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# Elimination of All Forms of Forced or Compulsory Labor

International Labour Organisation

International Labour Office

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# Elimination of All Forms of Forced or Compulsory Labor

**Abstract**
A compilation of reports submitted by various countries to the ILO by the year 2000, describing labor conditions and relevant laws, specifically relating to forced or compulsory labor.

**Keywords**
Bonded, Catherwood, Compulsory, Cornell, Countries, Economic, Europe, Forced, Global, Globalization, Globalisation, Human, ILO, ILR, Industrial, International, Labor, Labour, Law, Legal, Legislation, Library, Organization, Organisation, Portal, Relations, Reports, Rights, School, Standards, University, Work, Workers, Workplace, World

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# The elimination of all forms of forced or compulsory labour

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## Bolivia

The Office received no report from the Government for the annual review of 2001. A report was received for the annual review of 2000.

## Bolivia

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

Bolivia has not ratified the ILO Forced Labour Convention, 1930 (No. 29), but it ratified the Abolition of Forced Labour Convention, 1957 (No. 105), in 1990.

The law prohibits forced labour. However, there are various situations amounting to forced or bonded labour. There are many cases of rural indigenous workers being kept in a state of virtual slavery by employers who charge them more for their meals and lodging than they can earn.

Household workers may effectively be held captive by their employers, particularly when employment agencies attract rural indigenous women to cities with promises of employment as domestic servants, but then make them work without salaries to repay transport and other fees. This sometimes forces them into prostitution.

The practices of child apprenticeship mentioned above often amount to forced labour. The old practice of "criadito" service for indigenous children, usually 10 to 12 years old, persists in some parts of the country. Criaditos are indentured by their parents to better-off families to perform household work in exchange for education, clothing and room and board. There are no controls over the benefits to, or treatment of, such children, who may become virtual slaves for the years of their indenture.

People who are imprisoned for the expression of political opinions in opposition to the established political order are liable for sentences of imprisonment involving the obligation to work. [… Reference is made to the application of a ratified Convention.]

There are many reports of serious abuses of forced labour in Bolivia, almost always concerning indigenous people, including children in various forms of indentured labour.

## Canada

### *Means of assessing the situation*

#### Assessment of the institutional context

No update to the Government's initial report is considered necessary for the annual review of 2001. However, the Government is making progress toward obtaining the formal agreement of the provinces and territories for ratification of ILO Convention No. 29.

The Government of Ontario has indicated that the following minor corrections should be made to the information regarding the province of Ontario in Canada's initial reports submitted for the annual review of 2000 (GB.277/3/2):

– Delete the first sentence under the heading "Ontario" which reads: "The province's *Employer and Employee Act* prohibits voluntary contracts of employment of more than nine years".

– Delete the word "other" in the next sentence to read: "Many Ontario statutes protect employees in voluntary contract of employment, e.g. *Employment Standards Act, Occupational Health and Safety Act, Workplace Safety and Insurance Act, Pay Equity Act* and the *Labour Relations Act*".

### *Representative employers' and workers' organizations to which copies of the report have been sent*

A copy of this report is being provided to the following representative employers' and workers' organizations:

– Canadian Employers' Council (CEC);

– Canadian Labour Congress (CLC); and

– Confédération des syndicats nationaux (CSN).

### *Observations received from employers' and workers' organizations*

The Canadian Employers' Council advised that it does not plan to provide supplementary comments at this time since the Government's initial report is, in their view, comprehensive and factual. No comments have been received from the Canadian Labour Congress or the Confédération des syndicats nationaux.

## Canada

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

Canada has not ratified the ILO Forced Labour Convention, 1930 (No. 29), although the federal Government recently expressed its intention to ratify it, following consultations with the provincial governments, in 1999. It ratified the ILO Abolition of Forced Labour Convention, 1957 (No. 105), in 1959.

Forced labour is against the law in Canada and there are no known cases. However, […] [under] the Canada Shipping Act […] imprisonment, including forced labour, may be imposed for breaches of discipline, even when the safety of the ship is not endangered.

There are no indications of forced labour in Canada.

## *Government observations on ICFTU's comments*

The Government of Canada wishes to make the following observations in response to comments submitted to the ILO by the International Confederation of Free Trade Unions (ICFTU) for the annual review of 2001, with respect to the implementation of the principle of the elimination of all forms of forced or compulsory labour by Canada.

We note that the ICFTU agrees that in Canada forced labour is against the law and that there are no indications of forced labour in our country. Regarding the Forced Labour Convention, 1930 (No. 29), the Government of Canada is continuing to make progress towards obtaining the formal agreement of the provinces and territories for ratification of the Convention.

The ICFTU states that under the *Canada Shipping Act*, "imprisonment, including forced labour, may be imposed for breaches of discipline, even when the safety of the ship is not endangered". This issue, which currently involves sections 247(1)(b), (c) and (e) of the *Act*, has, for several years, been the subject of exchanges between the Government and the ILO Committee of Experts on the Application of Conventions and Recommendations in the context of the Committee's examination of the implementation of the Abolition of Forced Labour Convention, 1957 (No. 105), which Canada has ratified.

In line with our understanding that the follow-up to the Declaration is not meant to duplicate existing ILO supervisory mechanisms, the extensive information already provided to the aforementioned Committee over the years will not be resubmitted in this context.

However, in order to assist the Office in ensuring that the essential background information concerning this issue, as well as the Government's position, are reflected in the compilation of reports for the 2001 annual review, the following summary of some key facts is being provided:

– The provisions of the *Canada Shipping Act*, which have been of concern to the ILO Committee of Experts over the years, are archaic and not applied. Several amendments to the *Canada Shipping Act* have already been made in response to the Committee's concerns.

– In 1987, the *Canada Shipping Act* was amended, removing the penalty of imprisonment from section 242 of the *Act*, concerning the offences of desertion and absence without leave. Section 247(2), which had provided that any imprisonment penalty in section 247 may be with or without hard labour, was also removed.

– In 1992, the *Miscellaneous Statute Law Amendment Act* deleted sections 243 to 246 of the *Canada Shipping Act*, which had provided for the forcible return on board ship, of deserters and seamen absent without leave.

– The remaining issue is the concern expressed by the ILO Committee of Experts over the possibility of *any imprisonment penalty* being imposed for breaches of discipline under sections 247(1)(b), (c), and (e) of the *Canada Shipping Act*, even in cases where safety, life or health are not endangered.

In conclusion, the Government wishes to note that the *Canada Shipping Act* is being overhauled. The new proposed legislation *(Bill C-35, Canada Shipping Act 2000)*, received its first reading in Parliament on 8 June 2000. However, it has to be reintroduced because

of the intervening recent federal election. The proposed legislation does *not* provide for possible imprisonment for wilful disobedience of a lawful command.

## China

The Office received a report from the Government that was entitled "the abolition of all forms of forced labour" but the content of the report referred to "seminars on Convention No. 111".

The Office has therefore placed the Government's reports in its entirety in the category of elimination of discrimination in employment and occupation. [1]

The Government's report on the elimination of all forms of forced or compulsory labour provided under the annual review of 2000 appears in GB.277/3/2 (March 2000).

## China

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

[Note: Various references to ILO Conventions and supervisory procedures have not been reproduced.]

The report presented by the Government of the People's Republic of China in 1999 under the Declaration follow-up [2] covers six pages in the ILO's edition (published in March 2000). The first page deals with the institutional context; most of the remaining five pages deal exclusively with the practice identified by the Government as "rehabilitation through labour" (or "Lao Jiao") which, in its view, does not constitute forced or compulsory labour […].

The ICFTU therefore considered it necessary, after briefly summarizing the institutional context, to comment on the general prohibition of forced or compulsory labour under China's laws … and on the way in which it is implemented by certain employers and/or enforced by the authorities. Thereafter, the ICFTU will expose its views on the compatibility of exceptions foreseen under China's laws with … the relevant ILO principles and in practice.

According to the Government, "the principle of the elimination of all forms of forced or compulsory labour is recognized in China". The institutional context it presents consists of a summary of the relevant legislation in force in the People's Republic of China. Hence, according to the Government:

- the protection of personal freedom, guaranteed under article 37 of the Constitution, implies the elimination of forced or compulsory labour;

[1] Clarification was sought from the Government of China.

[2] See GB.277/3/2 (Mar. 2000).

- under article 32 of the Labour Law, any worker forced to work against his/her will by his/her employer has the right to resign, if the worker is subjected to "violence, intimidation or illegal restriction of personal freedom";

- under article 96 of the Labour Law, the persons in charge at employing units where such forced labour occurs "shall be taken … into custody for 15 days or less, or fined or given a warning: and criminal responsibilities shall be investigated against the persons in charge according to law";

- under the Criminal Law (article 244), persons "directly responsible" of forcing someone to work by "illegal restriction of personal freedom in violation of labour regulations", shall, "if the circumstances are serious", incur imprisonment of up to three years or criminal detention and/or a fine;

- labour inspectors shall also inspect acts of forced or compulsory labour and issue sanctions under the relevant administrative provisions.

The Government also indicates that three categories of persons "are excluded or are not covered by relevant legislation:

(1) criminals who have received penal sentences as a result of violating state criminal laws;

(2) those who are interned for rehabilitation through labour due to acts violating discipline or jeopardizing public order or not engaging in honest pursuits; and

(3) active servicemen".

Finally, it should also be noted that, according to the Government, "no categories of jobs or work or sectors are excluded or omitted from legislation regarding (the) principle" of elimination of all forms of forced or compulsory labour (hereinafter: "the principle").

In order to avoid misunderstanding, it should be noted that forced labour imposed as per exception (1) above, is qualified in China's legal context as "reform through labour". This process is known in Mandarin as "Laogai". The same term is frequently used to describe the actual penal institutions in which such "reform through labour" is exacted from convicted prisoners.

In turn, exception (2) above, i.e. "rehabilitation through labour", is known in China as Lao Dong Jioa Yang, or, in abbreviation, "Lao Jiao". It should be noted that, according to expert observers of China's criminal law and legal practice, the use by the Government of the English word "rehabilitation" in its 1999 report to the ILO under the Declaration follow-up, contrasts with the term "re-education", hitherto used by the Government when it commented upon this practice in the English language. The ICFTU believes that this apparent shift in terminology may have a bearing on the light in which the Government wishes to present its institutional context and practice […].

… [The] distinction made in China's institutional context between "Laogai" and "Lao Jiao", i.e. between "reform" through labour and either "re-education" or "rehabilitation" through labour [is meaningless].

As suggested by the Government's description of the institutional context, a general prohibition of forced labour exists in China, with the exception of penal sentences,

"rehabilitation" and military service. The extent to which the general prohibition is compatible with "the principle" as applied in practice calls for analysis.

The definition under China's laws of forced or compulsory labour exclusively as that which is exacted – in the context of an employment relationship – by way of "violence, intimidation or illegal restriction of personal freedom" falls well short of the relevant ILO standard. […]

The restrictive interpretation of "the principle" under the present Chinese laws appears to be twofold: on the one hand, the law restricts the scope of the principle by limiting the definition of forced or compulsory labour to three sorts of tools which may be used to exact it, namely violence, intimidation or limitations of personal freedom. On the other hand, it restricts the scope […] to that of the employment or, more precisely, the contractual relationship.

[…] Other ways may be used to exact forced or compulsory labour, than those envisaged by China's institutional context. In addition to violence, intimidation or physical limitation of freedom, various other modes of forced or compulsory labour exist … These include bonded labour, servitude, slavery and many other forms which may have existed or still exist in certain countries; many governments have commented upon such practices and the ILO's supervisory bodies have issued numerous relevant comments.

[Reference to the report submitted by another country is not reproduced.]

The ICFTU further recalls that forced or compulsory labour is defined by China's legal context as occurring *exclusively* in the context of an employment relationship. The Criminal and Labour Law articles indicated by the Government specifically refer to the "employing unit". The former deals with "labourers", the latter refers to "workers" and the right of revoking "the labour contract". In the ICFTU's view, such a limitation is incompatible with the general prohibition […]. It might not cover, for instance, the abovementioned phenomena of bonded labour, servitude or slavery, the nature of which either rules out the very existence of a contract or renders its termination by the workers quasi impossible. In more immediate terms, neither would the contractual restriction seem to cover any violations that might occur in the informal sector, which is booming in China as a result of the country's rapid socio-economic transformation. Likewise, it would seem to be non-operational in the context of forced or compulsory labour exacted in the context of trafficking of human beings, including forced prostitution.

Notwithstanding the ICFTU's reservations about the restrictive interpretation of "the principle" above, it should be noted that, in practice, numerous sorts of penalties are used in China in order to exact labour against the workers' will. In certain sectors, whether in the geographic or the industrial meaning of the term, these penalties are so common as to constitute, in effect, a wide-ranging and nearly systematic pattern, which deeply affects the climate of, not only industrial relations as such, but that of society as a whole. These practices, which are in themselves fully incompatible with "the principle", include all the criteria listed by the relevant Chinese laws (i.e. "violence, intimidation and illegal restrictions of personal freedom"), but are not limited to this list. Additional penalties include illegal deduction of wages, compulsory unpaid overtime, threats of dismissal and others.

According to detailed information available to the ICFTU, the practices listed below are frequently found in factories producing various consumer goods for export, such as textiles, footwear, radios, television and sporting equipment, handbags, bicycles and many other consumer items. They all seem to constitute serious obstacles to the elimination of

forced or compulsory labour. The most recent evidence available to the ICFTU concerns 17 factories located in Guangdong, Shandong and Jiangsu Provinces, with a total production workforce of 62,300 workers. Most factories are foreign-owned or have mixed capital. This information corroborates numerous earlier accounts and reports examined in previous years by the ICFTU.

The confinement of workers to the employer's premises, including mandatory residence in common housing on the grounds of the enterprise, is quasi systematic. Dormitories are locked from the outside. Personal identification is confiscated upon arrival and replaced with enterprise identification. The latter has to be handed to guards whenever the worker leaves the ground of the enterprise. In some circumstances, outdated residence permits are distributed by the employer, with the knowledge of local security forces. Being caught by the latter with such identification outside the enterprise can lead to expulsion from the are and mandatory return to the region of origin, often very far away. Commercial production facilities surrounded with barbed wire and protected by armed guards on watchtowers are not uncommon.

[Statements of a complaint-like nature are made with reference to working conditions.]

[…] Workers consider representation to the local labour authorities as useless. Attempts to organize independently or to strike are said by workers to lead automatically to severe prison sentences.

[Statements of a complaint-like nature are made with reference to working conditions.]

It should be noted that the overwhelming majority of [the workers involved] are young women, typically in the 17-26 years bracket.

Finally, the ICFTU notes from the Government's description of the institutional context that persons responsible for limitations to workers' personal freedom such as those detailed above, may be detained for 15 days or less, or fined or given a warning, in conformity with the Labour Law. The question thus also arises whether the very mild sanctions foreseen by the law for restricting the personal freedom of workers and exacting labour from them constitutes a sufficient deterrent to prevent such situations from occurring […].

The possibility of imposing mere fines as a means of dealing with the exaction of forced labour would thus appear insufficient. The ICFTU duly notes provisions in the Criminal Law allowing for terms of imprisonment of up to three years, when forced labour is exacted in "serious" circumstances. However, it is recalled that the same criminal law article also foresees a simple fine, as either a concurrent or an alternative penalty. Whereas no prison sentence is being recalled by the ICFTU as having been imposed in recent times on anyone in China for exacting forced or compulsory labour, the ICFTU can only conclude that the penalties provided for in the law are either inadequate or are not enforced in practice.

The practices described above suggest that the implementation of the prohibition of forced labour, even within the narrow definition of the institutional context, is problematic at best. At worst, it is catastrophic. As seen in the situations described, the exaction of labour by way of violence, intimidation or limitations of personal freedom, and within a contractual relationship, which is illegal under China's Constitution and laws, is in fact widespread in certain types of enterprises, particularly in the export-processing sector.

The question arises whether such situations are compatible with international standards concerning forced or compulsory labour. Bearing in mind the strictly promotional objective of the ILO Declaration's follow-up and of the annual reporting, the ICFTU purposefully abstained from identifying above specific cases, whether individual or collective, or particular enterprises where such situations are known to occur on a permanent basis. Nor did the ICFTU make reference to concrete reports, studies or other publications on these issues. As it has had no earlier opportunity to discuss the issue of forced or compulsory labour in China, it regrets any resulting imprecision or lack of detail which might give rise to a wrong impression of unsubstantiated claims.

In fact, evidence abounds of situations such as those described above, and the existence of these practices is well known both by the Chinese public and within the international community. [Reference is made to workers migrating within the country and working conditions.] The Government itself raises these issues in various ways, for instance by issuing directives aimed at dealing more efficiently with these problems or by releasing information about the occasional punishment of those responsible for severe violations of labour rights, including forced labour. This is particularly the case when the facts of which the individuals concerned are accused, have led to the loss of workers' lives on a significant scale, and constituted public knowledge.

Likewise, international institutions and multilateral agencies, as well as numerous employers and, in particular, foreign investors active in China, have at their disposal vast amounts of reports, studies, testimonies and other evidence pointing at a general context of violations of labour rights and, in particular, at the existence in China of labour practices considered as forced or compulsory labour under international law. In fact, facing what some of them may perceive as an actual or potential threat to the general public's and, particularly, their customers' confidence, many employers, especially multinational companies investing in China, have in recent years conducted their own research into … their own or their subcontractors' China-based factories. Some have changed suppliers, relocated or may even have withdrawn as a result. Others have remained silent or, on occasion, attempted to hide the nature and scope of their own findings.

In view of the foregoing, the Government may consider taking appropriate measures in order, firstly, for the country's legal definition of forced or compulsory labour to [… be amended …] and secondly, for the existing laws prohibiting forced or compulsory labour, to be fully implemented in China's enterprises, with particular attention to production facilities located in special economic or export-processing zones.

Apart from military service and "rehabilitation through labour", which it does not regard as conflicting with the principle of the elimination of all forms of forced or compulsory labour, the only exception foreseen by China's legal context is that of "criminals that have received penal sentences as a result of violating state criminal laws". No explanation is provided as to the nature or scope of crimes covered by the laws in question.

In view of the above, it must be assumed that the Government refers to the entire body of China's criminal law. It follows, for instance, that the criminal laws referred to by the Government must include the Law on Endangering State Security, which replaced the former Law on Counter-revolutionary Crimes when China revised its Criminal Law in 1997. Both laws include "Laogai" amongst the penalties foreseen for repressing the crimes in question.

In this context, it should be noted that, in addition to all the major crimes of common law which are repressed in the relevant legislation of all civilized countries, China's

criminal laws and judicial practice also repress certain acts or activities which are hardly considered as crimes by the community of nations. The ICFTU recalls, in this respect, that many Chinese workers have been sentenced to long terms of "Laogai". In particular, many have been sentenced to terms of "Laogai" after having been found guilty under the Law on Endangering State Security or, during the period 1989-97, under the Law on Counterrevolutionary Crimes. The ICFTU firmly believes that the acts of which these workers stood accused cannot constitute legitimate grounds for conviction to forced or compulsory labour […]. Such cases have included, for instance, holding views opposed to the established political system, offences to labour discipline or participation in strikes […].

According to official statistics, 3,017 trials for counterrevolutionary crimes or endangering state security were held in the ten-year period from 1989-98. The highest number in any year was 728 (in 1990); the second highest number was in 1989 (448). At the end of 1999, according to the Ministry of Justice, 1,900 prisoners were held in ministry facilities for both categories of crimes; they included 1,300 prisoners convicted of counterrevolutionary crimes before that law was replaced, in 1997. Since January 1998, 600 individuals had been incarcerated for crimes against state security. Institutions administered by the Ministry of Justice include prisons and reform through labour institutions ("Laogai chang", or labour camps).

Both prison and "Laogai chang" inmates perform forced labour, but the second category of prisoners are usually sentenced to no more than five years. According to expert ICFTU sources, of the 1,900 inmates mentioned, approximately 50 per cent have been sentenced exclusively for having exercised their right to freedom of expression and/or association.

[Statement of a complaint-like nature regarding the alleged imposition of "Laogai" on independent labour activists in the period 1989-2000, not reproduced.]

Owing to the strictly promotional character of the Declaration follow-up, as well as to the need to avoid any dual examination, the comments below do not refer to any specific cases.

Since 1989, the ICFTU has recorded numerous cases in which workers have been sentenced to "Laogai" for carrying out collective, independent labour activities or having attempted to do so. [Statements of a complaint-like nature and reference to ILO supervisory procedures, not reproduced.]

The reach of China's prohibition of strikes can in some cases be astounding. The ICFTU considers that strikes are illegal under Chinese laws and are punishable, in fact, with forced labour, in direct contravention with the principle.

The ICFTU wishes to stress, however, that the Chinese authorities do not hide the existence of industrial disputes, nor that these occasionally lead to strikes. [Reference is made to matters other than the elimination of forced or compulsory labour.]

Other sentences to "Laogai" have been passed on Chinese workers for attempting to establish independent workers' organizations and for various related acts qualified by the prosecuting authorities as endangering state security, communicating state secrets, incitement or stirring up of social unrest. According to the Government, these sentences were passed with due respect of judicial process, particularly of the rights of those accused, and the persons so convicted were correctly treated in detention.

The ICFTU has considered, in contrast, that the persons sentenced to forced labour have been denied elementary standards of fair judicial process, notably their right to access to counsel and their right of appeal; that they have been the object of physical violence or even torture inflicted by prison staff, that some of their relatives have received comparable treatment; that proper medical care was systematically denied in "Laogai" institutions […].

As stated in the introduction, five of the six pages of the Government's 1999 report on "the principle" describe in much detail with what it calls "rehabilitation" (previously "re-education") through labour, or "Lao Jiao". This practice is not incompatible with the principle, according to the Government.

The ICFTU notes from the Government's description that sentences to "Lao Jiao" may be imposed for, amongst other reasons: violation of "public security rules"; refusing to work for a long time; "having difficulty in making a living" owing to an earlier dismissal incurred for breaches of discipline or jeopardizing public order; and other "minor offences" for which there is "no criminal liability".

The Government further indicates that, "since rehabilitation through labour is a compulsory measure for education and reform rather than a criminal punishment, the decision on whether a person concerned should be interned for rehabilitation through labour is not made by the people's court, but reviewed and approved by the administrative committee for rehabilitation through labour of the provinces […] and of large and medium-sized cities". The "administrative committees" in question "shall be composed of responsible persons of civil affairs, public security and labour departments".

The individuals concerned are not present at the time of the "Lao Jiao" committee's decision. This stems clearly from the described sequence of the procedure: cases are firstly investigated by public security organs, then submitted to the committee, with decides whether to impose "Lao Jiao" and if so, for how long (up to three years, with one possible additional year, according to the Government). Only thereafter is the person concerned notified.

The ICFTU recalls in this respect that […] penal labour [is not to be] imposed unless the guarantees laid down in the general principles of law recognized by the community of nations are observed, such as the presumption of innocence, equality before the law, regularity and impartiality of proceedings, independence and impartiality of the courts, guarantees necessary for defence, clear definition of the offence and non-retroactivity of penal law.

In view of the above, the ICFTU considers that the […] distinction made by the Government between "Laogai" and "Lao Jiao" is not relevant to the principle of the elimination of all forms of forced or compulsory labour.

In view of its already extensive comments on "Laogai", the ICFTU does not wish to comment in detail at this time on the Government's description of "Lao Jiao". Various issues, however, would call for detailed examination, including statements to the effect that the individuals concerned have the right to appeal the "decision" of the "Lao Jiao" committees, with the assistance of lawyers; that their "legitimate rights and interests are safeguarded"; that they enjoy full freedom of religion, of property, of correspondence; that they are not imposed corporal punishment and mistreatment […].

[…] The provisions concerning adequate working conditions, including lower working time and production quotas than in the general society, occupational health and

safety, vocational training and the acquisition of technical skills would also need to be assessed in relation to the practice.

ICFTU sources suggest that some situations as those described above may indeed occur. [Reference is made to several cases involving independent labour activists allegedly detained in "Lao Jiao" institutions … and, inter alia, whose sentences were extended by a year or more.]

[With respect to conditions within these institutions, reference is made to the report of the UN Commission on Human Rights' Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 53rd Session of the Commission, Document No. E/CN.4/1997, Item 8(a), at: "China" and the Government's statements to the Committee Against Torture.]

According to the Government, 240,000 persons were held in "Lao Jiao" institutions in 1999; 40 per cent of them for "larceny, fraud and gambling", another 40 per cent for "repeatedly taking drugs, prostitution and whoring" and the remaining 20 per cent for "offences of disturbing public order such as assembling crowds to pick quarrels and stir up troubles". Authoritative sources in China place the present number at approximately 300,000 persons. If correct, the figure would represent an increase of 25 per cent in one year. It would appear, however, that 230,000 people were already "interned" for Lao Jiao by mid-1997, according to official statistics. More conservative estimates therefore place the annual growth rate at 10 per cent or more in the period 1997-2000.

For the ICFTU, such a steep rise in the number of people interned for "Lao Jiao" might be related to the notorious increase in workers' and peasants' protests throughout China during the last year. An analysis of street demonstrations by discontented workers in Hunan Province in 1998 was carried out by the General Office of the Hunan Federation of Trade Unions and results published in an ACFTU publication in 1999. They showed a steep increase in the number of protests compared with 1997. According to statistics provided by both the local ACFTU branch and the Department of Labour, 247 street protests and demonstrations had taken place in the province in 1998, involving 33,318 people. This represented an increase of 100.8 per cent in the number of protests as compared to 1997 (123) and an increase of 79.4 per cent in the number of people taking part (18,751). One-third of the protests had involved 100 people or more, an increase of over 100 per cent in one year.

According to the same report, there were 93 cases (37.7 per cent) where protests resulted from the infringement of workers' legal rights during restructuring. […] The study remains silent about any consequences of these protests, in particular as to whether any of these incidents, involving thousands of workers, led to any administrative or judicial sanctions against any of the participants. It is difficult to escape the notion, however, that at least some of the workers involved may have contributed to the reported 25 per cent increase in the "Lao Jiao" population since 1999, or indeed found themselves among the 600 persons convicted to "Laogai" sentences since 1997, under the revised law on endangering state security.

It is recalled that "no categories of jobs or work or sectors are excluded or omitted from legislation regarding (the) principle" of elimination of all forms of forced or compulsory labour. This statement [by the Government] must probably be understood as referring to the occupational scope of the general prohibition of forced or compulsory labour: no occupations shall be excluded from it. It is, however, also relevant to the universal principle of non-discrimination in the enjoyment of all human rights, in this case, the right not to be submitted to forced or compulsory labour […].

The Government's report is silent on the issue of whether individuals belonging to any specific category of the population may be sentenced more frequently than others to terms of either "Laogai" or "Lao Jiao". The question thus arises of whether any evidence exists that specific categories of the population may in practice suffer differentiated treatment with regard to "the principle". The ICFTU notes in this respect that, while no information seems to be available on any systematic discrimination against any particular "jobs or work or sectors", in the strictly occupational sense, vast amounts of information are available concerning the imposition at a differentiated rate of sentencing to "Laogai" and "Lao Jiao" terms of individuals belonging to specific religious or national groups.

In one area, the discriminatorily high rate of forced labour sentences imposed on a particular category of citizens, compared to the overall population, could seem to infringe both on the domestic law and on the ILO principle itself. The area in question is that of clergy of specific religious denominations or groups. The exercise of leading or responsibility functions within different religious groups or denominations is officially recognized as an occupation, or even as a profession, by many countries with different traditions and cultures, in different parts of the world […].

It is recalled in this respect that, in China, the Catholic religious minority is divided into two parts. One is recognized by China's Government. The other is not. Members, but in particular the clergy of the latter, generally referred to as the "underground Catholic church", are frequently reported to have been sentenced to "Lao Jiao" terms. The exercise of religious functions without state approval is the direct cause of their forced labour sentences.

[…] It must be recalled, in that respect, that priests of the "underground Catholic Church" are not the only specific category of citizens receiving forced labour sentences in connection with their religious beliefs or activities with comparatively higher frequency than the general population. For instance, members, and particularly the clergy of the underground, or "home" Protestant church (so named after the private premises where its religious ceremonies are held), are also frequently sentenced to forced or compulsory labour.

Similarly, it is widely known that the imposition of "Laogai" or "Lao Jiao" sentences is disproportionately frequent among members of the Tibetan national group. In particular, however, members of the Buddhist clergy, both nuns and monks, are frequently repressed in this fashion. … [The] issue arises of whether this specific occupation, in practice, may give rise to violations of the legal provisions guaranteeing non-discrimination between different "jobs or sectors" in the application of "the principle" […].

In recent times, a new group of citizens has been targeted for severe repression on religious grounds, namely members and leaders of the Falungong, a spiritual and mystic movement reportedly counting millions of members and sympathizers. It is considered by the Government as a "heretic cult". Several senior figures in the movement have been sentenced to harsh sentences of "Laogai", while hundreds if not thousands, were sentenced to terms of "Lao Jiao". […] Members of the movement are systematically detained by the security forces. Credible reports suggest that many are sentenced to "Lao Jiao". If so, this would seem to call into question the Government's statement that "it is evident that citizens (…) are not interned for rehabilitation through labour because of their political views or normal religious activities". It is also noteworthy that, in November 1999, the Standing Committee of China's National People's Congress adopted legislation which gave the police and judicial authorities the right to view as criminal acts the publication of "cult" materials. […].

## Democratic Republic of the Congo

### *Means of assessing the situation*

Assessment of the institutional context

There have been no changes in law and practice since submission of the first report.

Assessment of the factual situation

Statistics are still not available owing to the lack of statistical tools and financial means necessary to collect this information.

### *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

(a) Efforts made by the Government are:

The process of ratification will soon be completed.

(b) Necessary conditions are:

No assistance has been received from the ILO in this matter.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

Employers

– Enterprise Federation of Congo (FEC);

– National Association of Investment Enterprises (ANEP);

– Confederation of Congolese Small and Medium-sized Enterprises (COPEMECO).

Workers

– National Union of Workers of Congo (UNTC);

– Trade Union Confederation of Congo (CSC);

– Democratic Confederation of Labour of Congo (CDT);

– Confederation of Workers and Executive Staff of Congo (SOLIDARITE);

– Organization of Unified Workers of Congo (OTUC);

– Cooperation of Unions in Public and Private Enterprises in Congo (COOSEPP).

### *Observations received from employers' and workers' organizations*

No observations were received from the employers' and workers' organizations.

## Ethiopia

### *Means of assessing the situation*

Assessment of the institutional context

We would like to draw your attention to the fact that, after having forwarded our initial report to the ILO, the Forced Labour Convention, 1930 (No. 29), was submitted to the competent authority for consideration, along with our suggestions and advice concerning possibilities for its ratification.

Therefore, we will inform the Office of the outcome, as soon as a decision is taken in this regard.

## Japan

### *Means of assessing the situation*

Assessment of the institutional context

As regards conditions in Japan with respect to the prohibition of various forms of forced labour there is nothing to add or change to the previous report.

The sentence in the previous report:

> In enforcement, etc. of the Labour Standards Law, the Labour Standards Bureau at the Ministry of Labour, Prefectural Labour Standards Offices and Labour Standards Inspection Offices as local branches are established, and the appropriate number of necessary personnel are allocated at these agencies.

should be changed as follows:

> In enforcement, etc. of the Labour Standards Law, the Labour Standards Bureau at the Ministry of Labour, Prefectural Labour Bureaux and Labour Standards Inspection Offices as local branches are established, and the appropriate number of necessary personnel are allocated at these agencies.

Assessment of the factual situation

The contents of the previous report should be changed as follows:

1. The number of violations and cases sent to the prosecutor's office pertaining to section 5 of the Labour Standards Law (prohibition of forced labour) is as follows.

| | Number of violations during periodical inspection | Number of cases sent to the prosecutor's office |
|---|---|---|
| 1995 | 0 | 1 |
| 1996 | 0 | 1 |
| 1997 | 0 | 1 |
| 1998 | 1 | 0 |
| 1999 | 0 | 2 |

2. The number of violations and cases sent to the prosecutor's office pertaining to Article 122 of the Mariners Law (Penal servitude imposed on that master compelled person on board the vessel to perform an act which he has no obligation to perform, by abusing his authority) is as follows.

| | Number of violations during periodical inspection | Number of cases sent to the prosecutor's office |
|---|---|---|
| 1995 | 0 | 0 |
| 1996 | 0 | 0 |
| 1997 | 0 | 0 |
| 1998 | 0 | 0 |
| 1999 | 0 | 0 |

## *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

There is nothing to change or add to the previous report.

## *Representative employers' and workers' organizations to which copies of the report have been sent*

(Employers' organization) Japan Federation of Employers' Association

(Workers' organization) Japanese Trade Union Confederation

## *Observations received from employers' and workers' organizations*

The following sentence should be added to the previous report.

The Japanese Trade Union Confederation requests "the early ratification of ILO core labour standards and promotes the reaching of an agreement on its global necessity". (Request for a 2000 to 2001 policy system.)

## Japan

### *Observations submitted to the Office by the Japanese Federation of Employers' Associations (Nikkeiren)*

Nikkeiren attaches great importance to the 1998 ILO Declaration and considers that Japan should promptly start examining the issue, with the aim of ratifying Conventions Nos. 29 and 111. [Reference is also made to the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), which is not covered by the Annual Review for 2001.] As far as Conventions Nos. 29 and 111 are concerned, it is necessary for the tripartite parties to take joint action in looking into difficulties for and obstacles to ratification, and study measures to address them.

## Japan

### *Observations submitted to the Office by the Japanese Trade Union Confederation (JTUC-Rengo)*

Central and local public employees and employees of public enterprises are prohibited from going on strike and disciplinary action is taken against violators. Furthermore, imprisonment of three years or less or a fine of 100,000 yen or less may be imposed on the leaders of "illegal" strikes. Such imprisonment does not comply with the Convention [No. 105, not ratified].

Central and local public employees are prohibited from any political activity. Imprisonment or a fine, as described in the previous paragraph, may be imposed on violators. This is considered to be not in compliance with the Convention, which suppresses forced labour as punishment for political activity.

JTUC-Rengo has been urging that Japan ratify Convention No. 105 at the earliest date.

### *Government observations on the JTUC-Rengo's comments*

[The following observations were submitted with reference to the JTUC-Rengo's comments on the Government's report for the first annual review. Since it was not possible to include the Government's observations in that compilation of reports, they are being reproduced in the compilation for the second annual review. The Government's report and JTUC-Rengo's comments can be found in GB.277/3/2, pp. 201-211.]

As confirmed at the 274th Session of the Governing Body, organizations of workers or of employers are to make their comments when the annual reports are compiled by the Office under the follow-up to the Declaration on Fundamental Principles and Rights at Work. Therefore, the Japanese Government does not raise objections about the procedure whereby the JTUC-Rengo comments on non-ratified fundamental Conventions within the framework of the follow-up.

However, asking governments to make observations on comments presented to the Director-General by workers' organizations, and reflecting these comments and observations in the compilation of the annual reports, are matters which were not decided

upon as the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. The Japanese Government believes that these actions are contrary to the overall purpose of the annual follow-up, as agreed in paragraph 2 of section 1 of the Annex to the ILO Declaration, and that they may lead to the creation of a new machinery for supervising the position of member States with respect to matters dealt with in the non-ratified Conventions.

In the past, the Governing Body did not make any rules as to (1) the relationship between the reports submitted by governments, and the comments presented by the organizations of workers or of employers, and (2) the treatment of comments made by organizations of workers or of employers. The Japanese Government would like to know what the Office thinks on the points raised in (1) and (2) above, as well as the treatment of the Government's observations to be submitted within the framework of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.

The Japanese Government thinks that it may be appropriate to discuss the aforementioned questions in the Governing Body, depending on the content of the response by the Office. [3] The Japanese Government wishes to reserve its right to express its position on the JTUC-Rengo's comments, after the Office replies to the questions.

At the same time, as regards comments made by organizations of workers or of employers, the Japanese Government also requests that, until the Office gives a clear response to the aforementioned questions, it will not in any way reflect the comments made by JTUC-Rengo in the compilation of the annual report.

In addition, the Japanese Government wishes to make known its position, that comments made by the JTUC-Rengo on ratified Conventions should not be reflected in the compilation of the annual report, since ratified Conventions are not the subject of the annual follow-up. [4] With respect to the Global Report to be drawn up under the responsibility of the Director-General, there is no consensus on the way in which comments by workers' or employers' organizations will be handled; and comments submitted by JTUC-Rengo should not be taken into account.

The overall purpose of the follow-up is to encourage efforts by members of the Organization to promote the fundamental principles and rights that are reaffirmed in the ILO Declaration. The objective of the follow-up is of a strictly promotional nature. The Japanese Government believes that the follow-up should be handled with the understanding that it should not lead to the establishment of a new supervisory machinery and should not create the duplication of the reporting system on non-ratified Conventions already established in the Constitution.

## *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

Only one of the main ILO Conventions on forced labour has been ratified by Japan.

[3] Note from the Office: Reference may be made to the statement of the Legal Adviser during the March 2000 session of the Governing Body.

[4] Note from the Office: The Office has rectified this error. Reference by the JTUC-Rengo to ratified Conventions in the annual review were subsequently deleted from the compilation.

Japan ratified the ILO Forced Labour Convention, 1930 (No. 29), in 1932. It has not ratified the ILO Abolition of Forced Labour Convention, 1957 (No. 105). The Labour Standards Law prohibits the use of forced labour and there have been no reports of forced labour in Japan.

## Korea, Republic of

### *Means of assessing the situation*

#### Assessment of the institutional context

Forced or compulsory labour is prohibited by the national laws and regulations.

This principle is recognized in:

- The Constitution:
  - Article 10 (respect for human dignity and worth): "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."
  - Article 12, paragraph 1 (personal liberty): "All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated, except as provided by Act. No person shall be punished, placed under preventive restrictions or be subject to involuntary labour, except as provided by Act and through lawful procedures."
  - Article 15 (freedom to choose occupations): "All citizens shall enjoy freedom of occupation."
- Article 6 (prohibition of forced labour) of the Labour Standards Act (LSA): "An employer shall not force a worker to work against his/her own free will through the use of violence, intimidation, confinement or by any other means which unjustly restrict mental or physical freedom."
- Article 460 of the Criminal Procedure Act: The sentence of imprisonment shall be executed under the direction of a public prosecutor and in accordance with the court decision.

Article 6 of the LSA gives a definition of the term "forced labour", by stating that "an employer shall not force a worker to work against his own free will through the use of violence, intimidation, confinement or by any other means which unjustly restrict mental or physical freedom".

* In preparation of ratification of the ILO Conventions Nos. 29 and 105, the Korean Government has consulted with the ILO experts on these ILO Conventions on 28-30 April 1998 to seek their advisory assistance on whether the Korean legal system is in compliance with what is contained in the two

Conventions. The finding was that, certain national laws and regulations might contradict the principles enshrined in the Conventions in the following ways: [5]

– *Convention No. 29:*

This Convention states in Article 2, paragraph 2, that the term "forced or compulsory labour" shall not include "any work or service exacted in virtue of compulsory military service laws for work of a purely military character". In the meantime, articles 26-33 of the Military Service Act in Korea stipulate that those conscripted within the military service system can serve as public interest service personnel for the purpose of public interests at national government agencies, local governments, public organizations and social welfare facilities. Therefore the special scheme of the public interest service personnel may seem to contradict the provision of the Convention.

However, in practice, it is not possible to deploy everybody with military obligations to work or service of a purely military character. Therefore, the public interest service personnel are to serve public interests at the national government agencies and local government at ordinary times and be immediately transferred to combat forces at the time of national emergency. That is, the public interest service personnel are stand-by military forces. On completing the compulsory obligation period, they are integrated into the reserve force and may be mobilized at the time of war, just like those who finished active military service.

– *Convention No. 105*:

Article 1 of the Convention states that forced or compulsory labour shall not be used as a punishment for holding or expressing political views or for having participated in strikes.

Meanwhile, the National Security Act prohibits public officials from engaging in political or collective activities and provides for penal sanctions of imprisonment of up to one year and fine of up to 2 million won in the case of violating the former provision.

The Assembly and Demonstration Act provides for penal sanctions of imprisonment of up to two years or fine of up to 2 million won in the case of those who organized an assembly or demonstration which is forbidden or for which an advance notification of its being forbidden had been delivered.

The National Security Act provides for penal sanctions of imprisonment in the case of anti-state activities. Those who knowingly praise, encourage, propagandize or sympathize with activities of anti-state organizations; their members or those acting on behalf of an organization which could endanger the existence and security of the nation and the democratic social order; and those who lead an attempt to overthrow the Government shall be punished with imprisonment of up to seven years. Those who, for the same purpose, produce, import, photocopy, carry, transport, distribute, sell or purchase documents, publications and other materials shall be punished with imprisonment of less than seven years.

[5] All text following the (*) is supplied by the Government for clarification of the text that immediately follows.

The Trade Union and Labour Relations Adjustment Act bans any industrial action which is not organized by trade unions or approved by the majority of union members. Any violation against this provision will face an imprisonment of one to five years or monetary sanctions of 10-50 million won.

There are no specific occupations for which forced or compulsory labour is allowed.

The Criminal Act provides for penal sanctions against the following cases and the responsibilities for taking action against forced labour are assumed by the police, prosecution and courts:

– in case a public official, by abusing his official authority, forces a person to do any work that the individual is not obliged to do (article 123 of the Criminal Act: abuse of authority);

– in case a person coerces another to do any work that the individual is not obliged to do, by using violence or intimidation (article 324 of the Act: coercion); or

– in case a person arrests, confines, captures or entices another person as hostage and makes him or her do any work that he/she is not obliged to do (article 324-2 of the Act: coercion by hostage).

Article 110 of the LSA specifies that an employer who forces an employee to work against his/her own free will shall be punished by imprisonment for less than five years or by a fine of up to 30 million won. In this regard, labour inspectors working at the 46 regional labour offices throughout the nation carry out investigations into alleged violations. If the reported cases turn out to be true, they make arrests and send the offenders concerned to the competent authority.

### *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

As mentioned earlier, the principle of elimination of forced labour is explicitly stated in the Constitution and laws, and in order to ensure implementation of the legal provisions, penal sanctions are also contained in the national laws and regulations.

The Labour Standards Division of the Labour Standards Bureau, Ministry of Labour, coordinates and controls the application of the Labour Standards Act, and the monitoring of the implementation of the Act; labour inspection at workplaces; and the measures to be taken against violations of the LSA.

The Labour Standards Division also determines whether employers are complying with their obligation to follow the legal requirements with regard to the prohibition of forced labour, and advises on measures to be taken in case of non-compliance. Under the direction and supervision of the Ministry of Labour's Labour Standards Division, labour inspectors of the 46 regional labour offices conduct workplace inspections, ask employers to make reports or attendances and act as law enforcement officers in the case of violations, in order to ensure that employers fully observe their obligations with regard to the elimination of forced labour.

The implementation of penal sanctions against violations of the provision of eliminating forced labour, mentioned earlier are guaranteed by the police, prosecution and courts of law.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

The representative employers' and workers' organizations have been sent a copy of this report:

– Federation of Korean Trade Unions (FKTU).

– Korea Employers' Federation (KEF).

### *Observations received from employers' and workers' organizations*

No observations have been received.

## Korea, Republic of

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

The Republic of Korea has ratified neither the Forced Labour Convention, 1930 (No. 29), nor the Abolition of Forced Labour Convention, 1957 (No. 105).

The Constitution provides that no person shall be punished, placed under preventive restrictions, or subjected to involuntary labour except as provided by law and through lawful procedures.

There is no indication of forced labour in the Republic of Korea.

## Lesotho

### *Means of assessing the situation*

#### Assessment of the institutional context

The principle of the elimination of all forms of forced or compulsory labour is recognized in Lesotho.

The Constitution of Lesotho of 1992, in article 9, recognizes the principle of the elimination of compulsory or forced labour. The Labour Code Order No. 24 of 1992 which is the main law regulating employment and labour matters also recognizes the principle in its section 7.

Lesotho is party to the Forced Labour Convention, 1930 (No. 29). Copies of the Labour Code and Constitution were sent to the ILO.

Forced labour is defined in the Labour Code as any 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 or herself voluntarily.

Persons and categories that are excluded from the definition are:

– any work or service exacted by virtue of any compulsory military service law for work of purely military character;

– any work or service exacted from any person as a consequence of a conviction in a court of law, provided that such work or service is carried out under the supervision and control of a public authority, and that the said person is not hired, or placed at the disposal of any private individual, company, association or other such body;

– any work or service exacted in case of emergency, that is to say in the event of war or of a calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect pests or plant diseases or pests and, in general, in circumstances which would endanger the existence or well-being of the whole or part of the population;

– minor communal services done by members of a community which are in their direct interest.

The Labour Code provides for a penalty for any person who exacts, causes or permits forced labour. Such a person is fined a sum of money not exceeding M2,000,00 (the equivalent of US$316 [at the time of reporting]) or imprisonment for a term not exceeding one year.

Any chief or public officer who puts a constraint on the population under his charge or on any other individual to work for a private individual or public undertaking is given the same penalty as mentioned earlier. [6]

The Department of Labour is engaged in a campaign which sensitizes workers in the textile, construction and transport sectors on their rights including the prohibition of forced labour.

## Assessment of the factual situation

There are no indicators or statistics available on forced or compulsory labour.

[6] The Labour Code in section 7(2) emphasizes the prohibition of forced labour by chiefs or public officers. The reason for this is that in the past, chiefs used to call upon members of the population under their charge or supervision, to work in their fields, i.e. to plough or weed. Nobody was expected to refuse. These persons were not paid for their work but were only given food. It should be noted that the penalty imposed on anybody who forces any person to work for them is the harshest of the Code. This shows how seriously the Government takes such offences.

### *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

The ratification of the Abolition of Forced Labour Convention No. 105, (1957), by the Government of the Kingdom of Lesotho is in its final stages. It is hoped that the instrument for ratification will be deposited with the office of the Director-General of the ILO before the end of 2000.

The objectives of the Government with regard to the abolition of forced or compulsory labour can be met with increased human and financial resources. There is need for more and better paid inspectors.

Technical assistance from the International Labour Organization for training inspectors would be appreciated.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

The employers' and workers' organizations to which a copy of the report has been sent are the following:

– Association of Lesotho Employers (ALE);

– Congress of Lesotho Trade Unions (COLETU);

– Lesotho Trade Union Congress (LTUC);

– Lesotho Federation of Democratic Unions (LFDU).

### *Observations received from employers' and workers' organizations*

The Government of Lesotho has not received any observation on the follow-up measures that have been taken or need to be taken with regard to the elimination of forced or compulsory labour from the employers' and workers' organizations.

## Lesotho

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

The 1987 Employment Act prohibits forced or compulsory labour and there are no reports that it occurs.

### *Government observations on ICFTU's comments*

The principle of the elimination of forced or compulsory labour is recognized in Lesotho.

We fully confirm the observation made by the International Confederation of Free Trade Unions that forced labour is prohibited in Lesotho and that there are no reports of its occurrence. However, it is not correct to state that there is a 1987 Employment Act. The only piece of legislation that governs labour and employment matters is the Labour Code Order No. 24 of 1992.

## Madagascar

Since the Forced Labour Convention, 1930 (No. 29), was already ratified by Madagascar on 1 November 1960, the present report deals primarily with the Abolition of Forced Labour Convention, 1957 (No. 105), which is currently being studied with a view to submission for ratification. Although the Government recognizes that the two Conventions are complementary, certain measures have yet to be taken before it can proceed with the ratification of Convention No. 105. [Reference is made to the application of Convention No. 29].

### *Means of assessing the situation*

#### Assessment of the institutional context

The principle of the elimination of all forms of forced or compulsory labour is recognized in the following instruments:

– the Forced Labour Convention, 1930 (No. 29), ratified on 1 November 1960;

– Act No. 98-001 of 8 April 1998, which amends the Constitution;

– Act No. 94-029 of 25 August 1995, enacting the Labour Code;

– Act No. 68-018 of 6 December 1968 and Ordinance No. 78-002 of 16 February 1978 on the general principles of national service;

– Decree No. 59-121 of 27 October 1959, amended by Decree No. 63-167 of 6 March 1967, to establish the organization of the prison services;

– Decree No. 92-353, which regulates the conditions governing military call-up and procedures for meeting national service obligations.

The principle of the elimination of forced or compulsory labour is recognized by Madagascar in the aforementioned legal instruments. This is confirmed by:

– the fact that the definition of forced or compulsory labour given in Convention No. 29 has inspired national positive law. Article 83(2) VIII of the Constitution provides that: *"Treaties or agreements which have been ratified or approved supersede national law from their date of publication, provided that each such treaty or agreement is applied by the other party thereto"*;

– the Constitution, which:

(i) in its Preamble considers the International Charter of Human Rights and the African Human Rights Charter to be an integral part of positive law; and

(ii) provides that the law should determine the fundamental principles of the legal framework governing relations between employers and workers (i.e. the Labour Code);

– the Labour Code, section 3 of which prohibits forced or compulsory labour and defines same as *"any work or service exacted of any person under the menace of any penalty and for which said person has not offered himself voluntarily."*

However, this definition does not apply to:

– any persons sentenced by a court of law, provided that said work or service is carried out under the supervision and control of the public authorities and for a purpose which is in the public interest; and

– the following types of work:

(i) any work, services or assistance (public or ordered by law) required in case of accidents, shipwreck, flood, fire or other calamities, as well as in the event of robbery, looting, offences discovered while being committed (flagrante delicto) and public unrest;

(ii) any work which is of collective interest and carried out in application of a binding agreement freely entered into by the members of the *fokonolona* or forms part of minor work performed for the village;

(iii) any work which is of general interest and exacted in accordance with laws pertaining to the organization of national defence or carried out voluntarily as part of national service;

(iv) any work exacted from a person as a consequence of a conviction in a court of law, provided that said work or service is carried out under the supervision and control of the public authorities and for purposes which are of public interest.

Under the Labour Code, forced labour is heavily penalized by a fine (50,000 to 500,000 Malagasy francs (FMG); in September 2000, 1 US$ ≈ 6,800 FMG) and/or imprisonment for between one and three months. Repeat offences are punishable by a fine of up to 800,000 FMG and imprisonment for six months.

It is the responsibility of the labour inspectorate to note infringements by an establishment of the provisions of section 3 (concerning forced labour) of the Labour Code. The labour inspectorate's report is then sent to the public prosecutor who is in charge of initiating proceedings against the offender. Penalties are determined by the courts.

## Assessment of the factual situation

No indicators or statistics are available at present which would permit an assessment of the forced labour situation in Madagascar. This lack of data points to the need for a national survey on forced labour.

There is, however, evidence that forced labour does exist in Madagascar, notably in the form of prison labour being placed at the disposal of private individuals, companies or the national service.

[Reference to the application of the Forced Labour Convention, 1930 (No. 29)].

### *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

The first measures taken to promote the elimination of all forms of forced or compulsory labour consist in integrating the provisions of Convention No. 29, which has already been ratified, into legislation prohibiting forced or compulsory labour.

Since public opinion does not necessarily consider the use of prison labour by private enterprises for activities not of a purely military nature to constitute forced labour, the means deployed to promote the elimination of all forms of forced labour continue to lack conviction.

Nevertheless, efforts to raise awareness of forced or compulsory labour are made in collaboration with the human rights division of the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF).

In addition, the issue of the elimination of all forms of forced or compulsory labour in Madagascar was discussed at training sessions on standards and reporting, held in Antananarivo and Antsirabe during a mission carried out by an ILO standards specialist.

Participants agreed on the need to organize, with ILO assistance, a national seminar on forced or compulsory labour, to be attended by representatives of the various ministries concerned and other interested parties. This would represent an opportunity also to debate national problems encountered in the application of the principle of the elimination of forced or compulsory labour and possible solutions, as regards both law and practice. During the seminar it will further be possible to raise the question of the ratification of the Abolition of Forced Labour Convention, 1957 (No. 105).

The Government intends to make great efforts to achieve the effective abolition of forced labour in Madagascar.

The current problem faced by Madagascar as regards the effective abolition of forced labour is the abrogation of problematic legislation on prison labour and national service.

Technical assistance from the International Labour Office would be greatly appreciated in carrying out a study or national surveys on the forced labour situation in Madagascar. Such a study would have the following objectives:

(i) to analyse all aspects of the issue;

(ii) to provide national statistics and indicators;

(iii) to determine all institutional and practical problems affecting the abolition of forced labour;

(iv) to draft recommendations on the promotion of the abolition of child labour.

The results of the completed study would be used as a basis for discussion at a tripartite awareness-raising seminar or forum, to be attended by the social partners, representatives of the ministries of justice and the armed forces, as well as non-governmental organizations dealing with the issue. The forum would be able to formulate recommendations or approve the recommendations of the study with a view to elaborating a national strategy for the promotion of the abolition of child labour.

Such a national strategy should, in the first instance, result in the abrogation of the problematic legislation [reference to the application of Convention No. 29] to lead to the ratification of the Abolition of Forced Labour Convention, 1957 (No. 105). Lastly, it should include a national tripartite plan of action which will determine targets, objectives, time frames for completion, expected results, tripartite assessment, as well as questions related to follow-up.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

A copy of this report was sent to:

Employers' organizations

– Association of Enterprises of Madagascar (GEM)

– Fivondronan 'ny Mpandraharaha eto Madagasikara (FIVMPAMA)

– Union of Industries of Madagascar (SIM)

– National Economic and Social Council (CONECS)

– Free Enterprise and Partners Group (GEFP)

Workers' organizations

– Progressive Trade Union for Economic Recovery in Madagascar (SEREMA)

– Fivondronan 'ny Sendika Revolisionera Malagasy (FISEMARE)

– Sendika Tolon 'ny Mpiasa (TM)

– Sendika Reharehan 'ny Mpiasa Mivondrona (SRMM)

– Syndikan 'ny Mpiasa Mitolona (SYMPIMITO)

– Sendika Kristianina Malagasy (SEKRIMA)

– Firaisan 'ny Sendikan 'ny Mpiasan Madagasikara (FISEMA)

– Independent Trade Unions of Madagascar (USAM)

– Fivondronan 'ny Mpiasa Malagasy (FMM)

– Independent Trade Union of United Workers.

### *Observations received from employers' and workers' organizations*

Comments from the social partners will be forwarded to the ILO as soon as they have been received by the Government.

## Madagascar

### *Observations submitted to the Office by the Independent Trade Unions of Madagascar (USAM)*

### *Means of assessing the situation*

Assessment of the institutional context

The principle of the elimination of all forms of forced or compulsory labour is recognized in Madagascar (Law No. 94-029 of the Labour Code, section 3) and by virtue of the country's ratification of the Forced Labour Convention, 1930 (No. 29), of the ILO.

Forced labour, as stipulated in section 3 of the Labour Code, is defined as "labour or a service demanded of an individual by means of the threat of any type of penalty for which the said individual has not volunteered of his/her own free will".

There are persons or categories of persons who are exempt from the implementation of this principle in case of necessity, as a result of work of general interest and/or accidents, as a result of natural disasters or other accidents, or as a result of legal action/sentencing.

The following categories of labour make up the exceptions under the Labour Code (section 3):

- labour, services, help required during accidents, shipwrecks, flooding, fire or other disasters and in the case of robbery, looting, crime, public protest or judicial enforcement;
- labour in the collective interest made compulsory and carried out under the application of an agreement that is agreed freely by the members of the "*fokonolona*" (village community: the basic institution of social organization in Madagascar), or in the framework of minor tasks in the village;
- labour of general interest when this is required in line with legal provisions relating to the organization of national defence or carried out voluntarily as national service;
- all labour required of an individual as a consequence of legal sentencing, on the condition that this labour or service be carried out under the surveillance and control of public authorities and that it contributes to the public good.

Decree No. 70-250 of 25 May 1970 provides for the creation of a commission responsible for proposing measures for the harmonization of national legislation with [two ratified Conventions]. In particular, this commission will examine the texts relating to the organization of penitentiary services, sections 3 and 4 of the Labour Code, the correct

measures to improve recovery of direct taxes and limit non-payment, and attacks on the credibility of the nation.

### Assessment of the factual situation

Madagascar has ratified the Forced Labour Convention, 1930 (No. 29), but not the Abolition of Forced Labour Convention, 1957 (No. 105). The reason for this is that provisions in the national legislation easily exceed those in Convention No. 105.

However, the practices observed in enterprises in free trade zones with regard to overtime are somewhat ambivalent. On the one hand, employers exploit the use of overtime hours; on the other hand, workers are ready to work these hours to increase their income. The problem is in how these hours are remunerated.

The high number of people who are underemployed or unemployed, the difficulties in finding employment, the concern to preserve at all costs the employment one has, etc. lead workers to neglect some of their basic rights, particularly as regards hours of work, and occupational health and safety.

## *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

The use of prison labour was, at one time, common. However, since the beginning of the 1990s this practice has been forbidden.

The approach of the Government of Madagascar is limited to the provisions laid down in [a ratified Convention] and existing national texts. However, a commission charged with reviewing the Penal Code has just been set up.

USAM has tabled suggestions for amendments and improvements to provisions in labour legislation and regulation.

The actions taken by the Organization are consolidated in the work of the Conférence des travailleurs malgaches (CTM) (Conference of Madagascan Workers), a platform that brings together the main central unions of the country.

The development of social dialogue, in the framework of promoting respect for the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which Madagascar has just ratified, should contribute to achieving this aim.

# Malaysia

## *Means of assessing the situation*

### Assessment of the institutional context

It must be mentioned at the outset that the Prisons Department of Malaysia does not subject its prisoners to compulsory labour.

The issue as to whether the Prisons Department of Malaysia practises compulsory labour among prisoners can be seen from the provision found in article 6 of the Federal Constitution of Malaysia, which reads as follows:

(1) No person shall be held in slavery.

(2) All forms of forced labour are prohibited, but Parliament may, by law, provide for compulsory service for national purposes.

(3) Work incidental to the serving of the sentence of imprisonment imposed by the court of law shall not be taken to be forced labour within the meaning of this article.

In the light of the above provision as provided for in article 6 of the Federal Constitution of Malaysia, it is clear, at present, that none of the prisoners in Malaysian prisons are engaged in compulsory labour.

In Malaysia, the rehabilitation programme of offenders is geared towards the preparation of inmates for their eventual return to the community as law-abiding and socially productive persons. For this reason, the penal system attaches great importance to prison labour. It plays an important role, in not merely utilizing prisoners' labour constructively, but also serving the purpose of reformation and rehabilitation. The main objectives are provided as follows:

(i) cultivation of good working habits;

(ii) vocational training for both adult and young offenders to enable them to acquire new skills or to upgrade existing skills which provide employment potential after discharge; and

(iii) productive and gainful occupation during their period of incarceration to overcome the problem of idleness.

To attain these objectives, all convicted prisoners, except those who are not certified to be medically fit, are fully employed at work. However, under the prison legislation, remand prisoners are not required to work except for keeping clean the places in which they are confined.

## Assessment of the factual situation

Compulsory labour is not practiced by the Prisons Department.

None of these prisoners are foreigners.

Prisoners are not producing products for private/commercial interests.

No prison-made products are being exported to […]or any […] country.

At present, about 8,000 prisoners are involved in the vocational programme. Qualified trade instructors are provided by the Government to impart vocational skills to inmates. Traditional trades such as laundry services, carpentry, tailoring, metalwork and shoe repairing are popular in prisons. Inmates are paid wages based on the earning grade they are in.

In respect of prison labour, the legislation guarantees the following to inmates involved in the vocational programme:

(i) need to be certified medically fit;

(ii) normal working hours;

(iii) one-and-a-half days of rest per week;

(iv) safe and healthy working environment; and

(v) remuneration for work.

Over the years, the Malaysian Prisons Department discovered that the present traditional industrial activities carried out by penal institutions are not very effective in promoting vocational capabilities and the rehabilitation of inmates. In view of the above, the Malaysian Prisons Department has embarked upon a new approach, that is, initiating joint venture schemes with the private sector in order to:

(i) overcome the problem of providing employment to the ever-increasing number of inmates;

(ii) familiarize/expose inmates to more modern, sophisticated technology to develop more marketable skills;

(iii) provide more monetary gains to inmates; and

(iv) provide and create employment opportunities for inmates, with the hope that they may be absorbed by private firms upon release.

Under the joint venture scheme, the Prisons Department provides the labour force (inmates) and workshop premises (within the prison) and private companies provide the machinery, raw materials, technical expertise and are responsible for the marketing and sale of products. The participating firms are also required to pay for the rental of prison workshops, water and electricity, insurance coverage and regular salaries to the inmates.

Prisoners with long sentences who have been in prison over a period of six months and have displayed good conduct, are privileged to participate in the joint venture scheme. It must be mentioned that they are not compelled to do so. They participate on a voluntary basis after having been certified medically fit. Remuneration is almost the same as that received outside, taking into account the number of hours they put in.

The receipts from the said scheme are apportioned in the following manner:

– 50 per cent to government revenue;

– 40 per cent to the inmate; and

– 10 per cent to the special trust fund.

Currently, there are 32 joint venture workshops (all within prison precincts) which employ 1,868 prisoners. Their activities include assembly of electronic components, manufacturing of plastic products, coin boxes, toys, cane furniture and other items.

All the inmates participate voluntarily in the joint venture project. The training they receive under the project is considered part and parcel of the rehabilitation programme. Inmates are not compelled to work on the project. They do so on their own accord and, should they refuse to participate in the project, no punishment will be meted out to them. Prior to their participating in the said project, they will be medically examined to ascertain their medical fitness. All prisoners carry out the work within the prison compound and are under the supervision of prison personnel. They receive remuneration for the work they put in and are entitled to rest during the weekend as well as on public holidays.

## Malaysia

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

Only one of the main ILO Conventions on forced labour remains ratified by Malaysia. Forced labour is not a generalized problem in Malaysia although the seizure of passports of migrant workers by certain employers does have elements of compulsion.

Malaysia ratified the ILO Forced Labour Convention, 1930 (No. 29), in 1957. It ratified the ILO Abolition of Forced Labour Convention, 1957 (No. 105), in 1958 but then denounced it in 1990.

There have been no reports of forced labour in Malaysia. However, many foreign contract workers coming to Malaysia find themselves in an extremely abusive situation where they are liable to have their passports confiscated by their employers. Under such circumstances, the nature of their employment has clear elements of duress. Further investigation into their situation is certainly required. Furthermore, […] certain laws […] allow the use of imprisonment with compulsory labour for persons expressing views opposed to the established order or who participate in strikes.

Malaysia's decision to denounce the Abolition of Forced Labour Convention, 1957 (No. 105) was taken in response to continuing criticism of the existence in Malaysia of compulsory prison labour for the expression of views in opposition to the established political, social or economic order. [Reference is made to the ILO Conference Committee on the Application of Conventions and Recommendations.]

In conclusion, while there is no evidence of forced labour in Malaysia in its most common forms, certain aspects of the treatment of migrant workers by their employers have elements of compulsion which require attention. Furthermore, there is need for the Government to provide legal guarantees of protection against forced labour and to ratify once more the ILO Convention on the abolition of forced labour.

### *Government observations on the ICFTU's comments*

1. The Government wishes to state that Malaysia is one of the few countries which has ratified at least one of the fundamental ILO Conventions in each of the four categories. The Malaysian Government is always concerned about the welfare of all workers, local and foreign, who have contributed to the development of our economy. Foreign workers, who are in the country legally, are subject to the same labour laws as the locals while they are employed in Malaysia. The Labour Department, under the Ministry of Human Resources, is vested with the responsibility of enforcing the labour laws. Any perceived

violations should immediately be reported to any of its branch offices located at the state and district levels throughout the country.

2. In addition, the respective foreign missions whose nationals are employed in Malaysia are in constant communication with the Labour Department to inform of any untoward incidents. Therefore, the allegation that many foreigners coming to Malaysia find themselves in an extremely abusive situation is baseless. If there is proof of any such abuses, the Government would not hesitate to take stern action against the violators in accordance with the law.

3. The incidence of employers retaining passports of migrant workers is not a common occurrence here. If it occurs, it is done for the purpose of safe keeping and they are replaced with special identification cards issued by the Immigration Department. These identification cards are given due recognition as legal travel papers within the national boundaries. The passports are returned to the workers on completion of their contract of service.

4. The Malaysian Government has taken upon itself to report to the ILO the latest developments in respect of the Abolition of Forced Labour Convention, 1957 (No. 105). The Government has not imposed compulsory labour, in any form, either within or outside the prison grounds.

5. A copy of this communication has been forwarded to the ICFTU.

## Mozambique

### *Means of assessing the situation*

#### Assessment of the institutional context

As a result of consultations, including the discussions which took place during an ILO-funded tripartite seminar in November 1999, the importance of ratifying the ILO Convention relating to the principle of the elimination of forced or compulsory labour has been recognized. This action would not be contrary to our national laws; rather, it would strengthen the relevant standards that apply at present.

One of the items on the agenda of the recently elected Government will be for the National Assembly to examine the question of ratifying the Forced Labour Convention, 1930 (No. 29).

## Namibia

### *Means of assessing the situation*

#### Assessment of the institutional context

The principle of the elimination of forced or compulsory labour is recognized in the Constitution of Namibia as well as in the Labour Act of Namibia (Act 6 of 1992).

In the Constitution of Namibia, article 9(2), it is stated that “No persons shall be required to perform forced labour.”

The Labour Act in section 108(1) establishes that "Any person who causes, permits or requires any other person to perform forced labour shall be guilty of an offence and on conviction be liable to the penalties which may be imposed by law for abduction."

In terms of the Labour Act, section 108(2), forced labour includes:

- any work or service performed or rendered involuntarily by any person under threat of any penalty, punishment or other harm to be imposed or inflicted upon, or caused to such a person by any other person in the event of such first-mentioned person not performing or rendering any such work or service;

- any work performed by any child under the age of 18 years of any employee of an employer in terms of any arrangement or scheme in any undertaking who is for any reason required to perform such work in the interest of such employer;

- any work performed by any person only of the fact that such person is for any reason subjected to the control, supervision or jurisdiction of a traditional chief or headman in his or her capacity as such chief or headman.

In the Namibian Constitution, forced labour does not include the following:

- any labour required in consequence of a sentence or order of a court;

- any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interest of hygiene.

The Namibian Constitution excludes the following categories of jobs or sectors:

- any labour required of members of the defence force, the police force and the prison service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;

- any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that requiring such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

The means of implementing the principle of the elimination of all forms of forced and compulsory labour include:

- Administrative means:

  The Labour Act in section 108(1) establishes that "Any person who causes, permits or requires any other person to perform forced labour shall be guilty of an offence and on conviction be liable to the penalties which may be imposed by law for abduction." The sentence for forced labour is mandatory imprisonment of not less than one year.

- Material means:

The labour inspection form DL1 provides for the detection, recording and reporting of the presence of forced labour at workplaces. The civil courts and the district labour courts are the judicial bodies responsible for taking action against cases of forced labour.

– Legal means:

The Labour Act is the legal instrument for implementing the principle.

### Assessment of the factual situation

Labour inspection reports are indicators that might be used to assess the situation.

No incidents of forced labour were reported in these reports.

No additional information is available.

## *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

At its meeting in August 2000, the tripartite Labour Advisory Council recommended to the Minister of Labour the ratification of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). [7] Should the Minister concur with the recommendations, the Conventions will be tabled at Cabinet from where they will proceed to the Parliament for ratification.

The means deployed to promote the elimination of all forms of forced or compulsory labour include the following:

- The Government has criminalized forced labour as mentioned in the above legal instruments. The Ministry of Labour conducts regular labour inspections at workplaces to monitor labour practices in the country.
- The Organization promotes the principles by urging member States to ratify the eight core Conventions including Conventions Nos. 29 and 105 on forced labour.
- The National Union of Namibian Workers (NUNW), the Public Service Union of Namibia (PSUN) and the Namibian Employers' Federation (NEF) are the workers' and employers' organizations responsible for monitoring forced labour in Namibia. The Namibian Institute for Democracy (NID) is one of the organizations which encourages and creates awareness and knowledge of the Namibian Constitution and democracy in Namibia, through various initiatives such as workshops and advertisement campaigns. Through these means, employees and the Namibian public at large are informed of their rights under the Constitution.

The objectives of the Government are to strengthen the capacity of the labour inspectors and social partners to eliminate forced labour through observance of the Namibian Constitution and the Labour Act.

[7] The ratifications by Namibia of Conventions Nos. 29 and 105 were registered on 15 November 2000, i.e. after the cut-off date for the 2001 annual review.

The conditions deemed necessary to meet these objectives include creating awareness of forced labour amongst labour inspectors which could strengthen enforcement mechanisms. Regional and local councils as well as national administrators could be sensitized on the illegality and criminality of forced labour.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

The National Union of Namibian Workers (NUNW), the Public Service Union of Namibia (PSUN) and the Namibian Employers' Federation (NEF) have been sent copies of the report.

### *Observations received from employers' and workers' organizations*

The organizations are advised to forward their comments to the ILO, with a copy to the Government, should they wish to do so.

## Namibia

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

Forced and bonded labour of adults and children is prohibited by law. However, some media reports of the treatment of farm and domestic workers indicate that they often receive inadequate compensation for their labour and are subject to strict control by employers, under circumstances which could amount to forced labour. This has been hard to verify because Ministry of Labour inspectors often encounter problems in gaining access to the country's large, privately owned commercial farms in order to document possible violations in this area.

## Nepal

### *Means of assessing the situation*

#### Assessment of the institutional context

Article 20 of the Constitution of Nepal, 1990, guarantees the right against exploitation. It states that human trafficking, slavery, serfdom or forced labour in any form is prohibited, with the exception of compulsory service required by the State for public benefit. The law punishes any violation of these provisions. Likewise, the Civil Code of Nepal states that no one shall employ anybody against his/her will. Violations of provisions relating to forced or compulsory labour are referred to district courts and district administration offices.

### *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

Both ILO Conventions on the elimination of all forms of forced and compulsory labour are in line with the spirit of Nepal's Constitution and there are no legal barriers to the ratification of these Conventions. Recently the Government of Nepal has liberated bonded labour *(kamaiya)* which had occurred in the agricultural sector in five districts of western Nepal. The Ministry of Land Reforms and Management is initiating programmes aimed at generating income and productive employment by providing those removed from bonded labour with skill development training. Moreover, the Government of Nepal in collaboration with the ILO/IPEC and international agencies is launching integrated programmes with a view to improving their quality of life and reintegrating them in the mainstream national development process.

The Cabinet has approved to submit ILO Convention No. 29 (1939) to the national Parliament for ratification. Due to the closing of the parliament session, this Convention could not be ratified in the current budget session of Parliament. Convention No. 29 (1930) will be submitted for ratification to the national Parliament in the forthcoming winter session.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

The most representative workers' and employers' organizations in the present context are the General Federation of Nepalese Trade Unions known as GEFONT, the Nepalese Trade Union Congress known as NTUC, the Democratic Confederation of Nepalese Trade Unions known as DECONT and the Employers' Council of the Federation of Nepalese Chamber of Commerce and Industry.

Copies of this report have been sent to these organizations for their comments and observations in accordance with article 23, paragraph 2, of the ILO Constitution.

### *Observations received from employers' and workers' organizations*

The Government of Nepal has sent reports for observations and comments to both workers' and employers' organizations to give effect to the ILO Conventions on the elimination of all forms of forced and compulsory labour. Two of the aforementioned organizations have sent positive comments on the ratification of the two ILO Conventions.

## Nepal

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

Bonded labour in Nepal primarily affects two groups: *dalits* ("untouchables") and the Tharu indigenous community of the far-western region. Based on three studies carried out by different organizations in 1992, 1994 and 1995, it can be estimated that between 70,000 and 110,000 Nepalese in five districts (Kanchanpur, Kailali, Bardiya, Banke and Dang) are being exploited as bonded labourers under what is called the *kamaiya* system.

The figure of 70,000 to 110,000 focuses on the indigenous communities affected by *kamaiya* and does not include the more common form of bonded labour *(haliya)* which affects the *dalits* in Nepal.

Article 20 of the 1991 Constitution of the Kingdom of Nepal prohibits forced labour as does the country's civil code. On 1 May 2000, a group of *Kamaiyas,* led by the Kamaiya Movement Working Committee, tried for the first time to challenge the legality of their bondage under Nepali law. In the Geta Village Development Committee of Kailali District, 19 bonded *Kamaiyas* filed a case against their landlord [named].

The landlord's unwillingness to enter into negotiations and initial refusal by government officials to register the case led the bonded labourers to take further action. On 20 May 2000, 20,000 people held a demonstration that shut down the district capital, as well as a sit-in at the district administration office, until officials finally registered the case. Further demonstrations took place in mid-July in Kathmandu.

On 17 July 2000, the Minister for Land Reforms and Management [named] announced that the Government of Nepal decided to end the practice of bonded labour with immediate effect and that all outstanding debts owed by bonded labourers were cancelled. Anti-Slavery International understands that a bill on bonded labour has been drafted which will make this Declaration enforceable and that it will be debated in the current session of the Nepalese Parliament.

This announcement undoubtedly represents a very significant advance in Nepal. The Government now has to take the practical steps to make this announcement a reality. In this respect, there are several key questions and concerns which need to be addressed.

(1) Will the national legislation have a definition of bonded labour which includes both the *kamaiya* and the *haliya* systems and a clear enforcement strategy to ensure that those found to be exploiting bonded labourers are prosecuted?

(2) Will the Government undertake a national survey to identify bonded labourers throughout Nepal and not just the *Kamaiya* in the far-western region?

(3) Will this legislation ensure the rehabilitation of bonded labourers through the provision of viable alternatives for a sustainable income, including a minimum wage and rights to land they have been working, sometimes for generations?

(4) What is the Government doing to protect the rights of bonded labourers who have been declared free by the government announcement of 17 July 2000 and who may be

expelled from their land by angry landlords thus ending up without land, an income or a means of subsistence?

(5) When will the Government of Nepal ratify ILO Convention No. 29?

## Philippines

### *Means of assessing the situation*

Assessment of the institutional context

We wish to inform you that the instrument relating to this principle is still in the process of being considered for ratification and that there have been no substantive changes since the initial report was submitted last year, under the follow-up to the Declaration.

[Reference is made to matters relating to the Worst Forms of Child Labour Convention, 1999 (No. 182), which will be covered only by the annual review starting in 2002.]

We will keep the ILO informed of developments with respect to the ratification of fundamental Conventions relating to the principles and rights concerned [reference is made to the principles and rights relating to both forced labour and child labour].

## Philippines

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

The Philippines has not ratified the ILO Forced Labour Convention, 1930 (No. 29), but it ratified the Abolition of Forced Labour Convention, 1957 (No. 105), in 1960.

The law prohibits forced labour. However, over 300,000 children are in conditions amounting to bonded labour, working as household domestic servants under terms that involve a “loan” advanced to their parents that the children are obliged to pay through their work. Furthermore, there are reports from Bulacan province near Manila that farms employ under-age workers and restrict them from leaving.

Although forced labour is in general prohibited, many children in domestic employment and in the rural sector are working in conditions amounting to bonded labour.

### *Government’s observations on ICFTU’s comments*

This is in relation to the report by the International Confederation of Free Trade Unions (ICFTU) which states that while Philippine laws prohibit forced labour, there are over 300,000 children in conditions amounting to bonded labour, working as household domestic servants and farm workers. The following are the Philippine Government’s observations on this matter:

(1) The Philippine Government, through the Department of Labor and Employment (DOLE), calls ICFTU's statements into question particularly for its failure to cite the sources of its statistics. Further, the work environment mentioned makes the situation of these children not readily visible and thus, not easy to be detected.

(2) However, while we refute the figures as reported, the DOLE recognizes that there are child workers in the country and it has instituted certain measures to address their plight. A concrete example is the Sagip Batang Manggagawa (Rescue the Child Laborer) Program launched in 1994. The programme primarily employs an inter-agency quick action team for detecting, monitoring, rescuing and providing rehabilitation/reintegration measures to children rescued from hazardous and exploitative work conditions. Particularly in the Bulacan area, legal action has been taken against a piggery farm employer who employed minors in his establishment. The case filed resulted in the conviction of the employer while the children, the victims, availed of the benefits under the joint Department of Social Welfare and Development – Department of Justice (DSWD-DOJ) Witness Protection Program. The rescued children were brought back to their parents. The DOLE is committed, through the SEM programme, to continue to closely look into the matter by targeting the conviction of erring employers and freeing children from exploitative work situations.

[Reference is also made to the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), which is not covered by the annual review for 2001.]

(3) Prior to this ratification, the DOLE issued Department Order No. 4 series of 1999 on hazardous work and activities to persons below 18 years of age.

## Qatar

### *Means of assessing the situation*

#### Assessment of the institutional context

Since we submitted our initial report there have been no changes nor is there any additional information in this regard

If there are any changes, or new measures taken with respect to the Declaration, the relevant information will be provided to the ILO.

[In a later communication, the Government of Qatar resubmitted the report that it provided for the first annual review (2000). The full text of the report may be found in GB.277/3/2, pp. 221-222.]

## Rwanda

### *Means of assessing the situation*

#### Assessment of the institutional context

The principle of the elimination of all forms of forced or compulsory labour is recognized in Rwanda in:

– section 29 of the Constitution of 10 June 1991 which prohibits forced labour (except for prisoners), and

– section 4 of the Act of 28 February 1967 under the Labour Code which states that forced labour is absolutely prohibited.

[Reference is made to a ratified Convention].

According to section 4 of the Labour Code, forced labour is any work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily.

The new Labour Code, which was recently adopted by the Transitional National Assembly, takes up this definition and further specifies that forced or compulsory labour does not include:

– work or service exacted from any person in accordance with compulsory military service laws concerning work of a purely military character;

– work or service exacted from any person as a consequence of a conviction in a court of law, provided that said work or service is carried out during normal hours of work under the supervision and control of a public authority and that said person is not hired to or placed at the disposal of private individuals, companies or associations;

– work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or impending calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, and in general any circumstance that endangers or would endanger the life or normal existence of the whole or part of the population;

– work organized by local communities, provided that it has been approved by the population or its direct representatives and can therefore be considered to form part of normal civic obligations.

Section 4 of the current Labour Code must be interpreted on the basis of article 29 of the Constitution concerning forced labour other than that performed by prisoners. Expressed differently, imprisonment as a punishment is carried out in penitentiary facilities and entails the obligation to work (section 39 of the Penal Code).

Compulsory labour may also be used as a disciplinary measure in virtue of the provisions of the Decree of 11 May 1921 on the Disciplinary and Penal Code for inland navigation.

However, given the insignificant volume of traffic on Lake Kivu, which is the only body of water in the country where anything resembling maritime activities is possible, there have so far been no cases of imprisonment of seamen for disciplinary reasons.

The national legislation is silent as to whether categories of jobs, work or sectors are excluded or omitted.

Under section 180 of the Labour Code, modified by Legislative Decree No. 35/77 of 10 November 1977, violations of section 4 of the Labour Code are punishable by a fine of between 10,000 and 50,000 Rwanda francs. Repeat offences can be punishable by imprisonment for a period of 15 days to six months, in addition to payment of a fine.

Assessment of the factual situation

No statistical information is available.

### *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

The practice of forced or compulsory labour does not exist in Rwanda, with the exception of persons sentenced to imprisonment.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

Copies of this report have been sent to the following representative employers' and workers' organizations:

– Rwandan Private Sector Federation (FRSP) (employers' organization);

– Confederation of Trade Unions of Rwanda (CESTRAR);

– Consultative Council of Free Trade Unions (COSYLI);

– Association of Christian Trade Unions "UMURIMO" (ASC/UMURIMO).

### *Observations received from employers' and workers' organizations*

Observations from the professional organizations concerned are still expected and will be forwarded as soon as they are received.

## Singapore

### *Means of assessing the situation*

Assessment of the institutional context

Singapore ratified Convention No. 105 in 1965 but subsequently denounced the Convention in 1979. The decision to denounce the Convention was made in the light of the failure to reach an understanding with the Committee of Experts [on the Application of Conventions and Recommendations] (CEACR) on the practical difficulties and practices Singapore faced with regard to the implementation of Convention No. 105, despite the establishment of a "direct contact" with an ILO representative in 1975.

We would like to explain that certain provisions in the following legislation (i.e. the Newspaper and Printing Presses Act, Undesirable Publications Act, Internal Security Act, Societies Act and Trade Disputes Act) which the CEACR deemed to be in contravention to the Convention do not stipulate recourse to forced labour. However, if an individual is prosecuted under these Acts and is imprisoned, he/she will be subject to the Prisons Act which states that persons sentenced to imprisonment may be required to work. We would

however like to point out that such "work" is voluntary and essentially rehabilitative. Prisoners are not compelled, nor are they punished, if they refuse to work. In this regard, we are of the view that there is no forced or compulsory labour in Singapore.

## Singapore

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

In 1965, Singapore ratified the ILO Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105), but in 1979 Singapore denounced Convention No. 105.

Forced labour, as such, is prohibited in Singapore. However, […] sections 3, 13 and 16 of the Destitute Persons Act of 1989 state that any destitute person may be required to reside in a welfare home and engage in suitable work, or face penal sanctions. The Government of Singapore has stated that despite such provisions, admittance of persons to a welfare home and their possible employment is on an entirely voluntary basis.

There is no indication of forced labour in Singapore of a significant scale.

### *Government observations on ICFTU's comments*

The Government would like to make some clarifications with regard to the ICFTU's observations on Singapore.

The Destitute Persons Act (DPA) is a piece of social legislation providing for the shelter, care and protection of destitute persons. The aim of the DPA is to provide care and rehabilitation for destitute persons in an institutional setting, that is, a welfare home.

The Act does not state that a destitute person is liable for penal sanction if he does not engage in suitable work. In fact, no resident in our welfare home has ever faced penal sanctions if they did not engage in suitable work.

Section 13 of the DPA should therefore be interpreted in the context of rehabilitative services for destitute persons and does not constitute forced labour as envisaged in the relevant ILO Convention. Rehabilitation includes work training, self-help and mutual help to contribute to the individual's maintenance in the home. No resident of a welfare home is forced to undertake any form of work. A resident would have to make a written application if he wishes to participate in the various work schemes. He would then be referred to the Medical Officer for assessment to determine whether he is fit to work. Upon obtaining medical clearance, his application would be referred to the Home's Employment Committee, for work placement.

We would like to explain that section 16 is an entirely different provision and should not be linked to section 13. Section 16 deals with those persons who escape from the lawful custody of the home.

With regard to the comment that "The Government of Singapore has stated that despite such provisions, admittance of persons to a welfare home and their possible employment is on an entirely voluntary basis", we would like to clarify that while there is

provision for voluntary admission to welfare homes, residents are admitted under a statutory provision. It is only their possible employment that is on an entirely voluntary basis.

The aim of the DPA is to help destitute persons, by restoring their self-confidence through their participation in meaningful activities in the welfare homes and to enable them to acquire useful skills and working experience in jobs outside the home, which would contribute to their integration into society.

We hope that this clarification will help to provide a better understanding of the system in Singapore.

## Solomon Islands

No report was received by the Office from the Government for the annual reviews of 2000 and 2001.

## Solomon Islands

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

The Solomon Islands ratified the Forced Labour Convention, 1930 (No. 29), in 1985. It has not ratified the Abolition of Forced Labour Convention, 1957 (No. 105).

Forced labour is prohibited by the Constitution of the Solomon Islands. However, [… clarification is needed …] concerning various exclusions from [… the term "forced labour" …] including communal services and public servants. [… Reference is made to the application of a ratified Convention.]

There have been no reports of forced labour in the Solomon Islands.

## Sri Lanka

### *Means of assessing the situation*

#### Assessment of the institutional context

[Only one of the two communications received from the Government of Sri Lanka for the first annual review could be reproduced in the compilation of reports (GB.277/3/2). The following is the full text of the report on forced labour, together with the information, in square brackets, that updates it for the second annual review.]

Sri Lanka has recognized the principle of elimination of all forms of forced or compulsory labour:

– The freedom of the individual is a fundamental right that is guaranteed by the Constitution of Sri Lanka. Violation of these fundamental guarantees are justiciable under articles 14 and 17 of the Constitution of Sri Lanka.

– Sri Lanka has ratified Convention No. 29 which was registered on 5 April 1956.

– Slavery was abolished in Sri Lanka as far back as 1844 by the Abolition of Slavery Ordinance No. 20 of 1844.

– Sections 361 and 362 of the Penal Code prohibit the buying of, and dealing with, slaves, and there are penal consequences for violation of these provisions.

Forced or compulsory labour has not been specifically defined. Existence of any form of forced or compulsory labour has been identified only by means of analysis of Sri Lankan law in terms of certain conditions laid down in Article 1 of the Abolition of Forced Labour Convention, 1957 (No. 105).

Seemingly no forced or compulsory labour exists in the country. However, in terms of the restrictions on forced labour, as contained in Article 1, if these are given a strict interpretation, they would run contrary to certain provisions of the law. No person or categories of persons are excluded from the implementation of the principle and right relating to elimination of all forms of forced or compulsory labour.

Certain categories of jobs and work appear to be excluded from legislation and administrative regulations regarding the principle since certain legislative and administrative measures in force, are in conflict with some of the provisions in Article 1 of the aforementioned Convention.

Such instances are:

(a) The Compulsory Public Service Act No. 70 of 1961

This Act provides for the calling up for compulsory public service for a specified period of years of persons who are graduates from the University of Sri Lanka, or who are graduates of a foreign university and undergone a technical training in a Sri Lankan university, or who are graduates of a Sri Lankan university and thereafter become medical practitioners. Basically that was a move to stop the “brain drain” which the country faced at the time of the enactment of the law. Thus the services of professionals who had enjoyed benefits of free education had to be enlisted to meet the dearth of professionals in certain occupations and professions. However, since at present there is no such dearth of professionals, in effect, this law has become a dead letter.

(b) Essential Public Services Act No. 61 of 1979

The Essential Public Services Act seeks to ensure the maintenance of essential services such as water supply, electricity, health services, etc., in emergency situations. Upon declaration, certain government departments, public corporations, local authorities and cooperative societies become essential services. Any person working in such organization shall perform such work as he/she may be directed by the head of the organization. Nevertheless, this does not prevent workers coming under the Act from leaving their employment.

(c) Treasury Circular No. 627

Treasury Circular No. 627 requires that every public servant who goes abroad on training at the Government’s expense for a specified period should bind himself/herself by an agreement to serve the Government for a period of time after

training or pay to the Government the cost of the training in case he/she decides to leave the service early.

(d) Industrial Disputes Act

Section 40(1)(m) of the Industrial Disputes Act states that where a person being a workman, commences, continues or participates, or does any act in furtherance of a strike in any industry, after an industrial dispute in that industry has been referred to an industrial court for settlement by arbitration, is guilty of an offence, if an award in respect of the particular dispute has not yet been made.

Section 32(2) of the Industrial Disputes Act states that in essential industries "No workman shall commence, or continue, or participate in, or do any act in furtherance of, any strike in connection with any industrial dispute in any essential industry, unless written notice of intention to commence the strike had, at least twenty-one days before the date of commencement of the strike, been given in the prescribed manner and form by such workman or on his behalf to his employer."

Slavery was abolished in 1844 by the Abolition of Slavery Ordinance No. 20 of 1844. The Penal Code of Sri Lanka also prohibits slavery and imposes penal sanctions. Sections 361 and 362 of the Penal Code state as follows:

– Section 361: "Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may be extended to seven years, and shall also be liable to a fine."

– Section 362: "Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves shall be punished with imprisonment of either description for a term which may extend to fifteen years, and shall also be liable for a fine."

The directive principles of State Policy and Fundamental Duties in Chapter VI of the Constitution of Sri Lanka clearly state the following:

– Section 6: "The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the grounds of race, religion, language, caste, sex, political opinion or occupation."

– Section 7: "The State shall eliminate economic and social privilege and disparity, and the exploitation of man by man or by the State."

Freedom of the individual is guaranteed by section 14 of Chapter III of the Constitution, and section 17 provides the remedy for the infringement of fundamental rights where every person is entitled to apply to the Supreme Court for any infringement of a fundamental right to which such person is entitled under the provisions of Chapter III of the Constitution.

Nonetheless, in terms of Article 1 of ILO Convention No. 105, the exceptions to the application of the principle indicated earlier in this report could be interpreted as instances of forced labour. These exceptions had emerged essentially in the process of the State's commitment to development and maintaining law and order in the country.

## Assessment of the factual situation

In terms of Article 1 of ILO Convention No. 105, the exceptions indicated earlier could be considered as instances of forced labour. The best indicators of such forced labour would be the number of persons affected. The following would demonstrate the factual situation:

| Instance of forced labour | No. of persons affected |
|---|---|
| CIII(a) Compulsory Public Service Act No. 70 of 1961 | None from the date the law came into effect |
| Essential Public Services Act No. 61 of 1979 | Data not available |
| Treasury Circular No. 627 | All public officials are bound by this Circular<br>Total number of persons affected is not available |
| Industrial Disputes Act, section 40(1)(m) | None from the date the law came into effect |
| Industrial Disputes Act, section 32(2) | Not strictly enforced |

– Forced Labour has been abolished as a policy and the Government has guaranteed "freedom of the individual".

– The few exceptions indicated earlier in the report which could be interpreted as forced labour in terms of paragraphs (b) and (c) of Article 1 of ILO Convention No. 105, although still in force, are in effect almost a dead letter.

– The exceptions under the Essential Public Services Act No. 61 of 1979 would only be used during periods of emergency.

## *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

The measures taken to promote the principles are:

– ratification of ILO Convention No. 29; and

– guaranteeing freedom of the individual, as enshrined in the Constitution.

[The Government, in its update to the first note, adds the following: "Every person shall be entitled to apply to the Supreme Court in respect of any infringement or imminent infringement by executive or administrative action as provided under article 126 of the Constitution."]

The Government has accepted the principle of the elimination of all forms of forced labour. The provisions in Sri Lankan law that conflict with paragraphs (b) and (c) of Article 1 of ILO Convention No. 105 were enacted to achieve different purposes which were imperative in the light of the economic, political and social situation in the country.

However, the Government maintains a passive policy with regard to the enforcement of most of these rules and regulations.

The difficulties in ratifying Convention No. 105 are being studied by the ILO's senior specialist in international labour standards, ILO/SAAT, New Delhi.

The Government's objectives are to ensure equity, equality, and freedom of the individual.

According to the Attorney-General, paragraphs (b) and (c) of Article 1 of ILO Convention No. 105, if strictly enforced, would curb the application of certain provisions of the following laws:

– The Mobilization and Supplementary Forces Act No. 40 of 1985;

– Essential Public Services Act No. 61 of 1979;

– Prisons Ordinance No. 16 of 1877;

– Compulsory Public Services Act No. 70 of 1961.

The Attorney-General is of the view that these enactments may need to be re-examined and amended if the Convention were to be ratified.

[Hence, action should be initiated to closely scrutinize these laws which in the view of the Attorney-General may conflict with the provisions of the Convention: this is necessary in order to identify the exact provisions that need to be modified, the difficulties that may be encountered and the ways in which such difficulties could be overcome.

In this respect assistance is sought from the ILO to assign a competent person(s), preferably from the Attorney-General's Department/Ministry of Justice, to carry out a study. The views of the tripartite constituents on the findings of the study could subsequently be discussed at a national tripartite workshop. The ILO could assist financially to meet the cost of the study and the national tripartite workshop, and provide expertise for preparing the study as well as for the workshop.]

### *Representative employers' and workers' organizations to which copies of the report have been sent*

– Employers' Federation of Ceylon

– Ceylon Workers' Congress

– Sri Lanka Nidahas Sevaka Sangamaya

– Lanka Jathika Estate Workers' Union*

– Jathika Sevaka Sangamaya*

– Ceylon Federation of Labour

[* These two workers' organizations were listed in the first report but do not appear in the second.]

### *Observations received from employers' and workers' organizations*

No observations were received from any of these organizations.

## Sri Lanka

### *Observations submitted to the Office by the World Confederation of Labour (WCL) and the National Workers' Congress (NWC)*

The incidence of forced labour is minimal and mainly in the rural fishing communes called Wadiyas. Accurate statistics however are not available, as most of these communes are situated in the northern and eastern parts of the country and have been affected by the conflict which has hampered the Government's efforts in this regard.

### *Government observations on comments submitted by the WCL and the NWC*

The comments submitted by the WCL and the NWC refer to an illegal employment practice prevalent in the country some decades ago, especially in isolated islands in the northern and eastern parts of the country. Even at that time, the persons involved were dealt with in a severe manner. Raids were carried out jointly by the police and the armed forces.

However, no such practices have been reported in the recent past. Due to the prevailing security situation, the armed forces exercise vigilance by land, air and sea in the northern and eastern parts of the country. It is therefore doubtful that the activities observed by the WCL and the NWC could have been carried out. However, the matter has been reported to the Ministry of Defence to ascertain the veracity of these observations by means of on-the-spot investigations. We will report on their findings as soon as we hear from them.

In Sri Lanka, slavery was abolished in 1844 by the Abolition of Slavery Ordinance No. 20 of 1844. The Penal Code of Sri Lanka also prohibits slavery and imposes penal sanctions. Sections 361 and 362 of the Penal Code state the following:

Section 361: "Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may be extended to seven years, and shall also be liable to a fine."

Section 362: "Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with imprisonment of either description for a term which may extend to 15 years, and shall also be liable for a fine."

The directive principles of State Policy and Fundamental Duties in Chapter VI of the Constitution of Sri Lanka clearly state the following:

Section 6: "The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the grounds of race, religion, language, caste, sex, political opinion or occupation."

Section 7: "The State shall eliminate economic and social privilege and disparity, and the exploitation of man by man or by the State."

Freedom of the individual is guaranteed by section 14 of Chapter III of the Constitution, and section 17 provides the remedy for the infringement of fundamental rights. Every person is entitled to apply to the Supreme Court for any infringement of a fundamental right to which such person is entitled under the provisions of Chapter III of the Constitution.

Therefore, individuals are adequately protected against forced labour both by law and through the implementation of the law. Any illegal act of forced labour would be dealt with in a severe manner by the authorities concerned.

## Ukraine

### *Means of assessing the situation*

#### Assessment of the institutional context

It should be recalled that the Abolition of Forced Labour Convention, 1957 (No. 105), [8] obliges every member State of the International Labour Organization which ratifies it, to abolish forced or compulsory labour and not to resort to it, in any of its forms:

> Article 1
>
> Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour –
>
> (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 method of mobilizing and using labour for purposes of economic development;
>
> (c) as a means of labour discipline;
>
> (d) as a punishment for having participated in strikes;
>
> (e) as a means of racial, social, national or religious discrimination.

Moreover, the interpretation of the term "forced or compulsory labour", is contained in Article 2 of the Forced Labour Convention, 1930 (No. 29) as follows:

> Article 2
>
> 1. For the purposes of this Convention the term "forced or compulsory labour" shall mean all work or service which is exacted from any person under

[8] The ratification of this Convention was registered on 14 December 2000, i.e. after the cut-off date for the 2001 annual review.

the menace of any penalty and for which the said person has not offered himself voluntarily.

However, it should be noted that Article 2(2) of Convention No. 29 provides that the term "forced or compulsory labour" shall not include:

(a) any work or service exacted in virtue of compulsory military service laws or for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic and epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Based on the above, under article 43(3) of the Constitution of Ukraine the use of forced labour is forbidden. Military or alternative (non-military) service […] and also work or service performed by a person in compliance with a sentence or some other court ruling […], or in accordance with the laws governing states of emergency, military and other situations […] are not included.

## *Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*

Measures are being taken by the Government to eliminate all forms of forced or compulsory labour. The compatibility of the norms of the national legislation in force with the provisions of Convention No. 105 is currently being reviewed:

(1) The Supreme Council* of Ukraine has adopted the Act concerning amendments to the Labour Code of Ukraine which amends the provisions of Articles 32, 33 and 34, bringing them into conformity with the norms of Convention No. 105 (text enclosed herewith);

* Translator's note: the original Russian states 'Supreme Soviet', but as this text is clearly referring to the post-Soviet era, presumably 'Supreme Council' or 'Supreme Rada' is meant here.

(2) draft laws and regulations have been prepared with a view to bringing into line with the requirements of the Convention, provisions that are in force in some sectors of the economy, and which provide for the temporary transfer of a worker without his/her consent to another job, as part of a disciplinary sanction (Bill of Ukraine "Concerning amendments to article 51 of the Mining Act" and the Draft Order of the Cabinet of Ministers of Ukraine "Concerning amendments to the Regulations on the Discipline of Rail Transport Workers");

(3) the Draft Criminal Law Code of Ukraine is being examined by the Supreme Council* of Ukraine.

Taking into account the changes occurring in the legislation of Ukraine, ILO Convention No. 105 has been approved and submitted for ratification by the Supreme Council of Ukraine in accordance with the Act "Concerning the International Treaties to which Ukraine is a Party" (Order No.1005 of the Cabinet of Ministers of Ukraine of 21 June 2000).

At the session of the Committee of the Supreme Council of Ukraine on Foreign Affairs, the Bill on the ratification of the aforementioned Convention was examined. A decision was taken to approve it and submit it for examination at the Sixth Session of the Supreme Council of Ukraine, which will open in September 2000.

*Annexes (not reproduced)*

Selected articles of the Labour Code of the Ukraine to which amendments have been made (1 page).

## United States

### *Means of assessing the situation*

Assessment of the institutional context

There are no changes or supplementary information to report.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United States Council for International Business (USCIB) had the opportunity to comment on the report as it was being drafted, and copies are being submitted to them as required under article 23 of the ILO Constitution.

## United States

### *Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)*

The United States has not ratified the ILO Forced Labour Convention, 1930 (No. 29). It ratified the ILO Abolition of Forced Labour Convention, 1957 (No. 105), in 1991.

Forced labour is against the law in the United States. [Reference is made to the application of a ratified Convention.]

At present, 27,000 of the 1.2 million federal and state prisoners in the United States are engaged in work for pay, receiving between US$0.23 and $1.15 a day. A substantial increase in the number of such workers is presently being advocated by different parties. The prisoners work in several sectors including internationally traded products such as computer circuit board assembly, clothing, automotive parts, food, telemarketing and telephone reservations systems for hotels and airlines [… one airline named] and data-entry. There is evidence that at least three states are exporting prison-made goods, partly in order to evade laws restricting trade in prison-made goods between the US states. Prisoners who refuse such work lose their chance for early release, are deprived of privileges or sent to higher-security institutions and may be locked in their cells 23 hours a day.

Some of the employment in territories under the control of the federal Government amounts to forced labour. Since the 1980s the United States Commonwealth of the Northern Mariana Islands has developed a garment industry based on the ability of these islands to ship products duty free and without quotas to the United States. This status, together with local control of wage and immigration laws, has had the practical effect of introducing a system of indentured servitude into the territory. Local authorities permit foreign-owned companies to recruit thousands of foreign workers, mainly young women from foreign countries [named]. The workers are recruited by private agencies who demand exorbitant fees from these workers. Fees are either paid in advance or are deducted from pay in an arrangement that requires the workers to remain in the employ of the same manufacturer who in turn has a relationship with the recruiting agency.

In addition to the abuse of fee-charging, these foreign workers are routinely required to sign employment contracts where they agree to refrain from asking for wage increases, seeking other work and from joining a union. The workers are informed that contract violations will result in dismissal as well as deportation and that the workers concerned must pay the travel expenses to return to their home country.

There are ground for serious concern about commercial production by prisoners in the United States and about practices amounting to forced labour by exploited migrant workers (mainly women) in United States dependent territories.

## Viet Nam

### *Means of assessing the situation*

Assessment of the institutional context

So far the validity of the last report submitted for the annual review of 2000 remains the same. In case of changes, we will keep the ILO updated on additional information with regard to implementation and observance of the principles and rights.

### *Representative employers' and workers' organizations to which copies of the report have been sent*

Vietnam Chamber of Commerce and Industry (VCCI);

Vietnam Cooperatives Alliance (VCA);

Vietnam General Confederation of Labour (VGCL).

### *Observations received from employers' and workers' organizations*

So far, no objections have been received from the organizations mentioned.