

Tool 9

Legal Framework and Indicators on Forced Labour

Content developed by the Fair Labor Association (FLA) as part of the project “Remedies Towards a Better Workplace” with input from all project partners: Hivos, Arisa, Unicef, AGT/SER, SAVE, READ, CCR CSR, WE Fashion, O’Neill, Prénatal, Hunkemöller, FNG, Cool Investments.

For whom: for AGT signatories, FLA affiliates, brands and companies.

Objective: This document provides an overview of the most important international standards and definitions on forced labour and forced child labour. It also includes indicators for identifying forced labour or the risk thereof.

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1. International Conventions and Frameworks

- ILO C29 – Forced Labour Convention¹
- ILO P029 – Protocol of 2014 to the Forced Labour Convention
- ILO C105 – Abolition of Forced Labour Convention²
- ILO R203 – Forced Labour (Supplementary Measures) Recommendation, 2014
- The League of Nations Slavery Convention, 1926³
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 2000⁴

¹ http://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=TUR&p_count=805&p_classification=03&p_classcount=4

² Ibid.

³ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-3&chapter=18&lang=en

⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

2. Definitions and International Legal Frameworks on Forced Labour

Term	Definition and International Legal Frameworks
Forced Labour	<p>ILO Conventions No. 29 and 105 provide an international framework for defining forced labour and formulating legislation and policies to combat forced labour. In addition, two UN Conventions (1926 Slavery Convention, Supplementary 1956 convention), ILO Convention No. 182 on the Worst Forms of Child Labour (1999), and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), known as the “Palermo Protocol”, provide definitions of forced labour-related terms and concepts. Based on the above definitions, the ILO, in a publication called “Hard to see, harder to count”, has developed an operational definition and survey guidelines to help measure forced labour. These are cited and summarized below.</p> <p>ILO Convention No. 29⁵, 1930</p> <p>ILO Convention No. 29, the Forced Labour Convention, defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2.1). The Convention provides for certain exceptions, in particular with regard to military service for work of a purely military character, normal civic obligations, work as a consequence of a conviction in a court of law and carried out under the control of a public authority, work in emergency situations such as wars or other calamities, and minor communal services (Art. 2.2).</p> <p>ILO Convention, No. 182⁶, 1999</p> <p>ILO Convention No. 182, the Worst Forms of Child Labour Convention, states that “worst forms of child labour” shall include “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”.</p> <p>ILO Convention No. 105, 1957</p> <p>ILO Convention 105, the Abolition of Forced Labour Convention, requires members that ratify it to specifically suppress and not make use of any form of forced or compulsory labour:</p> <ul style="list-style-type: none"> • As a means of political coercion or education or as a punishment for holding or expressing political views ideologically opposed to the established political, social or economic system; • As a method of mobilizing and using labour for purposes of economic development; • As a means of labour discipline; • As a punishment for having participated in strikes; • As a means of racial, social, national or religious discrimination. <p>The League of Nations Slavery Convention, 1926^[1]_{SEP}</p> <p>This convention defines ‘slavery’ as the “status or condition of a person over whom any or all</p>

⁵ The Forced Labor Convention, 1930 (No. 29), ratified by 177 member States, defines forced labor as “All work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Five exceptions to this definition are explicitly mentioned in the Convention. As a consequence, work imposed under certain circumstances that would have otherwise fallen under the definition of forced labour does not constitute forced labour: work imposed under compulsory military service, normal civic obligations, prison labour (if conviction by a court + public authority supervision), work in emergency situations (war, calamity...), and minor communal services (within the community).

⁶ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182

of the powers attaching to the right of ownership are exercised” (Article 1(1)). Although the definition provided in the convention does not mention work, Article 5 requires ratifying countries to take “all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.” The United Nations Supplemental Convention on Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, calls for the progressive abolition of ‘debt bondage’ and ‘serfdom’ and other ‘practices related to slavery’:

Debt bondage, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

Serfdom, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.

Practices related to **slavery**: Any institution or practice whereby:

- A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group;
- The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or a woman on the death of her husband is liable to be inherited by another person; or
- A child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Trafficking in Persons: Forced labour is closely linked to human trafficking. Not all forced labour victims are victims of trafficking, but almost all trafficking victims are also victims of forced labour or the worst forms of child labour, since the definition of ‘human trafficking’ includes the purpose of some form of exploitation. The Palermo Protocol, discussed below, defines the term ‘exploitation’.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (the “Palermo Protocol”)

The Palermo Protocol is a supplemental protocol to the United Nations Convention Against Transnational Organized Crime. The Protocol’s definition of trafficking in persons has become a standard model for national legislation. The definition of trafficking in the Protocol is:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Coercive sexual exploitation and forced prostitution are included in the definitions of forced or compulsory labour. The consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means specified above have been used. In the case of a child, there is no need for any of the means cited above to be used; the child is a victim of trafficking if he or she is subject to recruitment, transportation, transfer, harbouring or receipt for the purpose

	<p>of exploitation.</p> <p>ILO Convention No. 143, 1975</p> <p>ILO Convention No. 143, the Migrant Workers (Supplementary Provisions) Convention, defines a migrant worker as “a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker”.</p>
<p>Forced Labour of Adults⁷</p>	<p>Forced labour of adults is defined as work or service, without reference to the employment status of the worker both formal or informal, for which a person has not offered him or herself voluntarily (concept of “involuntariness”) and which is performed under the menace of penalty (concept of “coercion”) applied to the worker by an employer or a third party. The coercion may take place during the worker’s recruitment process (forced or deceptive recruitment) to force him or her to accept the job (unfree recruitment) or, once the person is working, to force him/her to do tasks, which were not part of what was agreed at the time of recruitment (work and life under duress), or to prevent him/her from leaving the job (impossibility of leaving employer). Forced labour definition includes the four principal dimensions:</p> <ol style="list-style-type: none"> 1. Unfree recruitment covers both forced and deceptive recruitment. Forced recruitment is when, during the recruitment process, constraints are applied to force workers to work for a particular employer against their will – it being understood that poverty and a family’s need for an income are not recognized as indicative of such coercion; the coercion or constraints must be applied by a third party. Deceptive recruitment is when a person is recruited using false promises about the work. This represents involuntariness in so far as, had the worker been aware of the true working or other conditions, he or she would not have accepted the job. 2. Work and life under duress covers adverse working or living situations imposed on a person by the use of force, penalty or menace of penalty. “Life under duress” refers to situations where degrading living conditions, limitations on freedom or excessive dependency are imposed on a worker by the employer. 3. The impossibility of leaving an employer is a form of limitation on freedom, and a key feature of forced labour. While the deliberate retention of wages is recognized as a form of coercion (as the worker has to stay because outstanding wages will be lost if he or she leaves, hence there is a penalty for leaving), a worker who cannot leave a job because of poverty or lack of alternative income opportunities is not in a situation of forced labour, unless specific elements of coercion or involuntariness are also present. 4. Penalty or menace of penalty (as a means of coercion) may be applied directly to the worker or to members of his or her family. The “coercion” dimension is identified in four sub-categories as follows; ^[1]_[3] <ul style="list-style-type: none"> Debt bondage or debt manipulation and any accompanying threats against a worker or his/her family members. The debt may have been contracted at any time during the work or non-work history of the worker, whether before and/or at the time of recruitment (where an advance payment or loan is given and the debtor has to repay it through his or her work and/or that of a family member) or when the person is already employed. <i>Hard to See, Harder to Count</i>⁸ guidelines suggest including all cases where a debt has been imposed on a worker without his or her consent. Withholding of wages or other promised benefits may be used by an employer to retain a worker longer than agreed. As the worker does not want to leave without being fully

⁷ Hard to See, Harder to Count; Survey guidelines to estimate forced labour of adults and children, ILO, 2012.

⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf

	<p>remunerated, and in the absence of access to legal means of recourse, he or she is obliged to remain with the employer in the hope that eventually payment will occur.</p> <ul style="list-style-type: none"> • Retention of passport, identity papers or travel documents refers to all situations where workers do not have access to their documents upon request. Cases in which an employer holds the documents for safe-keeping but the worker can retrieve them at any time, do not fall under this category. This type of forced labour may arise among migrant workers. • Abuse of vulnerability, including threats of denunciation to the authorities, is a means of coercion where an employer deliberately and knowingly exploits the vulnerability of a worker to force him or her to work. The threat of denunciation is used especially in the case of irregular migrant workers. <p>Please see Figure I for forced adult labour conceptual framework.</p>
<p>Forced Labour of Children⁹</p>	<p>Forced labour of children is defined as work performed by children under coercion applied by a third party (other than his or her parents) either to the child or to the child’s parents, or work performed by a child as a direct consequence of their parent or parents being engaged in forced labour. Regarding forced labour, in legal terms, a child below the age of legal majority (18 years old) cannot him or herself give consent to work (that is, the notion of “offering oneself voluntarily”), and therefore the consent of the parent(s) must be considered instead. The coercion may take place during the child’s recruitment, in forcing the child or his/her parents to accept the job, or once the child is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent the child from leaving the work. If a child is working as a direct consequence of his or her parents being in a situation of forced labour, then the child is also considered to be in forced labour.</p> <p>As with forced adult labour, forced child labour may take four different forms;</p> <ul style="list-style-type: none"> • Unfree recruitment of children, which covers both forced and deceptive recruitment. <i>Forced recruitment</i> is when, during the recruitment process, constraints are applied to force a child to work for a particular employer – it again being understood that poverty and the family’s need for a supplementary income are not recognized as indicative of forced recruitment. <i>Deceptive recruitment</i> occurs when a child is recruited through false promises made to the child or to his or her parents, which introduces an element of involuntariness insofar as, had either been aware of the real working or other conditions involved, the child would not have accepted or been allowed to undertake the job. • Work and life of children under duress covers adverse working or living situations imposed on a child by the use of force, penalty or threat of penalty. “Work under duress” may entail an <i>excessive volume of work or tasks</i> that are beyond what can reasonably be expected of a child given his or her physical and mental capacity. “Life under duress” relates to situations where restrictions on freedom or excessive dependency are imposed on a child by his or her employer. • The impossibility for children to leave their employer is treated as a distinct dimension. The difficulty to leave an employer is characteristic of forced labour in situations where leaving would entail a penalty or punishment which, in the case of children, might be something seemingly less significant than for an adult, for example, an inference that his or her parents would be extremely unhappy or disappointed if he or she were to leave, and that the family would suffer as a result. • Regarding coercion of children, the four sub-categories of coercion of adults listed above also apply. The “penalty” can be applied to the parents, rather than directly to the child.

⁹ Hard to See, Harder to Count; Survey guidelines to estimate forced labor of adults and children, ILO, 2012.

Please see **Figure II** for forced child labour conceptual framework.

Figure I: Forced Adult Labour Conceptual Framework

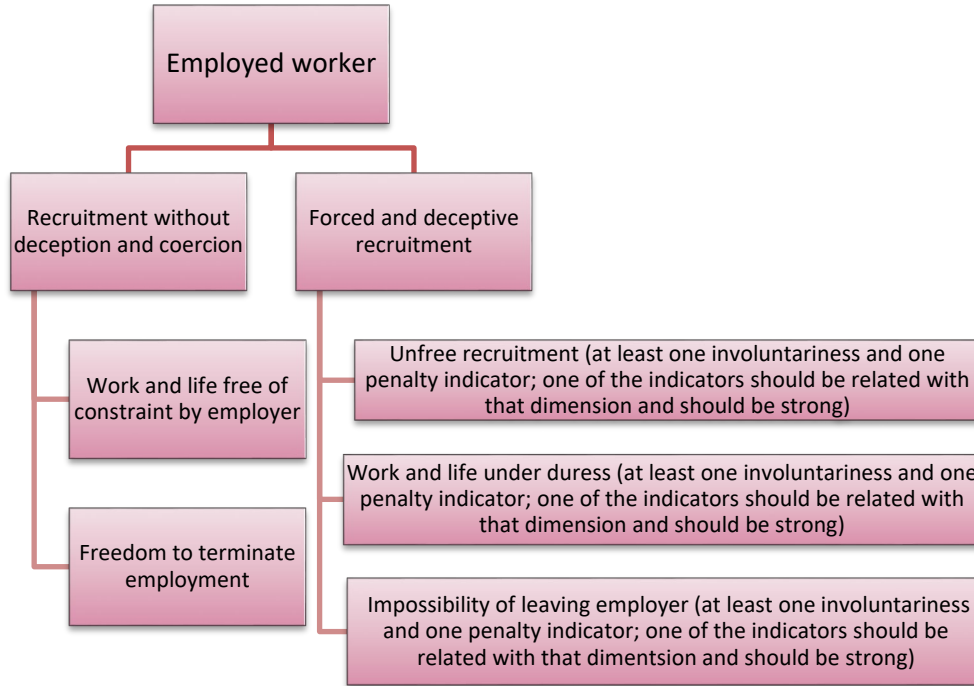
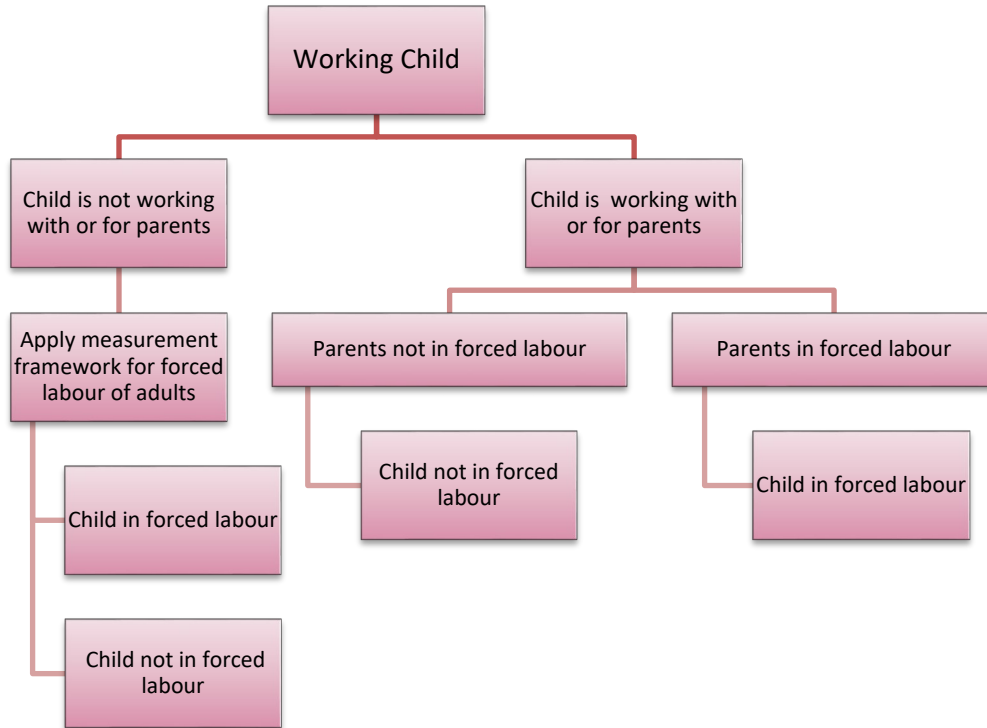


Figure II: Forced Child Labour Conceptual Framework



3. Get to know indicators for forced labour

- Forced labour is difficult to identify. Therefore, it is important to get a better understanding of the several indicators for forced labour. Make sure that company staff from different departments are well informed and aware of indicators that can help them identify forced labour risks.
- The indicators of involuntariness are grouped under the three “dimensions”: *unfree recruitment, work and life under duress and impossibility of leaving the employer*. These correspond to the three phases during which coercion (the fourth “dimension”) may be applied by employers to workers: to force them to take the job, to force them to work or live under conditions with which they do not agree, and to prevent them from leaving or moving to another employer. The combination of indicators of involuntariness and penalty or menace of a penalty can then be used to qualify a situation as one of forced labour.

3.2 Indicators for forced adult labour

1. Indicators of unfree recruitment of adults

Indicators of involuntariness:

- Recruitment linked to debt (advance or loan) (**strong indicator**)
- Deceptive recruitment (regarding working conditions, content or legality of employment contract, housing and living conditions, legal documentation or acquisition of legal migrant status, job location or employer, wages/earnings) (**medium indicator**) ^[1]_{SEP}

Indicators of penalty:

- Confiscation of identity papers or travel documents (**strong indicator**)
- Withholding of assets (cash or other) (**strong indicator**)
- Financial penalties (**medium indicator**)

2. Indicators of work and life under duress of adults

Indicators of involuntariness:

- Forced overtime (beyond legal limits) (**strong indicator**)
- Limited freedom of movement and communication (**strong indicator**)
- Degrading living conditions (**strong indicator**)
- Induced or inflated indebtedness (by falsification of accounts, inflated prices for goods/services purchased, reduced value of goods/services produced, excessive interest rate on loans, etc.) (**medium indicator**)
- Multiple dependency on employer (jobs for relatives, housing, etc.) (**medium indicator**)
- Pre-existence of a dependency relationship with employer (**medium indicator**)
- Being under the influence of employer or people related to employer for non-work life (**medium indicator**) ^[1]_{SEP}

Indicators of penalty:

- Confiscation of identity papers or travel documents (**strong indicator**)
- Further deterioration in working conditions (**strong indicator**)
- Violence against worker in front of other workers (**strong indicator**)
- Constant surveillance (**strong indicator**)
- Withholding of assets (cash or other) (**strong indicator**)
- Withholding of wages (**strong indicator**)
- Financial penalties (**medium indicator**)

3. Indicators of impossibility of leaving employer of adults

Indicators of involuntariness:

- Forced to stay longer than agreed while waiting for wages due (**strong indicator**)
- Forced to work for indeterminate period in order to repay outstanding debt or wage advance (**strong indicator**)^{[17]_{SEP}}

Indicators of penalty:

- Confiscation of identity papers or travel documents (**strong indicator**)
- Imposition of worse working conditions (**strong indicator**)^{[17]_{SEP}}
- Under constant surveillance (**strong indicator**)
- Violence imposed on other workers in front of all workers (**strong indicator**)^{[17]_{SEP}}
- Withholding of assets (cash or other) (**strong indicator**)^{[17]_{SEP}}
- Withholding of wages (**strong indicator**)
- Threats against family members (violence or loss of land or jobs) (**strong indicator**)
- Financial penalties (**medium indicator**)

3.3 How to know if there is indeed forced labour?

- The dimension “unfree recruitment” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present, and at least one of these indicators is strong.
- The dimension “work and life under duress” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present, and at least one of these indicators is strong.
- The dimension “impossibility of leaving employer” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present, and at least one of these indicators is strong.
- Any adult worker for whom the dimension of unfree recruitment^{[17]_{SEP}} OR^{[17]_{SEP}} life and work under duress OR^{[17]_{SEP}} impossibility of leaving the employer is positive, can be considered a victim of forced labour.

4. Indicators for forced labour of children

- **Forced labour of children** is defined as work performed by children under coercion applied by a third party (other than by his or her parents) either to the child or to the child’s parents, or work performed by a child as a direct consequence of their parent or parents being engaged in forced labour.
- The coercion may take place during the child’s recruitment to force the child or his/her parents to accept the job, or once the child is working, to force him/her to do tasks that were not part of what was agreed at the time of recruitment or to prevent the child from leaving the work. If a child is working as a direct consequence of the child’s parents being in a situation of forced labour, then the child is also considered to be in forced labour.
- The indicators of forced labour presented in the following section are designed specifically to enable identification of forced labour of children (excluding children working with parents who are themselves engaged in forced labour), and are derived from the indicators for adults presented above. All indicators are considered to be of equal severity in the case of children, regardless of severity of medium and/or strong.

1. Indicators of unfree recruitment of children

Indicators of involuntariness:

- Child is born into a bonded family and is forced to work for his or her parents’ employer
- Recruitment as collateral for a loan given to parents or relatives
- Recruitment as part of the employer’s agreement to employ the parents or relatives
- Recruitment in exchange for a cash advance or loan to the parents
- Recruitment in the context of a tradition perpetuated by those in power
- Deception about:^{[17]_{SEP}}

- access to education^[1]_[SEP]
- living conditions
- location of the job
- wages
- quantity of work

Indicators of penalty:

- Family would lose benefits (land, housing, etc.)
- Other family members would lose their job
- Exclusion of family members from future employment
- Violence against child
- Violence against family members
- Exclusion of family members from access to loans^[1]_[SEP]

2. Indicators of work and life under duress of children

Indicators of involuntariness:

- Forced overtime (beyond legal limits)
- Forced to work for the employer's private home or family^[1]_[SEP]
- Forced to work when sick or injured
- Limited freedom of movement outside the workplace
- Food, clothing and housing provided by employer in lieu of a wage
- Degrading living conditions^[1]_[SEP]

Indicators of penalty:

- Physical violence^[1]_[SEP]
- Psychological violence
- Wage deductions^[1]_[SEP]
- Threat of dismissal
- Threats against family
- Punishment/violence inflicted on other children in front of child
- Constant surveillance
- Withholding of wages
- Retention of identity paper

3. Indicators of impossibility of leaving employer

Indicators of penalty:

- Under constant surveillance
- Family would lose benefits (land, housing, etc.)
- Other family members would lose their job
- Exclusion of family members from future employment^[1]_[SEP]
- Threats or violence against child
- Threats or violence against family members
- Exclusion of family members from access to loans^[1]_[SEP]
- Withholding of wages
- Confiscation of identity papers^[1]_[SEP]
- Punishment inflicted on other children in front of child^[1]_[SEP]
- Threat of further deterioration in working conditions^[1]_[SEP]
- Threat of forced sexual exploitation

4.2 How to know if there is indeed forced child labour?

- The dimension “unfree recruitment” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present.
- The dimension “work and life under duress” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present.
- The dimension “impossibility of leaving employer” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present.
- Any child worker for whom the dimension of unfree recruitment OR^(L)_(SEP) life and work under duress^(L)_(SEP) OR^(L)_(SEP) impossibility of leaving the employer is positive, can be considered a victim of forced labour.

For more information about indicators of forced labour see:

- ILO: [ILO Indicators for forced labour](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf) (https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)
- Sedex: [Guidance on Operational Practice and Indicators of Forced Labour](https://www.sedexglobal.com/wp-content/uploads/2016/03/Sedex-Guidance-on-Operational-Practice-and-Indicators-of-Forced-Labour.pdf) (<https://www.sedexglobal.com/wp-content/uploads/2016/03/Sedex-Guidance-on-Operational-Practice-and-Indicators-of-Forced-Labour.pdf>)
- ILO: [Operational indicators for trafficking of human beings](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf) (https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf)
- Verité: [Fair hiring toolkit](https://www.sedexglobal.com/wp-content/uploads/2016/03/Sedex-Guidance-on-Operational-Practice-and-Indicators-of-Forced-Labour.pdf) (<https://www.sedexglobal.com/wp-content/uploads/2016/03/Sedex-Guidance-on-Operational-Practice-and-Indicators-of-Forced-Labour.pdf>)

Other sources of interest:

http://ubmasiafiles.com/files/aplf/psf/psf12/2012_child_labour_guidance.pdf

http://www.fairlabor.org/sites/default/files/documents/reports/addressing_forced_labor_in_supply_chains_august_2017.pdf

https://www.isealliance.org/sites/default/files/resource/2019-02/Forced_Labour_Remediation_Working_Paper_0.pdf