction

I.1 Background to study

This short study of selected ILO instruments (and state practice under those instruments) was carried out during February and March 2015 as part of preparatory work for the OHCHR's "Accountability and Remedy Project". The OHCHR's Accountability and Remedy Project comprises six distinct, but interrelated, projects and will run until June 2016.[1] At that point, OHCHR will report the outputs and recommendations from the initiative to the United Nations Human Rights Council, as per its mandate under Human Rights Council resolution A/HRC/RES/26/22.[2]

The six projects that comprise the OHCHR's Accountability and Remedy Project have been selected because of their strategic value and potential to improve accountability from a practical, victim-centred perspective.[3]

Project 2 of the Accountability and Remedy Project is entitled "Roles and responsibilities of interested States". This project will explore current and developing State practices and attitudes with respect to the appropriate use of extraterritorial jurisdiction and domestic measures with extraterritorial implications. It will result in "good practice" guidance for States, in relation to the management of cross-border cases, and explore possible models of international and bilateral cooperation.

I.2 Aims of study

There are already a number of international instruments,[4] negotiated under the auspices of the ILO and supervised by ILO's supervisory bodies,[5] which have relevance for the ways in which States parties meet their "duty to protect" against human rights abuses by private parties, including business enterprises. Of these, several are addressed specifically to the kind of conduct that has been defined, for the purposes of the OHCHR's Accountability and Remedy Project, as gross human rights abuses. The aims of this preliminary study are threefold:

(i) to examine the approach of certain ILO instruments to cross-border issues and problems, in particular the extent to which States parties

[1] Further information about the OHCHR's Accountability and Remedy project can be found at
[2] The text of this resolution is available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/22.
[3] More information about the content and aims of these six projects can be found at http://business-humanrights.org/en/ohchr-accountability-and-remedy-project/content-timeline-and-process#prgm_work.
[4] These ILO instruments are usually referred to as "international labour standards" and comprise Conventions that are open for ratification to become legally binding, and Recommendations that are not for ratification.
[5] The Committee of Experts on the Application of Conventions and Recommendations (or "CEACR"), the International Labour Conference's Committee on the Application of Standards, and special procedures (Committee on Freedom of Association, Representations, Complaints).

are required to (a) regulate foreign parties and their conduct and (b) cooperate in respect of the identification, investigation and enforcement of offences;

(ii) to clarify geographical scope of treaty provisions relating to access to remedy; and

(iii) to gather information relating to State practice under these treaty provisions, to gain an insight into how States parties are interpreting their treaty obligations with respect to regulation, enforcement and access to remedy in practice.

I.3 How the study findings will be used

The findings of this preliminary study will be used to help inform preparations for, and give practical context to, interactive workshop discussions on the cross-border regulatory and enforcement issues and challenges posed by business involvement in severe human rights abuses. These discussions are scheduled to take place in the latter half of 2015. The aims of these workshops will be as follows:

- to clarify the legal and practical problems that can arise in cross-border cases;
- to understand the ways in which existing views of roles and responsibilities are likely to shape State responses;
- drawing from experience in other regulatory fields, to consider ways that States can work together cooperatively to address the challenges that arise in cross-border cases;
- to test and give participants the opportunity to react to different possible models of international cooperation; and
- to identify the possible elements of a principled basis for appropriate action in relation to jurisdictional matters.[6]

I.4 Methodology

This study focuses on substantive treaty provisions in, and State practice pursuant to, two treaties in particular, both of which have been identified by the ILO as "fundamental". These are:

- the 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000) (referred to in this study as "C182 – Worst Forms of Child Labour"); and

[6] For more information about the planned programme of work for Project 2 ("Roles and Responsibilities of Interested States") specifically, see http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/RemedyWorkPlans.pdf.

- 1930 Convention concerning Forced or Compulsory Labour (Entry into force: 1 May 1932) (referred to in this study as "C029 – Forced Labour").

In addition, this study takes account of the provisions of the 2014 Protocol to C029 – Forced Labour ("P029"). However, at the time of writing this Protocol had received no ratifications and was not in force.

As migrant workers and members of indigenous communities have been identified as being at particular risk of the abuses covered by the treaties above, the survey of treaty provisions also included a review of the provisions of the following additional international instruments:[7]

- 1989 Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 Sep 1991) (referred to in this study as "C169 – Indigenous Peoples");
- 1949 Convention concerning Migration for Employment (Revised 1949) (Entry into force: 22 Jan 1952) (referred to in this study as "C097 – Migrant Workers"); and
- 1975 Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Entry into force: 09 Dec 1978) (referred to in this study as "C143 – Migrant Workers – Supplementary Provisions");

Researchers then reviewed the provisions of relevant recommendations adopted by the International Labour Conference for further insights as to expectations of States parties in response to cross-border challenges and issues, namely:

- 1999 Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour (referred to in this study as "R190 – Worst Forms of Child Labour"); and
- 2014 Recommendation on supplementary measures for the effective suppression of forced labour (referred to in this study as "R203 – Forced Labour").

Finally, researchers reviewed the comments of the Committee of Experts on the Application of Conventions and Recommendations (or "CEACR"), in relation to "C182 – Worst Forms of Child Labour" and "C029 – Forced Labour" for information about how States deal with cross-border regulatory and enforcement challenges in practice, including information about different forms of extraterritorial regulation, "domestic measures with extraterritorial implications"[8] and international cooperation initiatives. Because of time and resource constraints, this review was confined to 35 jurisdictions chosen to

[7] Note that these instruments are separately open to signature and ratification. In other words, they will come into effect as between the States which are party to them, irrespective of whether those States are signatories to other ILO treaties, such as C182 - Worst Force of Child Labour or C029 – Forced Labour.
[8] See UN Guiding Principles on Business and Human Rights (A/HRC/17/31), Guiding Principle 2, Commentary.

reflect a good geographical spread, as well as a mix of developed, developing and emerging economies. These 35 jurisdictions included the 25 "focus jurisdictions" chosen for the purposes of the OHCHR's programme of work (to the extent that these States are parties to the relevant international instruments).[9] It was only possible to review the most recent comments (i.e. direct requests and observations") of the CEACR displayed on the ILO NORMLEX database.[10]

I.5 Primary source materials: a health warning

It is recognised that the CEACR comments ("direct requests" and "observations"), which focus on the implementation of ratified Conventions in law and practice, are given in response to, and seek to probe, information submitted by States, employers and workers organisations. There are likely to be many domestic initiatives (and potentially some extraterritorial and cooperative initiatives) that are not mentioned in the CEACR reports because they had not previously been brought to the attention of the ILO's supervisory body, or indeed have been brought to their attention, but were considered not to raise any problem to comment upon. Therefore the information gathered on States practice for the purposes of this study can only be treated as indicative.

II. Selected ILO Conventions

II.1 C182 - Worst Forms of Child Labour (as supplemented by R190 – Worst Forms of Child Labour)

II.1.1 Summary of provisions relating to cross-border regulation and cooperation

Extraterritorial regulation and domestic measures with extraterritorial implications: C182 – Worst Forms of Child Labour does not lay down any geographical constraints to the responsibilities of States parties to regulate business entities and provide access to remedy. For instance, Article 1 of the treaty, which requires "*immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency*", contains no wording that would necessarily limit the scope of regulatory obligations to addressing the problem of child labour within the territory of the relevant State party. The precise geographical scope of obligations under the treaty is, therefore, a matter for interpretation. However, R190, which supplements C182, contains the clear suggestion that responses of States parties may be addressed to extraterritorial as well as "within territory" human rights impacts. Article 15 of R190 states that *"[o]ther measures aimed at the prohibition and elimination of the worst forms of child labour might include …. (d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions*

[9] See n. 5 above, p. 7. A complete list of jurisdictions covered in the review of CEACR comments appears at Annex 3.
[10] See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO:::.

for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country".

International cooperation: The Convention contains a general provision on international cooperation as follows:

"Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education."[11]

This provision was a significant change of approach for ILO standards, which were traditionally aimed at regulating national labour standards by each State within its own territory[12]. It reflects not only the recognition of the international dimension of the issues to be tackled (e.g. child sex tourism, child trafficking, child pornography on the Internet) but also the awareness of the need for international cooperation in comprehensive measures to tackle the root causes (e.g. poverty alleviation, universal education).

Further guidance is provided by R190 – Worst Forms of Child Labour which states that "*Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:*

(a) gathering and exchanging information concerning criminal offences, including those involving international networks;
(b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;
(c) *registering perpetrators of such offences*."

In addition, Article 16 of R190 provides as follows:

"Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations.

Such international cooperation and/or assistance should include:

(a) mobilizing resources for national or international programmes;
(b) mutual legal assistance;
(c) technical assistance including the exchange of information;
(d) support for social and economic development, poverty eradication programmes and universal education.

[11] C182 – Worst Forms of Child Labour, Article 8.
[12] For example, the ILO Convention concerning Minimum Age for Admission to Employment, 1973 (No.138), requires in its Article 2(1) that "Each Member which ratifies this Convention shall specify, … a minimum age for admission to employment or work within its territory and on means of transport registered in its territory …"

II.1.2 Summary of provisions relating to access to remedy

Under Article 7(1) of C182 – Worst Forms of Child Labour, States parties agree to "*take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions*."

Further guidance is provided in R190 – Worst Forms of Child Labour as follows:

"12. Members should provide that the following worst forms of child labour are criminal offences:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.

13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.

14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate."

In other words, C182 encourages States parties to consider and implement a range of sanctions and remedies for the serious human rights abuses covered by the Convention, including criminal sanctions against employers, civil remedies, supervisory remedies and other sanctions, such as revoking permits and licenses.

II.1.3 Information and insights emerging from most recent CEACR comments

Enforcement of standards against businesses: The most frequently mentioned sanctions, in cases where involvement in the worst forms of child labour have been detected, are imprisonment and fines. While the cases that result in imprisonment obviously concern individual (rather than corporate) defendants, it is not possible to tell what proportion of the remainder concerned offences were committed by business enterprises (as opposed to individual managers or owners). Information about actual sanctions imposed (i.e. length of prison terms or quantum of fines) was generally scant (and, indeed, the CEACR comments consistently request more information from States parties in this regard). The CEACR comments reviewed for the purposes of this study do not shed light on the success or otherwise of legal cases against businesses (as opposed to individual managers and owners). Moreover, there was little data in the CEACR reports reviewed for the purposes of this study that provided any insights into how States are responding in practice to the challenge laid down in R190 - Worst Forms of Child Labour (see Article 14, quoted above), that special sanctions be developed for business enterprises "*such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate*". However, the CEACR comments do draw attention to some specific examples of measures that appear to relate specifically to businesses (as opposed to individuals), such as publication of sanctions taken against employers (Argentina), and certain incentives for businesses that can demonstrate that they do not use child labour (Bolivia). Some jurisdictions (e.g. Thailand) have created regimes that enable child victims of abuse to recover damages from the employers concerned.

The method of detection that is most frequently mentioned in the CEACR comments reviewed for the purposes of this study is regular and ad hoc inspection by government officials (usually referred to as "labour inspectors") as well as law enforcement officials, such as police and border guards, in cases of trafficking in persons. However, the use of "whistle-blower" hotlines and other public reporting mechanisms is mentioned in several country-specific reports. The difficulties posed by a lack of resources available to labour inspectors, and their complicity in abuses in some cases, are cited as serious obstacles to effective enforcement in a number of jurisdictions.

Extraterritorial regulation and "domestic measures with extraterritorial implications": Despite the provision in R-190 Worst Forms of Child Labour urging States to consider measures to address the extraterritorial abuses of their own nationals, the CEACR comments shed little light on State practice in this regard. It is noted that some States (e.g. Australia, Canada and Sweden) have taken specific steps to enable criminal prosecutions to take place against their own nationals for crimes of sexual abuse of children in other jurisdictions. However, no definite examples of measures aimed at

addressing extraterritorial human rights impacts of business enterprises (as opposed to individual offenders) were identified in the course of this study.[13]

International cooperation: The CEACR comments highlight examples of a range of different international and regional cooperation initiatives. These can be categorised as follows:

(i) information gathering and sharing to aid detection and investigation of crimes (e.g. international child sexual exploitation database which involves 40+ jurisdictions);
(ii) technical assistance, capacity building and awareness raising projects (Argentina, Brazil, Colombia, Germany, Netherlands, Nigeria, Bulgaria, Pakistan);
(iii) bilateral and regional agreements between source, transit and destination countries covering operational matters relating to identification, protection and return of child victims of trafficking (e.g. Mexico, together with several other partner jurisdictions, Thailand, n.b. bilateral arrangements with a number of neighbouring States);
(iv) initiatives to inform people in other jurisdictions about their rights and where to get help (e.g. United States, Philippines); and
(v) support for socio-economic development, and especially in the field of education.

However, there was insufficient information in the CEACR reports reviewed for the purposes of this study to be able to determine the detailed workings of these initiatives or to draw any general conclusions as regards their success to date. (Indeed, CEACR repeatedly calls for further information from States parties with respect to the practical impacts of these cooperative initiatives). Despite the specific reference to mutual legal assistance in Article 16 of R190 (see above), references to mutual legal assistance in CEACR comments are too few and far between to be able to draw any conclusions about when and how mutual legal assistance is made available, in practice, in cases involving the worst forms of child labour.

II.2 C029 - Forced Labour (and P029, not yet in force)

II.2.1 Summary of provisions relating to cross-border regulation and cooperation

Extraterritorial regulation and domestic measures with extraterritorial implications: Each ILO member State that ratifies C029 undertakes to "suppress the use of forced or compulsory labour in all its forms".[14] As with C182 - Worst Forms of Child Labour (see above), C029 does not contain any explicit provisions on the territorial scope of domestic implementation measures, beyond requiring that States parties apply the Convention provisions to any territories under their "sovereignty, jurisdiction, protection,

[13] Although the steps taken by some jurisdictions (e.g. Japan) to prevent distribution of child pornography via the internet arguably fall within the category of "domestic measures with extraterritorial implications".
[14] C029 – Forced Labour Convention, Article 1.

suzerainty, tutelage or authority".[15] Therefore, like C182, the extent to which the Convention may require or authorise some extraterritorial regulatory measures by States' parties is open to interpretation. Article 2 of P029 (which at the time of writing had received no ratifications and was not in force) contains a slight suggestion that States parties may indeed need to be concerned with extraterritorial human rights impacts. Under Article 4, each State party agrees to 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" (emphasis added). On the other hand, the Recommendation that accompanies this Protocol (R203 – Forced Labour (Supplementary Measures) Recommendation 2014) refers to "victims of forced or compulsory labour that occurred in the member State" (emphasis added).[16]

Article 4(g) of R203 calls for "domestic measures with extraterritorial implications" aimed at protecting people who are not already in the jurisdiction of the State party but who may be at risk of exploitation within the State party upon arrival. According to Article 4(g) of R203, "effective preventative measures" might include:

"(g) orientation and information for migrants, before departure and upon arrival, in order for them to be better prepared to work and live abroad and to create awareness and better understanding about trafficking for forced labour situations".

International cooperation: The Convention on Forced Labour (C029) does not contain a provision dealing specifically with international cooperation. However, this issue has been addressed by the CEACR in, for example, its 2000 General Observation addressed to all ratifying countries relating to trafficking in persons in which the CEACR has requested Governments to provide information on "(iii) international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons". [17]

P029 (not yet in force) would insert a provision to the effect that "*Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour*".[18] This is supplemented by the guidance in R203, Article 14, which states that:

14. International cooperation should be strengthened between and among Members and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained suppression of forced or compulsory labour, including by:

[15] See C029 – Forced Labour Convention, Article 26.
[16] See R203 - Forced Labour (Supplementary Measures) Recommendation 2014, Article 12(e).
[17] The general observation contains other relevant useful references: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3066644,,,2000
[18] P029 – Protocol of 2014 to the Forced Labour Convention 1930, Article 5.

(a) *strengthening international cooperation between labour law enforcement institutions in addition to criminal law enforcement;*

(b) *mobilizing resources for national action programmes and international technical cooperation and assistance;*

(c) *mutual legal assistance;*

(d) *cooperation to address and prevent the use of forced or compulsory labour by diplomatic personnel; and*

(e) *mutual technical assistance, including the exchange of information and the sharing of good practice and lessons learned in combating forced or compulsory labour.*

In addition, R203 recommends that, as part of its prevention strategy, each State party should take steps including:

"promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion."[19]

II.2.2 Summary of provisions relating to access to remedy

The provisions relating to access to remedy in C029 – Forced Labour Convention are brief.[20] Article 25 provides that the *illegal* use of forced labour "*shall be punishable as a criminal 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*".[21] C105 - Abolition of Forced Labour Convention, 1957, which seeks to outlaw specific types of forced or compulsory labour (i.e. for specific purposes), further obliges States parties to "*take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention*".[22]

The Protocol of 2014 (P029, not yet in force), together with the additional guidance provided by R203, would add considerably more detail with respect to access to remedies in cases of forced labour. Article 1(1) of P029 refers to both compensation for victims and effective sanctions as follows:

"In giving effect to its obligations under the Convention to suppress forced or compulsory labour, each Member shall take effective measures to prevent

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[19] R203 – Forced Labour (Supplementary Measures) Recommendation 2014, Article 4(i).

[20] Note that transitional provisions, which have now expired, contained some provisions on access to remedy. For instance, Article 23 provided for regulations governing the use of forced or compulsory labour to include bona fide complaints mechanisms.

[21] See further paragraphs 317 to 326 of the 2012 General Survey of the CEACR, which contain further observations with respect to application of sanctions and on the compensation of victims.
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf

[22] C105 - Abolition of Forced Labour Convention, 1957, Article 2.

and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour."

Article 4 further provides that:

"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."

This is supplemented by further guidance in R203 relating to access to remedies as follows:

"Members should take measures to ensure that all victims of forced or compulsory labour have access to justice and other appropriate and effective remedies, such as compensation for personal and material damages, including by:

(a) ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages;
(b) providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits;
(c) ensuring access to appropriate existing compensation schemes;
(d) providing information and advice regarding victims' legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge; and
(e) providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate."[23]

Finally, R203 adds the following guidance in relation to enforcement against business enterprises in particular:

"Members should take action to strengthen the enforcement of national laws and regulations and other measures, including by:

(a) giving to the relevant authorities, such as labour inspection services, the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organizations concerned for the prevention and protection of victims of forced or compulsory labour;
(b) providing for the imposition of penalties, in addition to penal sanctions, such as the confiscation of profits of forced or

[23] R203 – Forced Labour (Supplementary Measures) Recommendation 2014, Article 12.

compulsory labour and of other assets in accordance with national laws and regulations;

(c) *ensuring that legal persons can be held liable for the violation of the prohibition to use forced or compulsory labour in applying Article 25 of the Convention and clause (b) above …".*[24]

II.2.3 Information and insights emerging from most recent CEACR comments

Enforcement of standards against business enterprises: States parties have provided information on both anti-human trafficking measures and anti-forced labour measures under reporting processes mandated by the various ILO instruments. Because of the regulatory context and the nature of the offences involved, it is probable that at least some of the enforcement activities in relation to prohibitions of forced labour have taken place in respect of business enterprises. However, the information provided to CEACR, and hence the CEACR comments themselves, do not typically disaggregate the enforcement data to this extent. Information provided by States parties in relation to sanctions tend to focus on imprisonment and fines. However, CEACR comments do contain scattered examples of other measures that may be relevant to business enterprises in particular, such as the maintenance of a "dirty list" of companies found to have used forced labour (Brazil),[25] maintaining a "banned list" of recruitment and employment agencies (Philippines), close monitoring of recruitment agencies (Indonesia), close monitoring of business enterprises involved in specific sectors or which have failed to comply with regulatory requirements (including reporting requirements) (Thailand), "supervisory guidance" to business organisations following the identification of problems in "training schemes" for foreign interns (Japan), and collection of compensation for victims (Mexico).

As with C182, information regarding actual sanctions in individual cases (e.g. amount of fines or length of prison sentences) is patchy and scant. According to CEACR comments, enforcement of standards is deficient in many jurisdictions and is hampered, in many cases, by a lack of personnel and resources.

Extraterritorial regulation and "domestic measures with extraterritorial implications": The review of most recent CEACR comments did not reveal any examples of any clear attempts by States parties to regulate business activities extraterritorially. However, some States have extended the geographical scope of criminal law regimes to cover trafficking offences committed by their nationals extraterritorially (e.g. United Kingdom).[26] In

[24] Ibid, Article 13.

[25] According to CEACR's most recent comments on the implementation of C029 by Brazil, "[t]he [dirty list], which is updated every six months, is sent to various public administrative services and to banks administering constitutional and regional financing funds so that no financial assistance, grants or public credits are granted to those included on the list (Decree No. 540 of the Ministry of Labour and Employment of 15 October 2004)."

[26] The most recent CEACR comments on implementation of C029 by the United Kingdom notes that this has been done as part of a series of measures to implement the EU Directive on Human Trafficking.

addition, the comments do mention a number of initiatives that are aimed at either protecting their nationals abroad or assisting foreign migrant workers so that they are less vulnerable to exploitation on arrival in the territory of the relevant State. These initiatives (which potentially fall within the category of "domestic measures with extraterritorial implications") include providing information to foreign migrant workers about their legal rights through foreign diplomatic missions (Indonesia, Philippines, Thailand), border controls (Indonesia, Russian Federation in cooperation with other CIS states), close monitoring of recruitment organisations (Indonesia) and public information campaigns (Philippines).

International cooperation: A range of different international cooperative initiatives can be identified from the most recent CEACR comments on implementation of treaty obligations by States parties. These take the form of:-

(i) bilateral agreements and MOUs with destination countries for migrant workers relating to the treatment of those workers while in the jurisdiction of the destination country (Indonesia);
(ii) technical assistance and capacity building (Pakistan, Zambia);
(iii) cooperation and information sharing between enforcement bodies in respect of investigations into human trafficking (United Kingdom, Poland);
(iv) cooperation with respect to border controls (Russian Federation); and
(v) development of joint repatriation programmes (Thailand in cooperation with Cambodia, the Lao People's Democratic Republic, Myanmar and the Yunnan Province of China).

A number of further bilateral arrangements between labour supplying and labour receiving countries are mentioned in the CEARC reports (e.g. Colombia, Qatar). However, the aims, scope and institutional arrangements laid down in these agreements are not discussed in any detail.

The CEACR comments contain scant information on the use of mutual legal assistance to combat human trafficking and forced labour. It is difficult, from the information reviewed so far, to draw any meaningful conclusions about the extent to which mutual legal assistance has been relied upon in cross-border cases relating to human trafficking and the difference this assistance has made to enforcement and remedial outcomes.

II.3 Other relevant treaties

II.3.1 ILO Conventions relating to migrant workers (C097, C143)

Migrant workers are particularly vulnerable to gross human rights abuses in a business context. The ILO has adopted a number of conventions in relation to the protection of migrant workers in particular, and it is relevant for the purposes of this study to note the key provisions governing the relationships between labour supplying and labour receiving states. Article 3 of C097, for instance, calls for cooperation between States to address the problem of

misleading propaganda about emigration and immigration. Article 7 requires cooperation between the employment services of member States. Article 10 encourages further bilateral agreements in cases where there is large movement of workers from one member State to another.

C143 is concerned specifically with the problem of abuse of migrant workers in illegal or clandestine employment contexts. Article 3 calls on States parties to:

"adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members—

(a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and

(b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions,

in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention."

Article 4 calls for greater information exchange between States on the subject of migrant workers. Article 5 could potentially be interpreted as a call for greater use of extraterritorial jurisdiction to address the problem of prosecution gaps and to ensure that human traffickers do not enjoy impunity, i.e.

"One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities".

The domestic legal responses expected of States parties are set out in Article 6 as follows:

"Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise".

II.3.2 C169 – Indigenous and Tribal Peoples Convention

Similarly, indigenous peoples and tribal peoples are noted in a number of CEACR comments as they are among the vulnerable groups of concern to the ILO. As provided in its Article 2(2), C169 is aimed at achieving equality of rights and opportunities for members of indigenous communities with respect

to domestic laws, and protection of economic, social and cultural rights with respect to social and cultural identity. Part III of the Convention contains provisions on recruitment and conditions of employment. Article 32 of C169 provides for specific measures to be taken, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders.[27] Information on the legal implications of C169 for the private sector actors is available in the 2013 Handbook on C169.[28] Issues directly implying private sector actors have been reviewed in comments formulated by the CEACR.[29]

III. General comments and observations

Regulation and sanctions: *To* the extent that the regulation of business enterprises is discussed, CEACR reports have concentrated on enforcement activities and penal measures (the "punishment side"). The CEACR comments shed very little light on use of alternative remedies and sanctions (e.g. civil and administrative remedies, compensation), despite the fact that, according to the treaty provisions and related guidance, these should be an important part of domestic legal responses. Moreover, the Conventions and supporting Recommendations reviewed as part of this study contain little in the way of guidance for States parties as to how to work with business enterprises to achieve better prevention (the "preventative side"). However, it is possible that this aspect of prevention could receive more prominence in the future. A change in approach may have been signalled by the new 2014 Protocol to the Forced Labour Convention (P029 – not yet in force), which introduces, for the first time, the concept of corporate due diligence to the ILO's treaty regimes on forced labour. Article 5 of this Protocol states that "*the measures to be taken for the prevention of forced or compulsory labour shall include … (e) supporting due diligence by both the public and private sectors to prevent and respond to the risks of forced or compulsory labour*".

Use of extraterritorial jurisdiction in respect of business enterprises: The implementing measures of States parties with respect to business enterprises appear to be focussed almost entirely upon "within territory" human rights impacts. The study did not identify any examples of domestic regulatory initiatives which sought directly to regulate the behaviour of business enterprises in other jurisdictions. Some States parties have extended their criminal jurisdiction extraterritorially in respect of individual

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[27] For example, see 2013 CEACR Direct Request on C169 for Costa Rica (see comments on cross-border contacts and cooperation with Panama and Nicaragua): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3142865

[28] Handbook for ILO Tripartite Constituents: Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Geneva, ILO, 2013. This handbook was elaborated in close cooperation with the ILO's Bureau for Employers' Activities and the Bureau for Workers' Activities, with the aim of providing the ILO constituents with a practical tool to better understand the relevance, scope and implications of the Convention and to foster joint efforts for its implementation.

[29] For example, see 2014 CEACR Observation on C169 for Guatemala: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3180191

offenders, notably in relation to the offences of child sex tourism and human trafficking. However, there was no evidence in the State practice reviewed as part of this study that States parties interpret the guidance given in Article 15(d) of R190 (in respect of C182 – Worst Forms of Child Labour) as requiring extraterritorial regulatory action in relation to corporate nationals.

Domestic measures with extraterritorial implications: A number of examples of "domestic measures with extraterritorial implications" were noted. These have been put in place in response to concerns about cross-border trafficking for sexual and labour exploitation and can be divided into two main groups:

(i) measures aimed at protecting the State parties own nationals while abroad, by making sure that those individuals have access to information and assistance if required; and

(ii) preventative measures aimed at ensuring that migrants have access to accurate information about labour conditions and their rights before they leave their own countries.

International cooperation: A number of examples of international cooperation were identified in this study. Most of these have been developed in response to the problem of cross-border trafficking of humans for sexual and labour exploitation. Source, transit and destination countries appear to recognise the operational benefits in cooperating to identify those at risk, track the movements of offenders, detect and investigate offences and care for and repatriate victims. However, as noted above, there is little information in the CEACR reports themselves about how the various institutions work together in practice, and success of these cooperative projects and initiatives in terms of human rights outcomes.

IV. Five questions to explore further in the course of the OHCHR Accountability and Remedy Project (and specifically Project 2)

This preliminary study of State practice raises a number of questions of practice and policy that would be useful to explore further as Project 2 ("Roles and responsibilities of interested States") develops, i.e

1. Could the steps taken by some States in relation to sex tourism (and, to a lesser extent, human trafficking) represent the beginning of a trend in favour of greater use of extraterritorial jurisdiction to control, and provide greater access to remedies in respect of, harms that have been "exported", in one way or another, from a home State? Or are these special cases, demanding special treatment and to which special considerations apply?

2. Do the roles and responsibilities of interested States (e.g. home and host States) differ depending on the source of the relevant legal obligations (e.g. whether they derive from criminal, civil, administrative law) and/or the types of sanctions and remedies that may be

applicable? If so, how? How can these different roles complement (a) each other and (b) the regulatory efforts of other States?

3. In light of the new provisions under P029, how can interested States (e.g. home and host States) work together to promote greater due diligence on the part of business enterprises to identify and reduce adverse human rights impacts?

4. What can we learn from experiences to date in relation to international cooperative measures to combat forced labour and human trafficking? Are there broader lessons that can be drawn for other cases and contexts (e.g. in relation to liaison, overcoming problems of limited enforcement capacity, information sharing between authorities, public information etc.)?

5. In the context of investigation and enforcement of allegations of business involvement in serious human rights abuses, and in light of the experiences of States to date in respect of human trafficking, what factors (legal and practical) are likely to govern the success of mutual legal assistance arrangements in practice?

Annex 1: List of States parties: C182

Source: ILO Normlex.

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327

Afghanistan Albania Algeria Angola Antigua and Barbuda Argentina Armenia Australia Austria Azerbaijan	Bahamas Bahrain Bangladesh Barbados Belarus Belgium Belize Benin Bolivia, Plurinational State of Bosnia and Herzegovina Botswana Brazil Brunei Darussalam Bulgaria Burkina Faso Burundi	Cabo Verde Cambodia Cameroon Canada Central African Republic Chad Chile China Colombia Comoros Congo Costa Rica Croatia Cyprus Czech Republic Côte d'Ivoire
Democratic Republic of the Congo Denmark Djibouti Dominica Dominican Republic	Ecuador Egypt El Salvador Equatorial Guinea Estonia Ethiopia	Fiji Finland France
Gabon Gambia Georgia Germany Ghana Greece Grenada Guatemala Guinea Guinea - Bissau Guyana	Haiti Honduras Hungary	Iceland Indonesia Iran, Islamic Republic of Iraq Ireland Israel Italy
Jamaica Japan Jordan	Kazakhstan Kenya Kiribati Korea, Republic of Kuwait Kyrgyzstan	Lao People's Democratic Republic Latvia Lebanon Lesotho Liberia Libya Lithuania Luxembourg
Madagascar Malawi Malaysia Maldives Mali Malta Mauritania Mauritius	Namibia Nepal Netherlands New Zealand Nicaragua Niger Nigeria Norway	Oman

Mexico Moldova, Republic of Mongolia Montenegro Morocco Mozambique Myanmar		
Pakistan Panama Papua New Guinea Paraguay Peru Philippines Poland Portugal	Qatar	Romania Russian Federation Rwanda
Saint Kitts and Nevis Saint Lucia Saint Vincent and the Grenadines Samoa San Marino Sao Tome and Principe Saudi Arabia Senegal Serbia Seychelles Sierra Leone Singapore Slovakia Slovenia Solomon Islands Somalia South Africa South Sudan Spain Sri Lanka Sudan Suriname Swaziland Sweden Switzerland Syrian Arab Republic	Tajikistan Tanzania, United Republic of Thailand The former Yugoslav Republic of Macedonia Timor-Leste Togo Trinidad and Tobago Tunisia Turkey Turkmenistan	Uganda Ukraine United Arab Emirates United Kingdom United States Uruguay Uzbekistan
Vanuatu Venezuela, Bolivarian Republic of Viet Nam	Yemen	Zambia Zimbabwe

Annex 2: List of States parties: C029 and P029

Source: ILO Normlex

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174

Ratifications of C029 - Forced Labour Convention, 1930 (No. 29)

Date of entry into force: 01 May 1932

76748191815812	312174				
A827E2AB42201	76744411645812	C029 - Forced La	8B02D1CB462FC	79578282910688	
C029	9BD520EF1F91B	62170122990941	Date of entry into	58B7AA3C91C49	
49093619112901	C	5C9B2B6438EDE			

177 ratifications

Albania Algeria Angola Antigua and Barbuda Argentina Armenia Australia Austria Azerbaijan	Bahamas Bahrain Bangladesh Barbados Belarus Belgium Belize Benin Bolivia, Plurinational State of Bosnia and Herzegovina Botswana Brazil Bulgaria Burkina Faso Burundi	Cabo Verde Cambodia Cameroon Canada Central African Republic Chad Chile Colombia Comoros Congo Costa Rica Croatia Cuba Cyprus Czech Republic Côte d'Ivoire
Democratic Republic of the Congo Denmark Djibouti Dominica Dominican Republic	Ecuador Egypt El Salvador Equatorial Guinea Eritrea Estonia Ethiopia	Fiji Finland France
Gabon Gambia Georgia Germany Ghana Greece Grenada Guatemala Guinea Guinea - Bissau Guyana	Haiti Honduras Hungary	Iceland India Indonesia Iran, Islamic Republic of Iraq Ireland Israel Italy

Jamaica Japan Jordan	Kazakhstan Kenya Kiribati Kuwait Kyrgyzstan	Lao People's Democratic Republic Latvia Lebanon Lesotho Liberia Libya Lithuania Luxembourg
Madagascar Malawi Malaysia Maldives Mali Malta Mauritania Mauritius Mexico Moldova, Republic of Mongolia Montenegro Morocco Mozambique Myanmar	Namibia Nepal Netherlands New Zealand Nicaragua Niger Nigeria Norway	Oman
Pakistan Panama Papua New Guinea Paraguay Peru Philippines Poland Portugal	Qatar	Romania Russian Federation Rwanda
Saint Kitts and Nevis Saint Lucia Saint Vincent and the Grenadines Samoa San Marino Sao Tome and Principe Saudi Arabia Senegal Serbia Seychelles Sierra Leone Singapore Slovakia Slovenia Solomon Islands Somalia South Africa South Sudan Spain Sri Lanka	Tajikistan Tanzania, United Republic of Thailand The former Yugoslav Republic of Macedonia Timor-Leste Togo Trinidad and Tobago Tunisia Turkey Turkmenistan	Uganda Ukraine United Arab Emirates United Kingdom Uruguay Uzbekistan

Sudan Suriname Swaziland Sweden Switzerland Syrian Arab Republic		
Vanuatu Venezuela, Bolivarian Republic of Viet Nam	Yemen	Zambia Zimbabwe

Ratifications of P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Date of entry into force:

76748191815812	3174672	1EE72F7382658F		
76744411645812	P029 - Protocol o	CFE1B8EE85BFC	79578282910688	P029
DBCC1112DAD6I	62170122990941	Date of entry into	56F76C5E083D7/	49093619112901
P	882293CCF5C7B			

0 ratifications

Annex 3: List of jurisdictions covered in the preliminary study

1. The 25 “focus jurisdictions” for the Accountability and Remedy Project, arranged by UN Regional Grouping, are as follows:

Western Europe and Others	Eastern Europe	Latin America and Caribbean	Asia and Pacific	Africa
United States	Poland	Brazil	Japan	South Africa
United Kingdom	Russia	Colombia	China	Côte d'Ivoire
France	Azerbaijan	Argentina	Singapore	Morocco
Germany		Mexico	Thailand	Tunisia
Australia			India	Zambia
			Qatar	
			Papua New Guinea	
			Indonesia	

2. In addition, the CEACR comments relating to the following additional jurisdictions were reviewed for the purpose of this preliminary study.

Bolivia

Bulgaria

Chile

Egypt

Ghana

Netherlands

Nigeria

Norway

Pakistan

Philippines