

A PERSPECTIVE ON THE ILO CONVENTION ON THE ELIMINATION OF FORCED OR COMPULSORY LABOUR: THE CASES OF NIGERIA AND CAMEROON

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Abstract

Since its inception in 1919, the International Labour Organization (ILO) has promoted worldwide eradication of forced or compulsory labour as one of its primary objectives. Given its status as a universal and core international labour standard as promulgated within the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, the Convention on the Eradication of Forced Labour or Compulsory Labour has so far been ratified by many member states, including Nigeria and Cameroon. Here, the concept of forced labour is distinguished from the practice of labour exploitation, which is equally common within less developed economies. This article examines the implementation level within both nations as actors in the struggle against forced labour in the twenty-first century and the reality of implementing the Convention on the eradication of forced or compulsory labour within their respective legal systems. Examining the efforts put in by both nations till date will equally shed light and contribute to the discussion on the implementation process of the ILO's core labour standards and challenges faced, particularly within the context of developing economies.

Keywords: Forced, Compulsory, Labour

Introduction

The convention on the elimination of all forms of forced or compulsory labour is a fundamental principle in the area of international labour relations. It draws strength from two major International Labour Organization (ILO) conventions on forced labour; Convention No 29 on

Forced Labour, 1930 and Convention No 105 on the Abolition of Forced Labour, 1957.

While Convention No 29 defines forced labour as “all work or service exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily” (subject to the exceptions listed in Art 2, Para 2), Art 1 of Convention 105 provides by way of definition that every ratified member of this convention shall undertake to suppress and not to make use of any form of forced or compulsory labour in the following instances:

- 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
- B. As a means of labour discipline
- C. As a punishment for having participated in strikes
- D. As a means of racial, social, national or religious discrimination.

The act of forced labour occurs where work or service is imposed either by the state or individuals who have the will and authority and are in such a position as to threaten workers with severe hardship and deprivation such as restricting their mobility, food, wages or property and subjection to sexual, physical and verbal abuse (ILO, 2015). Arts 4 and 5 of the United Nations Charter expressly prohibit such treatment as they clearly state that no individual should be subject to degrading treatment such as torture, slavery, slave trade or servitude (Brownie and Goodwin-Gill, 2010).

From the above definitions, it may appear that the practice of forced or compulsory labour is in fact straightforward and easily deciphered. However, it is not always the case as the practice has been observed to take on other salient forms such as domestic workers being locked up or forbidden to leave the house or non-payment of wages as a form of punishment for disobedience. Another form of forced labour occurs in a situation wherein villagers are compelled to do manual work such as construction of roads and irrigation dykes where such villagers are threatened by government administrators or local rulers to show up at work sites (ILO, 2014).

At this point, it is worth mentioning that the concept of forced labour is quite distinct from exploitation, which is often characterised by people consenting to provide their services for unbearably low wages, due to adverse economic situations. A major distinguishing factor here is the presence of some form of ‘consent’ though often triggered by other circumstances such as severe lack of resources or poor economic circumstances. Here, individuals may choose to carry out menial jobs for extremely low wages in exchange for their freedom.

Another distinguishing factor is the individual's freedom to leave or cease from such menial work. In such a case, the individual would be considered as a victim of exploitation, but this would not amount to forced labour (Anderson & Rogaly, 2005; ILO, 2015). Hence, there should not be evidence of coercion for such a practice to be qualified as 'forced labour'.

Over the years, the practice of forced labour has been observed sometimes to take more modern forms such as human trafficking. Forced labour may originate as a result or consequence of labour trafficking, wherein traffickers assume a threatening position by confiscating the identity documents of the people they are transporting for employment purposes (Busse & Braun, 2003; ILO, 2014). Another form is to resort to kidnapping, particularly of the more vulnerable in society such as women and children. This is usually done by means of violence, abuse of authority, threat, intimidation or other forms of coercion (Outshoorn, 2005). Intimidation can range from threat of physical or sexual abuse or simply, the fear of revealing the victim's illegal status to the authorities.

A more traditional form of forced labour is debt bondage (Belser et al., 2005). This is usually witnessed in developing countries, where poor and illiterate peasants sometimes pledge labour services to an intermediary or landowner to work off a debt over a period of time. Besides the fact that such arrangements are rarely defined or limited in duration, these tend to be manipulated by such intermediaries or landowners in such a way that services provided are never sufficient to pay off the debt and so it is passed on from one relation to another and from one generation to another. Moreover, such arrangements are characterized by poor working conditions where individuals are at the mercy of the 'employer' and such relationships later deteriorate into forced labour. Studies conducted by the ILO revealed that practices of forced labour within private economies generates up to US\$150 billion in illegal profit yearly (ILO, 2014).

Convention 182 of the ILO further defines forced labour as one of the worst forms of child labour. However, a working child is not necessarily a forced labourer, unless there is lack of voluntariness and lack of evidence of coercion or threat of penalty. Lack of 'voluntariness' here indicates a violation of the person's freedom of choice (Skrivankova, 2010).

Studies conducted by the ILO revealed that a minimum of 12 million people were victims of forced labour at some point between 1995 and 2004, and by 2012, this figure had increased to 12.9 million, consisting of practices into which they were coerced or deceived to enter, and from which they cannot leave (ILO, 2005; Belser et al., 2005; ILO, 2012).

Consequently, the subsequent sections will go on to examine the concept of Forced or Compulsory labour and its key indicators, particularly within the framework of the ILO. The steps taken by both nations towards

the implementation of this Convention will also be analysed. This analysis will shed light on the reality of the implementation process and highlight challenges faced, most of which are common to both nations as developing economies. In line with the challenges identified, recommendations will be made on how to improve the implementation process of this Convention.

Key Indicators of Forced or Compulsory labour

The above definitions highlight three major aspects of the concept that need to be ascertained for an act of forced labour to be established within the scope of the convention. The notion of work or service rendered must be established. ‘Work’ here should however be distinguished from cases wherein an obligation is imposed to undertake education or training, as the principle of compulsory education is recognised within several ILO international standards as a means of guaranteeing the right to education for all (Kern and Sottas, 2003). Hence, for forced or compulsory labour to be deemed in existence there must be the imposition of work or service rendered.

Secondly, following the 1930 Convention, the service rendered must have been obtained “under the menace of any penalty” or the threat of punishment, such as the loss of privileges or rights. Hence, the absence of threat or menace would not qualify such an act as one of forced labour.

Lastly, there must be the aspect of “involuntariness”, wherein victims are compelled to perform certain tasks, using threats or coercive measures. As established earlier, the use of fraud, deception and the withholding of the victim, therefore, can amount to forced labour, as the victims are subjected to perform tasks which they would otherwise not have consented to do under different circumstances, and thus, there is an aspect of involuntariness. It connotes involuntary entry into labour relations as well as the use of coercion or intimidation to remain within it (Lerche, 2007).

Consequently, the Declaration compels member states to ensure the elimination of forced labour, guaranteeing the freedom to choose whether or not to enter into a work relationship and to ensure the protection of workers. It is on this premise that several states have taken the initiative to develop standards, which are in consonance with these minimum standards set out by the ILO.

Elimination of all forms of Forced or Compulsory Labour in Nigeria

The State of Nigeria has ratified the ILO Convention on the Elimination of Forced or Compulsory Labour. As mentioned in the introductory section, Convention No 29 of 1930 on the elimination of forced or compulsory labour defines the concept of forced labour as “all work or service exacted from any person under the menace of any penalty and for

which the said person has not offered himself voluntarily”. As such it refers to the practice of subjecting a person to work against their will, under the threat of some form of punishment into which they were coerced or deceived and from which they cannot leave (ILO, 2015).

As a ratifying member state of this Convention, Nigeria has taken significant steps towards eliminating the practice of forced or compulsory labour within its borders. However, being the most populous nation in Africa with an ever-increasing population of 179.6million people, Nigeria’s implementation of the Convention on the Elimination of Forced or Compulsory labour has not been full effective as it has been often marred by challenges within the implementation process.

Legal Implementation

Section 12 of the Constitution of the Federal Republic of Nigeria – 1999 provides that the National Assembly must approve all ratified treaties in order for them to be passed into law and be legally enforceable in Nigeria. This process is referred to as the “domestication of laws”, which applies to all international instruments, including the core ILO labour standards. In order to ensure enforceability of this labour standard, Sect 270 of the Nigerian Penal Code provides for the prohibition of forced labour in Nigeria and defaulters are liable to a fine or imprisonment for a term, which may extend to one year.

Moreover, Sect 73 of the Nigerian Labour Code prohibits the practice of forced labour and imposes a penalty of imprisonment for a term of two years or a fine of up to N1000. However, in the case of public officers involved in the practice of forced labour activities, it imposes a reduced imprisonment term of up to six months or a fine of N200. Also, the Nigerian Agency for the Prohibition of Trafficking in Persons (NAPTIP) Act, as amended in 2005 bans the practice with the highest penalty of a five year term imprisonment term or a N100.000 fine or both.

Evident from the above mechanisms on the abolition of forced labour is the variance in terms of penalty ascribed to those convicted. Considering the grievous effects of forced labour practices within a society, there is clearly a need for greater harmonization between the various mechanisms on the elimination of forced labour. In the case of the Labour Code, the penalty ascribed, particularly to officers, may be rightly deemed insufficient, if not inconsequential in comparison to the often lasting psychological, physical, social and economic effects of forced labour practices on its victims.

The foregoing evidently demonstrates a multiplicity of laws in Nigeria (similar to the case of the United Kingdom), which is intended to check and possibly eradicate the practice of forced labour. However, following the results of major studies conducted on forced labour which

highlights some key factors influencing this practice, the enforcement of conventions on forced labour in Nigeria may prove to be a herculean task for the government.

One of the major contributing factors of forced labour remains the economic depravity and low living standards of the victims (Skrivankova, 2006). As such, poverty plays a major role towards encouraging the practice of forced labour. Being the most populous nation in Africa with an ever increasing population of over 179.6 million people, common plagues such as unemployment and joblessness especially among the youthful workforce, is inevitable. Also, in a bid to earn a living, many sometimes tend to resort to inhuman working conditions. This is described by the ILO as a “state-imposed” form of forced labour to which 2.2 million people around the world are subjected (ILO, 2015).

Consequently, there remains an urgent need for the Nigerian government to complement the existing laws on the fight against forced labour, particularly its ratification of the major ILO conventions on forced labour, with social and economic policies and incentives such as job creation, welfare, social and educational opportunities, as well as increased awareness of negative effects of this horrible practice within its borders in order to ensure effective implementation.

Elimination of All Forms of Forced or Compulsory Labour in Cameroon

The ILO principle on the elimination of all forms of forced or compulsory labour draws strength from two major ILO conventions namely; Convention No 29 on Forced labour and Convention No 105 on the Abolition of Forced Labour, which were ratified by Cameroon in June 1960 and September 1962, respectively (ILO, 2015).

However, the practice of forced labour in Cameroon dates further back to the days of colonialism during which the French Colonial authorities imposed rigorous and consistent forced labour within all its colonies in French West Africa (including Cameroon), as a form of “civil obligation” (Schultz, 2012; Nfi, 2014). This resulted in the emigration of French speaking Cameroonians fleeing from their homes to seek refuge in southern parts of the country, which were formerly dominated by separate British rule. Moreover, the incidence of forced labour in Africa can be traced back to the historical legacy of slavery, reflecting the acute level of discrimination and exploitation that existed against the more vulnerable groups incited largely by foreign colonial authorities (ILO, 2009).

As such, the practice of forced or compulsory labour is not an entirely new concept within the context of Cameroon. Nevertheless, with the increase in globalisation and technology, this evil practice has equally

evolved from its traditional forms to more complex and modern practices, making it even harder for the authorities to effectively address. As mentioned in the preceding sections and according to the provisions of Art 2 of Convention No 29, “forced labour” refers to all work of service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Legal Implementation

Cameroon has made it a point to condemn and discourage all forms of forced or compulsory labour by adopting both national and internationally recognised instruments on the subject. Within the international level, Cameroon is a signatory party to several key conventions on the elimination of all forms of forced or compulsory labour such as the UDHR and the United Nations Charter which expressly prohibits the practice of forced labour. Art 8(3a) of the ICCPR to which Cameroon is a party, expressly forbids the use or practice of forced labour or compulsory labour, by stating “no one shall be required to perform forced labour or compulsory labour”.

At the national level, the 1992 Cameroonian Labour Code and its subsequent amendments in 1996 expressly prohibit or ban any practice of forced labour in its Sect 2(3) and (4). However, it provides an exception to the above provision in relation to work exacted on the grounds of compulsory military serve, work conducted as a civic obligation towards the general interests of the citizens, work conducted as a consequence of a conviction in a law court or any work exacted on the basis of force major such as war, disaster or threatened disaster (Section 2(5)).

Surprisingly, the Constitution of Cameroon makes no express provision for the prohibition of forced labour, as in the case of Nigeria. Moreover, contrary to most developed legal systems in the world, as in the case of the United Kingdom, besides failing to include provisions prohibiting forced labour, the Constitution equally makes no mention of the exploitation of migrant workers from Cameroon, who are coerced with fake promises of remuneration and later subjected to forced labour. This has led several Cameroonians to be lured away to work in foreign countries, being subjected to forced labour upon arrival. An example is the case of Cameroonian workers who were lured with forced promises of pay and good conditions to work in Sweden by a forestry firm, only for them to be later subjected to forced labour on plantations under new and horrible working conditions (ITUC, 2013).

Also, studies conducted in relation to forced labour in Cameroon revealed that forced labour practices are recurrent within the sector of domestic work, trafficking, work in spare parts shops and street vending, carried out mostly by children (Ndienla, 2012).

In an attempt to understand the practice of forced labour practices, particularly within the African continent where in it is prevalent, studies conducted by the ILO and UNESCO identified a set of endogenous and exogenous factors which are deemed to significantly contribute to this horrible practice (ILO, 2005; UNESCO, 2005). These studies revealed that the prevalence of wars in the African continent in the recent past which have negatively affected the level of governance and the rule of law in those nations, which inadvertently creates a conducive environment for forced labour and other human abuses which go unchecked. Secondly, the report attributed the wide prevalence of forced labour in Africa to regular participation of children in the revenue making process, which is largely due to poor living standards of the people.

Moreover, given the importance of agriculture in Africa in terms of employment in terms of employment, the impact on the increasing gross domestic products in several African countries, its positive contribution towards increasing the living standards of the African people, plays a significant role in alleviating poverty (Quartey, 2014). This implies that a significant percentage of the rural population is involved in agricultural practices such as farming and forestry, which are mainly conducted within the rural areas. The need for a constant supply of cheap labour was considered by the above report as one of the major factors influencing the horrible practice of forced labour as individuals are constantly ‘lured’ or coerced into working on such plantations or farms.

However, the above-mentioned factors cannot be considered as valid reasons for the use of forced or compulsory labour as they remain clear examples of violations of fundamental human rights of such victims. As such, developing a robust legal and policy framework nationally which duly addresses such issues labour is a prerequisite and good starting point towards the successful eradication of this evil practice. The absence of sufficient legal policies addressing such matters would only serve to provide a more conducive environment within which such practices would thrive.

Summary of Country-based Analyses

From the discussion provided throughout this chapter, it is obvious that both Nigeria and Cameroon have taken significant steps towards implementing the core international standards within the 1998 Declaration within their respective legal systems, both at the national and international levels. However, the review equally reveals major differences at the level of implementation or domestication of these international standards within the respective legal systems. An example of such differences in levels of implementation is in relation to the principle of elimination of discrimination

in respect of employment and occupation with these three selected jurisdictions.

While more developed nations such as the United Kingdom has followed its ratification of the relevant ILO conventions with the development of appropriate national laws and socio-economic incentives in order to facilitate practical implementation, Nigeria and Cameroon, being developing economies with less efficient and structured legal mechanisms, coupled with even fewer socio-economic mechanisms, so far have considerable gaps within their legal systems which have led to incessant reports of violations of the these standards. Sharing similar social, cultural and historical characteristics, as well as political aspirations, both African states are equally plagued with similar socio-economic problems, such as poverty, high unemployment rates and poor social reforms which all act as deterrents to the effective implementation of these international labour standards.

However, a closer examination at the latter systems, reveal that the Nigerian legal system enjoys a more robust legal framework, as compared to Cameroon, with a significant number of national laws and policies addressing the implementation of these four principles. An illustration of this difference can be observed through the establishment of a Nigerian national labour court in charge of addressing all industrial disputes and labour related matters. This can be contrasted with the case of Cameroon whose Constitution makes no allocation for the establishment of an organ for adjudication. This therefore leaves the settlement of such labour related issues to labour inspectorates and other regular courts.

The above discussion equally reveals that in addition to developing national laws and policies, effective and full implementation can only be achieved when accompanied with relevant socio-economic incentives such as education and training, general poverty alleviation, the development of both governmental and non-governmental agencies which monitor and control the implementation of these standards within the communities. All in all, it is obvious that the success of every legal system lies in its practical implementation and enforceability.

Conclusion

The above discussion illustrates a gulf between the process of ratification and effective implementation of this international labour principle and right at work, enshrined within the ILO's 1998 Declaration. This has been evidenced through the demonstration of a gap between theoretical and applied literature on this core labour standard, both in Nigeria and Cameroon. The researcher is of the view that such an analysis is not only relevant for the creation new knowledge within the area of legal

implementation of this fundamental principle, particularly within the African context, but it is also relevant in practice as it helps to elucidate key major challenges faced and practical measures to improve implementation, thereby bridging the existing gap.

Moreover, the conceptualization of this law has further revealed differences within both nations, cutting across socio-economic development and political structures. In the case of Forced labour, extreme levels of poverty and low living standards in Nigeria and Cameroon reveal that families often succumb to such dehumanizing treatment so as to earn some form of wage in order to sustain themselves (Edet and Etim, 2013). High levels of employment equally lead to young people seeking “greener pastures” overseas, which often lead to human trafficking, degenerating to forced or compulsory labour.

From the review conducted on the literature, the researcher concludes that in as much as there is evidence of ratification of the Convention on the elimination of Forced or Compulsory labour by the Nigerian and Cameroonian governments, there remains a gap at the level of its implementation by both parties, evidenced through the examination of labour case law files and a comparative analysis of the provisions of the ILO Declaration and the Nigerian and Cameroonian Labour Legislations. Several gaps have been identified within both systems, with regards to the protection of this core principle, some aspects of which are barely covered or mentioned. From this study, the researcher concludes that one of the major factors responsible for this inadequacy is the issue of Legislative incorporation, which upon ratification of this core standard requires member states to thereafter proceed to incorporate this convention within their individual national legislations, as a prerequisite for effective implementation. By this, implementation of these standards remains largely subject to the countries’ legislative actions, whether or not they decide to incorporate them within their respective labour codes, as law.

Also, the onus lies on member states to ensure that the provisions of their respective labour laws in no way contradict such international standards, in order to avoid legal misinterpretations and wrongful application of the provisions there in. However, at this point, the researcher recommends that these international standards be re-visited by the ILO for further deliberation, to ensure that its provisions practically take into account the individual development levels of its members, economically, socially and politically.

All in all, within both Nigerian and Cameroonian contexts, effective implementation of this law will only be guaranteed on the basis of effective incorporation into national legislation and relevant socio-economic restructuring, such as the provision of socio-economic incentives, alleviation

of poverty and effective mechanisms for monitoring and supervision of these laws. As such, the above-mentioned factors have been identified from the literature as major challenges to the implementation processes in both nations.

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