**Introduction**

This paper assesses the implementation of the International Labour Organization Conventions, specifically the Fundamental Conventions, in regulating work in the global era. This paper particularly focuses on the Forced Labour Convention, the Minimum Age Convention, the Worst Forms of Child Labour Convention and the Freedom of Association Convention. This paper argues that a number of methods have been used internationally to implement these Conventions, such as the use of legislation and policies, the use of free trade agreements, but also social mechanisms such as the governments' promotion of education and healthcare. Further, it is asserted that the implementation of Fundamental Conventions can also occur indirectly in High Court Cases.

This paper is structured to present this argument by first discussing the problems of forced labour, child labour and domestic worker issues globally. Thereafter, this paper conducts a statistical analysis of the countries that have ratified many of the ILO Conventions in order to gain perspective on the importance of ratification. As statistics only provide a flash of information, and do not provide the social and political reasons for implementation or how implementation occurs, this paper starts off the investigation with conducting a case study of Nepal. Nepal is chosen because it has implemented Fundamental Conventions, and is making good strides at implementation, however the situation in Nepal is a work in progress. Furthermore, this paper assesses the United States, which has implemented minimal Conventions and assesses why it has not implemented the Minimum Age Convention, and how implementing such a convention could cause friction with its economic policy, especially in terms of agricultural labour and farming.

In addition, this paper critically assesses how free trade agreements have immense power in implementing Conventions through the use of labour rights terminology in the Conventions and through the creation of arbitration arenas that allow breaches of labour rights to be arbitrated. Thereafter, this paper critically reflects on how the Supreme Court of Canada decisions have been inspired by Convention Fundamentals in deciding cases involving labour rights and how such cases attach legitimacy to the Conventions. Overall, the aforementioned issues are assessed by using different examples from around the globe to conclude that implementation of Conventions involves more than just creating legislation, but that now regional policies, promotion of education, health and welfare of people, the creation of free trade agreements and dispute resolution mechanisms, and implementation through the judiciary all have proven effective in assisting the Convention implementation process.

**Fundamental Conventions: The Problems of Forced and Child Labour**

The Fundamental Conventions of the ILO refer to key Conventions that are inherently necessary to protect rights of a person and the child. Interestingly, not all countries have subscribed to the fundamental conventions (which will be reviewed below), but clearly ratification of such Conventions symbolizes a countries' committed to them. These Conventions include: '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'[[1]](#footnote-1). Truly, these Conventions signify that they are fundamental to the rights at work. With respect to how these Conventions translate into laws in a country, often times forced labour rights are often incorporated into constitutions in the form of slavery, exploitation and trafficking rights, including the right to the freedom to choose employment.[[2]](#footnote-2) With regards to domestic labour rights, they are too found in other forms such as entrapment due to debt, trafficking rights, sexual and or labour exploitation and slavery. A large percentage of domestic workers are women and children. The problems inherent in domestic workers include poor work conditions, lack of social security, minimal collective bargaining, a high potential of abuse and sexual harassment, and forced labour. Such workers often have minimal education and training. Countries have been making progress in the domestic work field. For example, Haiti adopted the *Domestic Work Act,* which promotes that women and men get paid the same for the same work.[[3]](#footnote-3) Often time children where they are working in the agriculture settings are exposed to dangerous work conditions and the position internationally is that governments need to take the fundamental action to prevent such work.[[4]](#footnote-4) Other initiatives to implement such rights include increasing access to education and literacy as was the case in Mali where 3,000 domestic workers gained additional skills and training.[[5]](#footnote-5) The ILO continues to be a major influence on highlighting that legislation and policies need to be created and enforced especially in rural areas, but ultimately the governments need to develop plans to implement their ratification of Conventions. Therefore, learning how countries choose to implement such Conventions is positive in that it provides guidance to other countries, and increases knowledge sharing and this paper asserts therefore this is a worthwhile endeavor in light of the significant problem of forced labour. Such implementation analysis is a contextual matter, but may, nonetheless, will provide much needed insight and inspiration to other countries.

**Statistics: Snapshot of Implementation Progress**

Of the ILO Conventions that have been ratified, a survey of the ILO website in terms of ratification by country suggests there are sharp differences in the numbers and kinds of Conventions that have been ratified by the nations. For example, in relation to countries that have ratified the most number of Conventions, they include France, Norway, the Netherlands and Belgium. France has ratified 112 Conventions and 1 Protocol. It has ratified 8/8 of the Fundamental Conventions, 4/4 of the Governance Priority Conventions 112 of 177 of the Technical Conventions and currently 79 of the Conventions are in force.[[6]](#footnote-6) It is important to bear in mind Conventions, which are in force and ones, which are not. Moreover, Finland has ratified 101 Conventions and 3 Protocols, 8/8 of the Fundamental Conventions, 4/4 of the Technical Conventions, and 89 of the 177 of the Technical Conventions.[[7]](#footnote-7) The Netherlands has ratified 106 Conventions: 8/8 Fundamental Conventions, 4/4 of the Governance Conventions, 94/177 of the Technical Conventions, and 67 are currently in force. Norway has ratified 107 Conventions and 2 Protocols: 8/8 of the Fundamental Conventions.[[8]](#footnote-8) With respect to Belgium, 102 Conventions and 1 Protocol have been ratified. Specifically, all 8 out of 8 Fundamental Conventions have been ratified. [[9]](#footnote-9) Therefore, such statistics provide comparative information of which countries are embracing ILO Conventions and Protocols and which are not. Clearly, ratification of the Fundamental Conventions has been a priority.

We have to keep in mind that statistics provide a snapshot of how the country's ratification track record. However, although a country may ratify a certain Convention it is important to investigate how the country is actually implementing Conventions and how they translate into laws in the jurisdictions. France has ratified the Worst Form of Child Labour Protection and their implementation of this Convention has been significant which will be discussed below.

In France, children under the age of 16 may not be employed except for exceptional circumstances such as light work during school holidays and working in the entertainment industry. Under the *Code du Travail,* minors under the age of 18 cannot prepare, handle, and sell materials where such distribution would offend public morals. Furthermore, employers cannot hire minors in dangerous jobs.[[10]](#footnote-10) In order to be employed in the entertainment industry, a certification is required by the relevant administrative authority. Furthermore, France adopts strict rules with regards to the maximum amount of time the child may work per day and per week, particularly they cannot work more than 7 hours a day and 35 hours a week.[[11]](#footnote-11) Additionally, minors over the age of 16 may not work between the hours of 10 pm and 6 am, and if the minor is under 16 he or she may not work between 8pm and 6 am. In order to ensure that laws are being enforced, labour inspectors can do periodic checks.[[12]](#footnote-12) With respect to the armed forces, in France the minimum age that a minor can be hired is seventeen, but it requires consent from parents. Further, minors cannot serve in military abroad. Therefore, the example of France, a leader in the ratification of the ILO Convention, provides insight into how the Conventions have been implemented in terms of legislation, and clearly they have used the ILO as guidelines for their own laws.

**The Case of Nepal: Focusing on Social and Educational Policies to Implement Fundamental Conventions**

This paper further wants to highlight that although ratification of Conventions are positive steps, clearly though countries who have ratified such Conventions are constantly struggling to develop better strategies to improve laws in their jurisdictions.

Nepal also provides an important example, which is a country not of the European World, and provides information as to how Fundamental ILO Conventions are implemented in the developing world. Nepal has ratified the Worst Form of Child Labour Convention and the Minimum age Convention. According to Nepal Labour Force Survey 1998/1999 about 2 million children are engaged in work between the ages of 5-14 years old.[[13]](#footnote-13) The Worst Form of Child Labour Convention is important because it contains a number of Articles that specifically refer to child labour in relation to safety, prostitution, illicit behavior, and dangerous situations. Nepal has identified seven worst forms of child labour which are: domestic child labour, bonded labour, mining, ragpicing, carpet weaving portering and trafficking, and therefore the Convention relates to their worst forms of labour.[[14]](#footnote-14) However, Nepal has made a number of legal commitments in order to further protect child workers, but gaps in legislation still remain. For example, the *Child Labour Act* (2000) does not refer to family based work in agriculture, tea estates or at private homes, and accounts for the majority of Nepalese child workers under the age of 14.[[15]](#footnote-15) Therefore, although legislation exists, gaps in legislation have been found such as children working in agriculture in Nepal. As a result of such gaps, the Ministry of Labour has formulated the National Master Plan on Child Labour [2004-2014]. Most notably in the strategy, there are goals, focus areas, areas of intervention, and an implementation scheme in order to deal with forced labour and labour of children.

The Education for All Schemes is a core strategy for educational development and knowledge for sustainable living with dignity.[[16]](#footnote-16) Apart of the plan is child labour elimination programmes to be implemented into poverty alleviation programs, collaboratively approached between governmental and non governmental organizations, free compulsory primary education, family planning, linking of child labour with poverty programmes, specific sector and geographical needs. The reason why linking child labour education with poverty programmes is important is that the government has observed that such labour is most prevalent with the low-income population. Apart of the master plan focus areas include 'defining child labour' for an action plan which conforms to Convention standards. Therefore, the ILO has provided important guidance on the use of keywords and definitions. This paper asserts that the use of terminology and the need for definitions is important in order to bring awareness into rural communities. In such communities, illiteracy is often high so bringing awareness to things like 'child labour' and 'forced labour' helps to label certain actions that have been going on in rural settings for ages. With education of such terms and information that such practices are wrong, locals are able to better understand what is accepted. In terms of interventions, it has been recognized by the Master Plan that mechanisms in Nepal is often weak in regulatory and monitoring system. Therefore, the government aims to increase such monitoring systems on more local levels and focus on not only education to reduce poverty in rural communities, but also to increase health.[[17]](#footnote-17) The government is also focusing on education and health in order to decrease poverty in rural areas. Therefore, Nepal's strategy for implementation of the Conventions include not only educating the locals regarding faulty practices, but also aiming to reduce poverty which is a trigger to child and forced labour, and also increase education and health in order to prevent people getting trapped in poverty. Therefore, such a strategy for implementation is multi-pronged. The Master Plan found that child labour related education and awareness programs total millions per year due to international donor programs and the like so there is a lot of money funneling into the country, but more co-ordination on the ground level needs to occur to reach areas where there is no road access.[[18]](#footnote-18) Therefore, Nepal provides a solid example of efforts on the government and local level to implement the Conventions through social welfare policies.

**Is there a Need for the United States to ratify and implement the Minimum Age Convention?**

Of the NAFTA countries, Mexico has ratified the most Conventions with Canada coming in second and the United States coming in last. The United States has only ratified 14 Conventions, 2 out of 8 of the Fundamental Conventions, 1 out of the Governance Conventions and 11 out of 77 of the Technical Conventions. In total 12 are in force.[[19]](#footnote-19) Specifically, the United States has not ratified the Minimum Age Convention. At present the law in America is the *Fair Labor Standards Act.* Children under 12 may not work at present, and children between the ages of 12 – 16 can only be employed in certain occupations for limited hours. For minors between the ages of 16-18, they can work unlimited hours in non-hazardous occupations.[[20]](#footnote-20) There are, however, a number of exceptions to these rules, such as newspaper delivery, being employed by parents, and children who are in the entertainment industry. A main point of contention with the American laws related to children working on the farm. In particular, human rights organizations have found that kids are often working more than 10 hours in a day in dangerous positions on the farms.[[21]](#footnote-21) Working on farms can cause exposure not only to physical injury but also to dangerous pesticides. In fact, it was found by the National Safety Council that agriculture is the second most dangerous occupation in the United States. The US statistics find out that many of these children who do work on farms do not finish high school. In fact, under the *Labor Code* children in the agriculture field can work at the age of 12 in an unlimited fashion before or after school hours.[[22]](#footnote-22) Therefore, implementation of the Convention would alter when children can work in such positions. It is held that when such hours on farms would be illegal, there could be a greater emphasis on such kids attending and focusing on school in order to complete their education. If the child is in agriculture, a child can work anytime outside of school hours. Once the age of 16, a child can work on a farm at any time. Under 12 a child may work after school hours in non-hazardous jobs on a small farm that is excepted from the provision of federal minimum wage with parental consent. Between the ages of 12 – 13 the USA Youth Rules Website indicates that, 'you may work outside school hours in non-hazardous jobs on a farm where your parents work or with written parental consent.'[[23]](#footnote-23) For 14-15 year olds, 'you can work outside school hours in any non-hazardous agricultural job'. [[24]](#footnote-24) For 16 years or older, 'you can work in any farm job at any time.'[[25]](#footnote-25)

If the United States was to ratify its Convention on Minimum Age, significant changes would occur because as Article 3 states, 'The Minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling, and in any case, shall not be less than 15 years old'[[26]](#footnote-26) and this is in relation to the light work exemption of 13-15 year olds in Article 7(1). Where educational facilities are insufficiently developed the minimum would be 14 years old (Article 2(4), which would not be the case in the United States although some could argue that their education system in certain areas is not sophisticated. Furthermore, the Convention does not apply to family or small-scale holdings for local consumption farms, but it does apply to agricultural undertakings for commercial purposes. As a result, children would be limited to work on farms that are not family owned. In assessing the differences between the American law and the Convention we see that likely one of the main reasons underpinning the age of 15 is the reason of education. The United States of America, by adopting this Convention would most likely do it in circumstances where there is decline in education and literacy among the youth where social policy would emphasize education for youth instead of work. America is seen as an economically driven country, so it does not come as a complete surprise that children are able to work on farms under the age of 12 with parents approval. However, the pursuit of education and of work has to be balanced, and the law provides for family to make choices for their children. This paper argues that adopting such a Convention would impact small business farms which are not family-owned and could potentially affect the American economy, and it depends on whether America would adopt it in order to advance the need of focus on education for younger people. In low-income families in America, or families with single mothers, or disabled family members having young members work is critical to the family home and so the likelihood of adopting such a Convention would have impact on such demographics of people. Therefore, implementation of Convention’s objectives has to be in line with a country's ethos and clearly there are reasons for the US not ratifying the minimum age Convention.

**Implementation of ILO Conventions through Free Trade Agreements**

Free trade agreements exist between countries, which govern trade and can be used as a huge incentive where companies seek to invest foreign direct investment in countries. Often free trade agreements are known as bilateral investment agreements or international investment agreements and it is commonplace to have a number of obligations in the agreement, which protects potential investors. For example, the North American Free Trade Agreement governs trade between Canada, the USA and Mexico and contains provisions regarding environmental protection, minimum standard of treatment, expropriation and the like.[[27]](#footnote-27)

Melendiz-Ortiz argues that there could be benefits, which introduce labour standards into international trade agreements and that there are current international and legal models that are being developed. Basically, Melendiz Ortiz tracks a number of models, and these models suggest that implementation of Fundamental Conventions can also occur through free trade agreements.[[28]](#footnote-28) The US model opted for a unilateral system in 1984 known as the Generalized System of Preferences which stipulated requirement such as the prohibition of all forced obligatory labour and minimum age for employment of children.[[29]](#footnote-29) Even the North American free Trade Agreement of 1994 espoused that one of its main goals is ‘to strengthen the development and enforcement of environmental laws and regulation; and protect, enhance and enforce basic worker's rights.'[[30]](#footnote-30) The North American Agreement on Labour Cooperation also came into force and included goals such as improving working conditions and labour standards and to promote enforcement of labour legislation and focused on labour domestic law. In The United States- Jordan Free Trade Agreement labour matters were dealt with by Article 6, which served as a commitment to respect the ILO declaration and a non-derogation clause from international standards was also added.[[31]](#footnote-31) Article 17 also allowed that the same dispute settlement procedures would be used for trade questions as well as for labour matters. The US-Peru trade agreement had similar dispute resolution procedures.[[32]](#footnote-32) In addition, Canada and Peru signed a Free trade agreement (CPFTA), and the agreement is centered on applying fundamental labour rights.[[33]](#footnote-33) The agreement was premised on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow up (1998), and topics at issue are minimal work conditions, migrant workers, minimum wage and payment of overtime work. Furthermore, the public can make complaints regarding violation of labour laws and an offending party can pay up to 15 million dollars. Further, Chile has taken strides to include labour rights as part of its free trade agreements, with Columbia[[34]](#footnote-34). In fact, Chile played an important role in the Singapore meeting in establishing the international consensus of the ILO Declaration.

Therefore, the trend for labour rights in trade agreements has been expanding and clearly this has a positive impact for workers and pressure is put on countries at the cost of losing foreign direct investment. Clearly, if there is any way to promote labour rights it is the threat of a country losing a multi-million dollar contract and the ability of an infringed person being able to go to dispute resolution. Therefore, the reason why implementation of Convention through trade agreements is important is by combining the two labour rights gain more force, and where labour rights are disturbed there is a potential of going through the dispute resolution process of arbitration. As a result, where big money is involved, any breach of labour rights could threaten a contractual relationship and so what happens is that pressure is used as a tool to promote compliance with labour rights in local communities.

It is therefore, also important to mention that companies have a large role to pay in promoting labour rights, because where big companies with famous names denounce faulty labour practices, other companies might also succumb to pressure. Therefore, by assessing the relationships between treaties and corporation we see that pressure and the use of money can be used as tactics to create compliance where otherwise compliance would not exist.

**Implementation of ILO Objectives Through High level Court Cases**

As a result of being apart of the ILO and ratifying Conventions, it is found around the globe that judges and adjudicators will take into account the fact that a certain Convention has been ratified when coming to a decision. In fact, the recent trend of the incorporation of labour rights in free trade agreements indicates that labour rights are extremely important, and this is partly attributed to the fact that labour rights are closely tied in with economies and money. There are certain proponents that consider such fundamental labour rights to be classed under human rights. In fact, if we take a look at the ILO Declaration on Fundamental Principles and Rights of workers, the rights captured there could also be viewed as human rights, ‘such as freedom of association and the right to collective bargaining, elimination of all forms of forced or compulsory labour, abolition of child labour, elimination of discrimination in respect of employment and occupation’.[[35]](#footnote-35)However, court cases can provide practical insight into how labour rights could be couched as human rights. Although the ILO Declaration of Social Justice promotes the need of an increased dialogue to promote work environments and healthy wages, taking the position of equating labour rights with human rights would be an extremely loud statement and would put attention on the equation in other countries.[[36]](#footnote-36) Savage argues that equate labour rights with human rights we actually then see labour rights as a subsection of human rights and what happens is that 'we undermine class based approaches to advancing worker's rights'.[[37]](#footnote-37) In Canada, The United Food and Commercial Workers Union (UFCW) and the National Union of Public and General Employees (NUPGE) have been at the forefront of propounding that labour rights should be seen as human rights. However, in relation to implementation, the Supreme Court of Canada's generous interpretation of labour rights in the Charter has provided insight as to how Conventions have been promoted through the Supreme Court of Canada. In the case of *Dunmore v Ontario* (2001)[[38]](#footnote-38) it was observed that an Ontario law prevented agricultural workers from organizing into unions. The court struck down this law and it was held that the workers had a constitutional right under s 2(3) of the *Canadian Charter of Rights and Freedoms,* which is the right to 'freedom of association'.[[39]](#footnote-39) The Court determined that freedom of association could be equated with the right to enter into collective activities and in fact this court placed a plethora of emphasis on Canada's obligations under the ILO. [[40]](#footnote-40) The reason why this decision is important is because the Canadian Court decision used the ILO as a body of reference, and used its interpretations to also interpret how the freedom of association principle could be applied to agricultural workers.

Interestingly, however, the Canadian government has not signed onto ILO Convention 98, which is the right to collective bargaining, which goes to show that in spite of the specific Convention not being adopted the ILO, it has adopted the Convention on Freedom of Association 87 and therefore in this case it was clearly implemented. Furthermore, it has also been found in relation to British Columbia's *Health and Social Services Delivery Improvement Act* that the Canadian Courts in the *BC Health Services* decision have relied on international law holding that the Charter of Freedom of Association’s provisions should recognize the same level of rights as it is found in ILO Convention 87, dealing with the right to collective bargaining.[[41]](#footnote-41) Interestingly, the Court has at times blurred its international and domestic commitments when it comes to equating labour rights with human rights. The Canadian Courts have been mindful that the idea of collective bargaining is a contextual exercise to see whether collective rights should be granted or not. The *BC Health Services* decision, however, highlights that the Canadian government has its own reasons for not ratifying the Collective Bargaining Convention, but the decision will force anti union bodies to re-think of their approach to labour relations.[[42]](#footnote-42) Nonetheless, it is clear that implementation of Fundamental Convention has been occurring through litigation on a high level, and this helps to provide examples of how governments are practically implementing such rights.

**Conclusion**

This paper has critically analyzed the effectiveness of the implementation of the Fundamental ILO Conventions in relation to regulating work and has considered implementation in the context of forced labour, child labour and freedom of association. This paper has argued that globally fundamental ILO conventions are now being implemented by other methods than legislation. As the example of Nepal indicates the government is focusing on social welfare policies to improve poverty and healthcare in order to prevent child labour and forced labour. Moreover, the government's research includes the culmination of the National Master Plan, which sets specific goals for the country. It has also been found that certain countries such as France has been better at ratifying Fundamental Conventions as opposed to countries like the United States of America. However, an analysis of the *Labor Code* of America reveals certain strategies that are not surprising in light of America's economy. Furthermore, fundamental conventions can be implemented through the use of free trade agreements, which have the power to regulate labour rights and sometimes offer dispute resolution mechanisms. Lastly, this paper asserts that Supreme Court decisions, such as the Canadian Supreme Court has implemented ILO conventions through reference in relation to freedom of association. Therefore, learning from methods of implementation can provide helpful knowledge to other countries aiming at better implementation of Fundamental Conventions.

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35. ILO, Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its eighty-sixth Session, Geneva, 18 June 1998 and Annex revised 15 June 2010 (available at http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm) [↑](#footnote-ref-35)
36. Ibid [↑](#footnote-ref-36)
37. Savage, Larry, 'Labour Rights as Human Rights? A response to Roy Adams' Brock University, Available at:< <http://www.justlabour.yorku.ca/volume12/pdfs/06_savage_press.pdf>>. 69 [↑](#footnote-ref-37)
38. *Dunmore v Ontario* [2001] 3 SCR 1016 [↑](#footnote-ref-38)
39. *Constitution Act 1982 The Charter of Rights and Freedoms*, Available at: <http://laws-lois.justice.gc.ca/eng/const/page-15.html> [↑](#footnote-ref-39)
40. *Dunmore v Ontario* [2001] 3 SCR 1016 [↑](#footnote-ref-40)
41. Savage, Larry, 'Labour Rights as Human Rights? A response to Roy Adams' Brock University, Available at:< <http://www.justlabour.yorku.ca/volume12/pdfs/06_savage_press.pdf>>. 73 [↑](#footnote-ref-41)
42. *Dunmore v Ontario* [2001] 3 SCR 1016 [↑](#footnote-ref-42)