

## LABOUR STANDARDS- ULTIMATE THE GAP FOR RURAL WORKERS

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### **Abstract:**

‘Rural workers often fall outside the scope of national labour laws in a number of cases, they are explicitly excluded, either fully or partially, from the relevant laws, or, when they are covered under the law, they are excluded from protection in practice. The labour protection gap is huge and hence the dimension of the decent work deficit for rural workers. This severe decent work deficit needs to be addressed if approaches to address rural employment and reduce poverty are to be successful.

**Introduction:**

Many rural workers, especially in agriculture, experience severe difficulties and gaps in protection as regards freedom of association, forced labour, child labour, discrimination, wages, working time, occupational safety and health and social security. For example, 70 per cent of child labour is found in agriculture and bonded labour is prevalent in certain countries. The level of accidents and work-related illness in rural areas accounts for half the global total, with an average of 170,000 agricultural workers killed at work annually. International labour standards are essential to guide national legislation and policy and to help address labour protection gaps. They provide an internationally recognized framework for governments in the implementation of decent work principles in all areas of labour, including in rural areas. The supervisory system plays a key role in ensuring that real progress is made towards decent work for all, as a means of obtaining information on the application of international labour standards, in guaranteeing their effective implementation and by providing a dialogue and reference framework supporting the efforts of member States to implement international labour standards. The Global Reports, published annually as part of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, also provide valuable information on the implementation of fundamental principles and rights at work, including in rural areas.

Since its foundation in 1919, the ILO has been concerned with the protection of rural workers, especially in agriculture. In 1921, ten instruments were adopted to protect agricultural workers, covering freedom of association, minimum age, child labour, hours of work, social security, living conditions and vocational training. Since then, instruments have been adopted,<sup>1</sup> The term “rural workers” is defined, by Article 2 of the Rural Workers’ Organisations Convention, 1975 (No. 141), as “any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or, as a self-employed person such as a tenant, sharecropper or small owner–occupier.” In addition to these specific instruments, many other ILO standards include rural workers in their scope of application.

**Fundamental principles and rights at work:**

The importance of the fundamental Conventions is today universally recognized. According to the 1998 Declaration, all ILO member States, even if they have not ratified the Conventions in question, have an obligation – arising from the very fact of membership of the Organization – to

respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These rights are even more important in that they are enabling rights, i.e. they create conditions to allow access to other rights.

### **Freedom of association and collective bargaining:**

Freedom of association is a fundamental human right, which paves the way for improvements in social and labour conditions, for example, through collective bargaining. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that workers and employers, “without distinction whatsoever”, have the right to establish and join organizations of their own choosing. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provides that workers are to enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Two other Conventions particularly relevant to rural workers are: the Right of Association (Agriculture) Convention, 1921 (No. 11), which provides that member States are “to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture”.

Despite universal recognition of the right to freedom of association, rural workers, especially in agriculture, face both legal impediments and practical challenges in asserting this right (as a result of poverty, informality, dependency on the employer who provides not only income but also housing and schooling, the large number of women workers in agriculture and the often atypical employment relationships, such as migrant, seasonal or casual workers).<sup>5</sup> The need to promote trade unions, in general, and organizations in the rural sector, in particular, has been raised on several occasions by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

### **Forced labour:**

Forced labour is prevalent in many rural areas, especially among migrant agricultural workers and victims of trafficking. The Forced Labour Convention, 1930 (No. 29), provides that all member States undertake to suppress the use of forced or compulsory labour in all its forms. In accordance with the Abolition of Forced Labour Convention, 1957 (No. 105), member States shall undertake to suppress and not to make use of any form of forced or compulsory labour, for example, as a method of mobilizing and using labour for purposes of economic development or for having participated in strikes. These core Conventions cover all workers from the exaction of forced labour. This broad protection is afforded regardless of the sector of activity (whether in the formal or informal economy) or the legal status of the worker.

### **Elimination of child labour and protection of children and young persons:**

While great progress has been made in many countries in reducing child labour, a number of factors make child labour in agriculture and rural areas particularly difficult to tackle. These include large numbers of working children (approximately 132 million girls and boys aged 5–14), starting work at a young age, the hazardous nature of agricultural work, a lack of regulations in the area, the invisibility of their work, the denial of education, the effects of poverty, and ingrained attitudes and perceptions about the roles of children in rural areas. The prevalence of child labour, especially in agriculture, undermines decent work and employment for adults and weakens rural labour markets as it maintains a cycle where household income for both farmers and waged workers is insufficient to meet the economic needs of their families.

Rural poverty also drives girls and boys to migrate to towns and cities where they often end up as urban child labourers, urban unemployed or underemployed, exchanging their rural poverty for urban poverty. Child labour undermines efforts to promote rural youth employment under decent conditions of work. Children who have reached the minimum legal age for employment in their country (14 years of age or higher) continue to work in exploitative and hazardous child labour with poor future job and economic prospects. It is now widely acknowledged that combating child labour also implies addressing the problem of ending poverty and promoting decent work for youth and adults.

**To eliminate child labour in rural areas, four main gaps need to be addressed.**

**First**, national legislation has to include legislation prohibiting hazardous child labour in accordance with Conventions No 138 and 182.

**Second**, exclusions and exemptions in national labour laws for agricultural workers need to be eliminated. In addition, exemptions to the minimum age for working on family farms, or children working alongside their parents, deprive children of proper protection and, therefore, needs revision.

**Third**, labour inspection in agriculture is often either non-existent or inherently weak. Building the capacity of labour inspectorates and their inspectors to deal with child labour in agriculture and to ensure decent youth employment is vital.

**Fourth**, gaps in educational standards in rural areas should be remedied. Due to factors such as lack of schools, poor educational standards, and families being too poor to be able to send their children to school, there are often no viable alternatives for children other than to work under harsh and exploitative conditions in agriculture.

Educational deficits carry on into adulthood as lack of literacy, poor educational levels, and low-skill levels block pathways out of rural poverty for many agricultural workers.

### **Equality of opportunity and treatment**

Agricultural workers face discrimination on a number of levels, including often being excluded from relevant national laws. The Equal Remuneration Convention, 1951 (No. 100) provides that member States are to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. Under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), member States undertake to declare and pursue a national policy designed to promote equality of opportunity and treatment.

### **Tripartite consultation**

Tripartite dialogue is essential in order to ensure that all workers, including agricultural workers, have a voice in governance. The Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), provides that member States are to introduce procedures which ensure effective consultations, with respect to labour matters with representatives of employers' and workers' organizations, who are freely chosen by their representative organizations. Its



accompanying Recommendation (No. 152) suggests examples of consultation procedures. These procedures should include, inter alia, consultations on the preparation and implementation of legislative or other measures to give effect to Conventions and Recommendations.<sup>17</sup> In addition, many of the Conventions in the area of agriculture also request that the government consult with representatives of workers and employers on the implementation of the Convention. The report form under article 22 of the Constitution concerning Convention No. 144 gives the example of representatives of persons working in the rural sector and informal economy as “persons affected”, in addition to representatives of employers’ and workers’ organizations.

### **Labour administration and inspection :**

The Labour Administration Convention, 1978 (No. 150) is a key Convention for improving governance in rural areas and is dealt with more fully in Chapter 7. Labour inspection is the most important tool governments have at their disposal to ensure compliance with labour laws and to identify gaps in national legislation. The CEACR has emphasized the need to develop labour inspection activities in agriculture, especially to protect young workers and tackle child labour.<sup>19</sup> The Labour Inspection (Agriculture) Convention, 1969 (No. 129), requires Governments to establish a system of labour inspection in agriculture. Three main functions of labour inspection are identified: securing the enforcement of the legal provisions relating to conditions of work and protection of workers; providing technical information and advice to employers and workers on how best to comply with relevant legal provisions; and bringing to the attention of the competent authorities defects or abuses that are not specifically covered by the law and submitting proposals on how to improve laws and regulations. In this sense, labour inspection has a crucial and proactive role to play.

### **Employment policy and promotion :**

Under the Employment Policy Convention, 1964 (No. 122), and linked Recommendations (Nos 122 and 169), ratifying member States shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. Priorities for the rural sector include developmental policies, rural development, and educational and skills training policies. Article 3 of Convention No. 122 is of particular relevance to rural workers because it requires governments to consult with representatives of employers and workers in order to take into

account their views and experiences when formulating and implementing employment policies. The article 22 report form for the Convention specifies that consultations with representatives of other sectors of the economically active population such as those working in the rural sector and the informal economy should take place concerning employment policy measures.

The Employment Policy Recommendation, 1964 (No. 122), provides that special emphasis on a broadly based programme to promote productive employment in the rural sector should be incorporated within the framework of an integrated national policy. The promotion of rural employment is also present in the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), which states that all member States might implement special public works programmes, such as rural infrastructure projects, in order to create and maintain employment, to raise income levels and to reduce poverty.

#### **Vocational guidance and training :**

Many rural workers are poorly trained and lack marketable skills. Addressing this gap by ensuring a skilled rural workforce is key to empowering people to escape from the poverty trap. The Human Resources Development Convention, 1975 (No. 142), provides that ratifying States shall adopt and develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, to meet the needs of both young persons and adults in all sectors of the economy and branches of economic activity. Recommendation No. 195 provides that member States should promote access to education, training and lifelong learning for rural workers. As regards vocational rehabilitation, the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), expressly mentions the obligation to formulate and periodically review national policy with respect to all categories of disabled persons, especially in rural areas

#### **Wages:**

Wages in agriculture tend to be low, with many workers being paid below the national minimum wage. Wage setting is one of the most contentious rural labour issues, especially as payments are often delayed. The Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) calls for the creation or maintenance of adequate machinery to fix minimum wage rates. The national competent authority may exclude from the scope of application of this

Convention certain categories of agricultural workers, such as members of the farmer's family. Workers are to be guaranteed a minimum wage sufficient to meet their needs, but also to preserve the purchasing power of the wage. The Convention provides that the employers and workers concerned may participate in, or be consulted with regard to, the operation of the minimum wage-fixing machinery on a basis of complete equality. Guidelines for the fixing of minimum wages are found in the accompanying Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89). Other relevant ILO standards are the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage Fixing Convention, 1970 (No. 131).

**Working time:**

Working time is one of the main gaps in the protection of agricultural workers, with many of them regularly working long hours, often from sunrise to sunset according to the seasons, weather and crops. These workers often exceed the prescribed limit for the number of hours worked<sup>30</sup> and national laws often exclude agricultural workers from provisions concerning maximum working time. Agricultural workers are not covered by the two main Conventions on hours of work or weekly rest. They are also excluded from the scope of application of the Night Work Convention, 1990 (No. 171). They are covered under the Forty-Hour Week Convention, 1935 (No. 47), which provides that each member State is to apply the principle of the 40-hour working week. This is only a global objective, however, and the text does not prescribe specific limits to working hours. The right to annual leave with pay for agricultural workers is recognized by the Holidays with Pay Convention (Revised), 1970 (No. 132), which provides that workers are entitled to annual paid holidays of no less than three weeks. The provisions of this Convention can be accepted separately with respect to agricultural workers, or employed persons in the other economic sectors. Ratifying member States also have the possibility to exclude, following consultation with the organizations of employers and workers concerned, limited categories of employed persons in respect of whose employment special problems arise of a substantial nature, relating to enforcement or to legislative or constitutional matters.<sup>35</sup> In practice, agriculture is often excluded from the application of this Convention, an issue raised by the supervisory bodies in a number of cases.



**Occupational safety and health:**

Agriculture is one of the three most dangerous occupations to work in, along with construction and mining. Despite the hazardous nature of the work, and the high levels of risk, agriculture is often excluded from coverage under national occupational safety and health regulations or is the least well covered sector of the economy. The Safety and Health in Agriculture Convention, 2001 (No. 184), and its accompanying Recommendation No. 192 are particularly significant because for the first time in international law, agricultural workers are formally guaranteed the same rights and protection with regard to their health and safety as other categories of workers. They provide a framework for the development of national policies and mechanisms to ensure the participation of workers' and employers' organizations in that process. However, the Convention does not cover subsistence farming, industrial processes that use agricultural products as raw materials, and the industrial exploitation of forests. Furthermore, it allows member States to exclude certain agricultural undertakings or limited categories of workers from the application of this Convention or certain provisions thereof, when special problems of a substantial nature arise.

**Social security:**

Agricultural workers remain among the least well protected with respect to access to health care, sickness and maternity benefits, workers' compensation, etc. Pension schemes in developing countries rarely apply to the rural population. International labour standards have always advocated equal social security coverage of agricultural and industrial workers. In 1921, the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) requested ratifying States to "extend to all agricultural wage earners its laws and regulations which provide for the compensation of workers for personal injury by accidents arising out of or in the course of their employment". The Social Insurance (Agriculture) Recommendation, 1921 (No. 17), adopted the same year generalized this principle to apply also to insurance systems against sickness, invalidity, old age and other similar social risks ensuring agricultural wage earners conditions equivalent to those prevailing in industrial and commercial occupations. Since the adoption of the Social Security (Minimum Standards) Convention, 1952 (No. 102), the ILO social security instruments apply to employees without distinction. As the Convention requires coverage of at least 50 per cent of the total number of employees in the country, there remains the formal

possibility for the ratifying State to reach that scope of coverage without including agricultural workers.

**Maternity protection:**

The Maternity Protection Convention, 2000 (No. 183), and its Recommendation No. 191 apply to “all employed women, including those in atypical forms of dependent work”, hence it also applies to the agricultural sector. Although the Convention provides for the possibility for member States to exclude certain categories of workers from application of the Convention, this provision has so far not been used. Under the Convention, governments are to protect pregnant and breastfeeding women from health hazards and women are entitled to maternity leave and cash benefits as well as breaks for breastfeeding mothers. They are to be “guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave” and their employment is not to be terminated during her pregnancy or maternity leave. Convention No. 183 revised the Maternity Protection Convention (Revised), 1952 (No. 103). While the supervisory bodies have not commented yet on the application of the former with respect to agriculture, they often do so with respect to Convention No. 103. Problems raised include the exclusion or non-coverage of women in the agricultural sector with respect to maternity leave as well as the lack of statistical data on coverage in this sector.

**Migrant workers:**

Migrant workers who make up a large part of the agricultural labour force are particularly vulnerable to abuse. Protective instruments include the specific Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations. Convention No. 97 aims to regulate the conditions in migration for employment, provides general provisions for protection and prohibits inequality of treatment between nationals and migrant workers lawfully in the country of employment. Convention No. 143 and Recommendation No. 151 aim to address problems relating to irregular migration and provide a minimum level of protection of all migrants, independent of their status. Under Part I of Convention No. 143, ratifying States have a general obligation to respect the basic human rights of all migrant workers. Under Part II of the Convention, migrant workers who are lawfully in the country of employment are not only

entitled to equal treatment (as provided for in Convention No. 97) but also to equality of opportunity, e.g., equality with regard to access to employment, trade union rights, cultural rights and individual and collective freedoms.

### **Indigenous and tribal peoples:**

Indigenous peoples are more likely than non-indigenous peoples to work in agriculture, and they face de facto discrimination in terms of conditions of employment. If they earn their livelihood as subsistence farmers, their main problems frequently arise from unequal access to land with respect to land title and ownership rights, credit, marketing facilities and resources. They are also often subject to forced dispossession of land for the creation of agricultural undertakings as well as logging and mining activities. In all such cases, official policies should make provision for measures to allow indigenous peoples access to resources, including the means to carry out the activities from which they earn their living. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), provides protection and rights for indigenous workers in seasonal and casual employment, including in agriculture.

### **Plantations:**

At the time the Plantations Convention, 1958 (No. 110) was adopted, plantations constituted an important economic sector for many countries in tropical and subtropical regions, and the poor living and working conditions of plantation workers were widely recognized. The principal objective of the Convention was to afford broader protection to those workers. Convention No. 110, supplemented by its Protocol of 1982,<sup>52</sup> is a comprehensive instrument which deals, inter alia, with conditions of work, contracts of employment, collective bargaining, methods of wage payment, holidays with pay, weekly rest, maternity protection, accident compensation, freedom of association, labour inspection, housing and medical care.

### **Tenants and sharecroppers:**

The Tenants and Share-croppers Recommendation, 1968 (No. 132), provides guidance to member States with respect to tenants, sharecroppers and similar categories of agricultural workers who do not receive a fixed wage. Social and economic policy should promote a progressive and continuing increase in the well-being of these workers and assure them the

greatest possible degree of stability and security of work and livelihood. They should have the main responsibility for managing their holding and access to land. The development of organizations representing tenants, sharecroppers, etc., and those representing the interests of landowners should be encouraged.

### **Relevance and impact of international labour standards:**

While there is no comprehensive instrument dealing with the rural sector, the ILO has a large number of instruments that apply to the rural sector, especially agriculture. They provide an international legal framework for the protection of rural workers, especially agricultural workers. However, the high number of instruments in question may make it difficult to promote them. They are not necessarily easily identifiable, and this may cause problems in the perception of what protection international labour standards provide for the workers concerned. Another difficulty comes from the fact that, apart from the fundamental and a few other instruments including three of the priority Conventions and Conventions Nos 11 and 12, many of the relevant instruments are not very well ratified. The ratification rates of the up to date or interim status Conventions dealing specifically with agriculture are very uneven. They range from 122 ratifications for Convention No. 11 to eight ratifications for Convention No. 184.<sup>55</sup> Furthermore, even if the possibility to exclude rural or agricultural workers from application of certain Conventions is rarely used by ratifying States, serious problems of application have been highlighted in a large number of countries by the supervisory bodies.

### **Conclusions :**

The first would be national-level action. Member States could be called upon to review their legislation with a view to extending the coverage of protection to rural workers, including rural wage earners, and in particular to ensure that they enjoy the protection of fundamental principles and rights at work as contained in the Declaration on Fundamental Principles and Rights at Work. This would require better monitoring and enforcement of national legislation, including the extension of labour inspection. There is, however, no existing mechanism to monitor measures taken and evaluate progress made by countries.

A second option could be to invite member States to remove any exclusion that may exist in national law concerning the application of the fundamental Conventions to rural workers. This

could also include an invitation to them to consider ratifying the relevant up to date Conventions, in particular Conventions Nos 184 (occupational safety and health), 129 (labour inspection) and 122 (employment policy). It should be noted that in November 2007, the Governing Body decided that the promotion of priority Conventions, including Conventions Nos 122 and 129, should be strengthened.

A third option could be to consider the advantages of consolidating all the relevant standards into a single instrument with a view to providing more effective protection for the world's 3.4 billion people living in rural areas. The Plantations Convention, 1958 (No. 110) and the Rural Workers' Organisations Convention, 1975 (No. 141) could also be examined more closely with a view to better determining the difficulties and impediments to ratification and implementation and to extend coverage to all rural workers. Considering the large number of people concerned and the huge gap in protection, the ILO would be responding in providing a framework that would bolster the efforts for employment creation as a way out of poverty for rural workers

#### **Policy guidelines :**

- Respect, promote and realize:
- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;
- The effective abolition of child labour;
- The elimination of discrimination in respect of employment and occupation.
- Increase the ratification and effective implementation of fundamental Conventions and other relevant labour standards, including those related to safety and health, labour inspection and social security.
- Ensure that rural workers and, in particular, agricultural workers are covered under national laws and regulations as well as in practice.
- Ensure that the rights of particularly vulnerable groups of rural workers, such as migrant workers and indigenous peoples, are protected.



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