# The elimination of all forms of forced or compulsory labour

# Contents

# Azerbaijan

## Means of assessing the situation

### *Assessment of the institutional context*

Under the Constitution of the Republic of Azerbaijan, which entered into force in 1995, the Act of the Republic of Azerbaijan on employment, which entered into force in 1991, and the Labour Code, which entered into force on 1 July 1999, exacting of forced labour of any kind is prohibited, except in the cases specifically prescribed by law.

Excerpts from the abovementioned legislation are given below:

*Constitution of the Republic of Azerbaijan*

Article 35. The right to work.

1. Work is the basis of individual and social well-being.

2. Every person has the right to freely choose a type of activity, profession, occupation and place of work, based on their abilities.

3. No one may be forced to work.

4. Contracts of employment shall be concluded freely. No one may be forced to conclude a contract of employment.

5. The exacting of forced labour is permitted on the basis of a court decision, subject to the conditions and duration determined by law, and it is permitted to exact forced labour under the orders of authorized persons during military service and to force citizens to perform certain tasks during a state of emergency or martial law.

6. Every person has the right to work in safe and healthy conditions and to receive remuneration for work without any discrimination whatsoever, not to fall below the minimum wage fixed by law.

7. Unemployed persons have the right to receive social benefits from the State.

8. The State shall do everything in its power to eliminate unemployment.

*Act concerning employment*

Section 1. Employment

1. Employment means any activity of citizens, which is not contrary to the legislation of the Republic of Azerbaijan, carried out with a view to meeting their personal and social needs, and, as a rule, yielding earnings (remuneration).

2. Citizens have the exclusive right to dispose of their capacity for productive and creative work. It is prohibited to force persons in any way whatsoever to work., except in the cases specifically prescribed by legislation. The fact

that a person is unemployed shall not serve as grounds for their administrative, criminal or other prosecution.

*Labour Code*

Section 17. Prohibition of forced labour.

1. It is prohibited to force a worker to perform work or services that are not part of his duties by the use of force in any manner or by any means, or by threatening to terminate the employment relationship. Persons guilty of forcing a worker to work shall be prosecuted according to the procedure established by legislation.

2. Forced labour is permitted in work performed under the supervision of the appropriate state bodies in connection with martial law or a state of emergency, on the basis of the relevant legislation, and solo during the execution of court sentences with legal force." The Republic of Azerbaijan has ratified the forced Labour Convention, 1930 (No. 29), and submits regular reports to the ILO on its application. At present no list of work or services (except for compulsory military service or work or services required in an emergency) that may be exacted as normal civic obligations, has been established or is applied in practice.

The legal basis for martial law or a state of emergency is laid down in the relevant articles of the Constitution:

Article 111. Declaration of martial law states that:

> Where a certain part of the territory of the Republic of Azerbaijan has been occupied, where one or more foreign States have declared war against the Republic of Azerbaijan, where a real danger of an armed attack against the Republic of Azerbaijan has arisen, where the territory of the Republic of Azerbaijan has been blockaded, or there is a real danger of such a blockade, the President of the Republic of Azerbaijan shall declare martial law throughout the territory of the Republic of Azerbaijan or in some areas thereof and within 24 hours shall present the decree adopted by him to that effect to the Milli Mejlis of the Republic of Azerbaijan for ratification.

Article 112. Declaration of a state of emergency, states that:

> In the event of natural disasters, epidemics, epizootic, major environmental and other disasters, as well as acts aimed at violating the territorial integrity of the Republic, an uprising against the State or a coup d'état, mass demonstrations accompanied by violence or the emergence of other conflicts involving a threat to the life and security of citizens, or to the normal activity of state institutions, the President of the Republic of Azerbaijan shall declare a state of emergency in certain areas of the Republic of Azerbaijan and within 24 hours shall present the decree adopted by him to that effect to the Milli Mejlis of the Republic of Azerbaijan for ratification.

Prison labour in the Republic of Azerbaijan is performed only in institutions belonging to the state system of execution of punishment. The legislation of the Republic of Azerbaijan does not provide for hard labour as a form of punishment. The legislation of the Republic provides for criminal and administrative liability for violating labour legislation, including for exacting forced labour. Reference is made to the following provisions:

*Code of Administrative Offences of the Republic of Azerbaijan*

Section 41. Violation of labour legislation and occupational safety and health regulations states that:

> Officials who violate labour legislation and occupational safety and health regulations shall be fined an amount from five times to seven times the minimum wage.

*Penal Code of the Republic of Azerbaijan*

Section 136. Violation of labour legislation states that:

> An official (or employer) who terminates an individual contract of employment for personal reasons, or who otherwise commits a substantial violation of the labour legislation, shall be sentenced to deprivation of freedom of up to one year or corrective labour for the same period, or shall be removed from his post or publicly reprimanded.

### *Assessment of the factual situation*

In preparing reports for the ILO on the measures taken to give effect to Convention No. 29, inquiries were made to the Supreme Court of the Republic of Azerbaijan as to whether cases involving the exacting of forced labour are pending.

According to official replies, there are no such cases. Checks carried out by the State Labour Inspectorate have likewise not revealed any information on violations of labour legislation with respect to the exacting of forced labour.

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

A legislative framework has been established in the Republic of Azerbaijan which rules out the possibility of exacting forced labour. Forced labour is prohibited both by means of legislation adopted by the competent bodies and by means of the inspection system in operation, i.e., through the State Labour Inspectorate of the Ministry of labour and Social Protection.

The bodies of the Public Prosecutor's Office, within their terms of reference, also carry out the consistent monitoring of compliance with the labour legislation, by employers, workers, the executive bodies, legal entities and individuals. They also ensure the correct application of its requirements.

In accordance with the ILO's constitutional procedures, discussions are currently under way in the competent bodies concerning the possibility of ratifying the Abolition of Forced labour Convention, 1957 (No. 105); this attests to Azerbaijan's determination to develop and implement international standards in this area.

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

A copy of this report has been sent to the Association of Employers of Azerbaijan and the Confederation of Trade Unions of Azerbaijan.

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

No comments or suggestions were received from these employers' and workers' organizations.

## Bolivia

### Means of assessing the situation

#### *Assessment of the institutional context*

The Government of Bolivia confirms that the elimination of all forms of forced or compulsory labour is fully guaranteed under article 5, Title I, of the Political Constitution *(Fundamental rights and obligations of the person)*, according to which: "*No type of servitude is recognized and no one shall be compelled to render personal services without his full consent and due compensation. Personal services may be demanded only when so established by law.*" Article 6, paragraph II, states that: "*The dignity and freedom of the person are inviolable. To respect them and protect them is the primary duty of the state.*" Article 7(d) states that a fundamental right of citizens is the right "*to work and to engage in commerce, industry or any activity which is not detrimental to the collective good*". Under article 8(b), every person is obliged "*to work, according to his capacity and capabilities, in some socially useful activity*".

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

In 1990 Bolivia ratified the Convention on the Rights of the Child, article 32 of which recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education. In recent years the Government has adopted administrative, social and educational measures to implement this provision. These include specific minimum age provisions, regulations on working hours and conditions, and the introduction of appropriate sanctions to ensure effective implementation.

The *Education Reform Act* is one concrete measure which was adopted with a view to ensuring that children are not forced to start working prematurely. The Government has also approved the *Code respecting children and adolescents*, which contains provisions prohibiting work by children in some areas.

In Bolivian cities, rural workers enter the labour market within the informal economy, providing services as self-employed workers or employed by someone.

On 25 and 26 May 1999, a seminar on child labour took place under the auspices of this ministry and the ILO International Programme on the Elimination of Child Labour (IPEC). Participants included representatives of public institutions, prefectures, municipal authorities, NGOs, the judiciary, the legislature, the Confederation of Private Employers of Bolivia, the Central Union of Workers, the national police and the Church. The seminar discussed the exploitation of children at work and forms of work which could be hazardous, interfere with a child's education or adversely affect the child's health or physical, psychological, spiritual, moral or social development. The ILO's Programme on the Elimination of Child Labour (IPEC) stimulated the Government's interest in participating in this important initiative. The purpose of this meeting was to draw, with the participation of all the delegates, a *National Plan on Child Labour* in Bolivia with a view to formulating policies and actions aimed at eradicating child labour and protecting child workers. A proposal to establish a *National Committee on the Elimination of Child Labour and Protection of Child Workers* was discussed. A number of suggestions and changes were made and will be incorporated in the proposal before it is submitted again to the various civil institutions for adoption and further action. Another important legal instrument which is currently being examined by the Chamber of Deputies is the Act respecting home workers.

Lastly, the Government is proceeding with measures to adapt its legislation and bring it into conformity with the Convention. The Ministry of Labour and Micro-Enterprises is in the process of modernizing the General Labour Law. The revised law will incorporate all the fundamental principles applicable to workers. This will be the most important initiative in Bolivia, since the new law will be based on a consensus between workers, employers and the Government.

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

In accordance with article 23, paragraph 2, of the ILO Constitution, copies of this report have been sent to the Confederation of Private Employers of Bolivia (CEPB) and the Central Union of Workers of Bolivia (COB).

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

No observations were received from the above organizations on the follow-up to this Convention.

## Canada

### Means of assessing the situation

#### *Assessment of the institutional context*

All Canadian jurisdictions fully recognize this principle. In a December 1998 Report to the World Trade Organization Council Review on the trade policies of Canada the International Confederation of Free Trade Unions stated that "forced labour is against the law in Canada and there are no known cases".

The Government of Canada has been asked to report on the application of this principle for the purpose of the follow-up to the Declaration because while Canada has ratified Convention No. 105 on the Abolition of Forced Labour, it has not yet ratified Convention No. 29 although it is close to completing the consultations leading towards ratification.

Any possible imposition of compulsory or forced labour by federal or provincial governments inconsistent with ILO principles would be contrary to the *Canadian Charter of Rights and Freedoms*. Section 7 of the Charter provides that:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

In addition s.8 of the Charter guarantees everyone the right against unreasonable search or seizure, and s.9 the right against arbitrary detention or imprisonment.

Offences under the *Criminal Code* – kidnapping, crimes against humanity (inhumane acts or omissions which contravene customary or conventional international law or are criminal according to general principles recognized by the community of nations) and genocide – address certain kinds of forced labour. Canada is currently involved in negotiating Optional Protocols to the draft UN Convention on Transnational Organized Crime and developing accompanying penal offences for anyone involved in trafficking for purposes of forced labour.

The principle is also safeguarded under the labour standards and human rights legislation of all Canadian jurisdictions. The following is a non-exhaustive sampling of Canadian approaches.

### *Alberta*

There are no limitations on the freedom of Alberta workers, including public servants and essential service workers, to leave their employment. Under the *Alberta Employment Standards Code*, workers are required to give one or two weeks' notice to their employers to terminate employment, subject to several exceptions where notice is not required. There are no sanctions against workers for failing to give notice.

### *Newfoundland*

The *Labour Standards Act and Regulations* establish the minimum conditions and terms of employment in the province including minimum wage, vacation pay, weekly hours of work, and overtime rates of pay. The legislation establishes minimum protection for workers and provides a "level playing field" for businesses in terms of labour costs. By virtue of the minimum standards prescribed by this legislation, forced labour is prohibited. The Act is enforced by the Director of Labour Standards and where either party disagrees with a Director's decision, parties may appeal to an adjudicator.

### *Ontario*

The province's *Employer and Employee Act* prohibits voluntary contracts of employment of more than nine years. Many other Ontario statutes protect employees in voluntary contracts 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*.

*Quebec*

The principle of the elimination of all forms of forced labour is recognized by interpretation of articles 1 to 46 of the Canadian Charter of Rights and Freedoms (L.R.Q, c C-12), and under article 38 of the Youth Protection Act (L.R.Q, C.p-34.1). It may also possibly be covered under article 84.2 of the Labour Standards Act (L.R.Q., c. N-1.1, draft Act No. 50 of 1999).

Forced labour is not expressly defined, but covered indirectly. In this connection, it should be noted that article 10 of the Canadian Charter of Rights and Freedoms (L.R.Q, c C-12) enunciates the principle of recognition of rights without exclusion or preference on the basis of colour, sex, pregnancy, sexual orientation, civil status, age (except where this is stipulated by law), religion, political convictions, language, ethnic or national origin, social condition, handicap or the use of a means to alleviate the handicap.

Article 16 of the Charter prohibits discrimination in employment, apprenticeship, the length of a probationary period, vocational training, promotion, transfer, personnel displacement, sacking, suspension, dismissal, or employment conditions of a person, and also in establishing professional categories and classifications.

Article 46 of the Charter states that any working person has the right, in conformity with the law, to fair and reasonable employment conditions which respect his or her health, safety and physical integrity.

According to article 38 of the Youth Protection Act (L.R.Q, C.p-34.1) the safety or development of a child is considered as compromised: “f) if s/he is obliged to beg, to do work disproportionate to his/her capacities or to participate in an artistic production in an unacceptable manner in view of his/her age”.

Finally, article 84.2 of the Labour Standards Act (draft Act no. 50 (not adopted)) provides that “an employer may not employ a child in work which is disproportionate to the child’s capacities, or likely to compromise his/her education or harm his/her health, or physical or moral development”.

*Saskatchewan*

The *Saskatchewan Human Rights Code*, the *Labour Standards Act*, and the *Trade Union Act* contain safeguards against the imposition of forced or compulsory labour. Like legislation in other Canadian jurisdictions, Saskatchewan legislation does not explicitly define forced or compulsory labour. However, the principle of eliminating such practices is recognized in the legislation which provides minimum standards of employment and labour standards and occupational health and safety. Forced or compulsory labour includes work for which the worker is not paid a fair wage.

No persons or categories of persons are excluded from the implementation of the principle and right.

Regarding prison labour, where work is done by prison inmates in Canada it is under the supervision and control of a public authority. In those instances where prison inmates do work for a private employer it is on a voluntary basis, under the general supervision of the public authority, and with protective guarantees.

No categories of jobs or work or sectors are excluded or omitted from legislation regarding this principle.

There are no indications of forced labour in Canada.

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

The Government refers to its earlier statements as regards efforts made or envisaged to promote these principles and rights.

For many years it was assumed that Convention No. 29 was irrelevant to countries such as Canada since they did not have the types of practices which Convention No. 29 prohibits. However, in 1995, to respond positively to the ILO's promotion of the ratification of all fundamental Conventions, including Convention No. 29, the Government initiated a review of the potential for Canadian ratification. Federal-provincial consultations and ILO advice have determined that Canadian legislation and practice are fully compatible with the requirements of ILO Convention No. 29 and its underlying principles. Consultations leading towards ratification are being pursued.

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

Canadian Employers' Council.

Canadian Labour Congress.

Confederation of National Trade Unions (*Confédération des syndicats nationaux*).

## Observations received from employers' and workers' organizations

No observations were received.

## Annexes (not reproduced)

Table 1. General Labour Force Statistics, 1980-1998

Table 2. Labour Force Participation Rates, by age and sex, 1994-1998

Table 3. Employment, by class of worker, 1987-1998

Brief list of indicators on the elimination of forced or compulsory labour.

# China

## 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 China.

The Constitution of the People's Republic of China stipulates in article 37 that "Personal freedom of citizens of the People's Republic of China is inviolable … Unlawful detention or deprivation or restriction of citizens' personal freedom by other means is prohibited, and unlawful search of the person of citizens is prohibited". The protection of personal freedom implies the elimination of all forms of forced or compulsory labour.

Labour law of the People's Republic of China stipulates in article 32 that "A worker may notify at any time the employing unit of his decision to revoke the labour contract where the employing unit forces the labourer to work by resorting to violence, intimidation or illegal restriction of personal freedom".

Criminal Law of the People's Republic of China stipulates in article 244 that "Where the employing unit forces a labourer to work by resorting to illegal restriction of personal freedom in violation of labour regulations, if the circumstances are serious, the persons directly responsible shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and may concurrently or exclusively be sentenced to a fine".

The following 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. According to Military Service Law of the People's Republic of China, male citizens who have reached 18 years of age shall be enlisted for active service. Active servicemen in the Army shall serve for a duration of two years, and in the Navy and in the Air Force for a duration of four years.

No categories of jobs or work or sectors are excluded or omitted from legislation regarding this principle.

Legally, in addition to prohibiting employing units from forcing workers to work, the Labour Law also stipulates in article 96 that where an employing unit forces labourers to work by resorting to violence, intimidation or illegal restriction of personal freedom, the persons in charge shall be taken by a public security organ into custody for 15 days or less, or fined or given a warning; and criminal responsibilities shall be investigated against the person in charge according to law. On the administrative side, the labour inspectors of the labour departments shall inspect and sanction the acts of forced or compulsory labour on the part of employing units.

### *Assessment of the factual situation*

There exists no forced or compulsory labour in China except for the abovementioned persons interned for reform through labour.

The following explanations are provided on the question of rehabilitation through labour in China:

> The system of rehabilitation through labour in China was established in accordance with Decision Regarding the Question of Rehabilitation through Labour promulgated by the Standing Committee of the National People's Congress, as well as with other relevant laws and statutes. According to law, rehabilitation through labour is not a criminal punishment, but an administrative measure used to maintain social order and reduce and prevent crimes. It puts into a process of compulsory rehabilitation through labour those persons who have committed minor offences and are not criminally liable and who have working capabilities.

The system of rehabilitation through labour in China is implemented mainly on the basis of the following laws:

(1) Decision of the State Council Regarding the Question of Rehabilitation through Labour, approved at the 78th meeting of the Standing Committee of the First National People's Congress on 1 August 1957 and promulgated by the State Council on 3 August 1957;

(2) Supplementary Provisions of the State Council on Rehabilitation through Labour, approved at the 12th meeting of the Standing Committee of the Fifth National People's Congress on 29 November 1979 and promulgated by the State Council on 5 December 1979;

(3) Notice Concerning the Integration of Two Measures for Compulsory Labour and Detainment for Interrogation into Rehabilitation through Labour, issued by the State Council on 29 February 1980;

(4) Report on the Improvement of the Work of Rehabilitation through Labour submitted by the Ministry of Public Security, approved and transmitted by the Central Committee of the Communist Party of China and the State Council on 14 September 1980;

(5) Notice Concerning the Designation of Places for Rehabilitation through Labour as Special Institutions, issued by the State Council on 24 April 1981;

(6) Notice Concerning Transmitting "Provisional Methods for Carrying Out Rehabilitation through Labour drafted by the Ministry of Public Security", issued by the State Council on 21 January 1982;

(7) Decision on the Prohibition of Drugs, adopted by the 17th meeting of the Standing Committee of the Seventh National People's Congress on 28 December 1990;

(8) Decision on the Strict Prohibition of Prostitution and Whoring, adopted by the 21st meeting of the Standing Committee of the Seventh National People's Congress on 4 September 1991.

Pursuant to such regulations as the Decision Regarding the Question of Rehabilitation through Labour, the Decision on the Prohibition of Drugs and the Decision on the Strict Prohibition of Prostitution and Whoring, approved and promulgated by the Standing Committee of the National People's Congress, persons interned for rehabilitation through labour mainly include:

(1) those who will not engage in honest pursuits, involve themselves in hooliganism, commit larceny, fraud or other acts for which they are not criminally liable or violate public security rules and refuse to mend their ways despite repeated admonition;

(2) those who commit minor offences and are not criminally liable;

(3) employees of government organs, people's organizations, enterprises and schools who are able-bodied, but who have refused to work for a long period, violated discipline or jeopardized public order, and have been given sanctions of expulsion, and as a result have difficulty in making a living;

(4) those who decline to take part in manual labour and production despite persuasion, keep behaving disruptively on purpose, obstruct public officials from performing their duties and refuse to mend their ways despite repeated admonition.

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 (autonomous regions and municipalities directly under the central Government), and of large and medium-sized cities. According to Supplementary Provisions of the State Council for Rehabilitation through Labour, the administrative committees for rehabilitation through labour shall be established by the people's governments of the provinces, autonomous regions, and municipalities directly under the central Government, and of large and medium-sized cities, and shall be composed of responsible persons of civil affairs, public security and labour departments. These committees ensure that rehabilitation through labour must follow strictly the legal system and procedures established by law. In the process of handling cases, the organs of public security first investigate and collect evidence. When they find the offenders meet the conditions for rehabilitation through labour and need to be interned for that purpose, they shall submit their petitions to the administrative committees for review and decision. If these committees conclude that there is strong evidence of violating the law and committing offences, and that the offenders meet the conditions prescribed in the regulations concerning rehabilitation through labour, they shall make decisions to intern them for rehabilitation through labour and at the same time determine the term of rehabilitation through labour. Then the administrative committees shall fill in the Decision for Rehabilitation through Labour and the Notice Concerning Rehabilitation through Labour, and inform the persons concerned of the reasons for the decision as well as the duration. These persons shall sign in the Notice for Rehabilitation through Labour. Supplementary Provisions of the State Council for Rehabilitation through Labour stipulates that the term of rehabilitation through labour shall be one to three years. When necessary, it may be extended for one more year.

The term for the majority of persons interned for rehabilitation through labour is one year, and the term for the minority of these persons is either one year and a half or three years. If persons to be interned for rehabilitation through labour refuse to accept the decisions, they can submit their appeals, request a review or bring administrative proceedings before the people's courts in accordance with Administrative Procedural Law, within ten days after they have received the Decision for Rehabilitation through Labour. The people's courts will try and decide the cases. Those lodging appeals can have lawyers to defend them. When the administrative committees for rehabilitation through labour at all levels review or decide the cases regarding rehabilitation through labour, they shall be subject to the supervision of the people's procuratorates. Persons to be interned for rehabilitation through labour shall be taken over for education and reform by the organs in charge of rehabilitation through labour affiliated to the administrative departments of the judicial system. These organs receive persons assigned for rehabilitation through labour in accordance with such legal instruments as the Decision for Rehabilitation through Labour and the Notice Concerning Rehabilitation through Labour. They do not accept those who do not have these documents or with documents which contain elements incompatible with the facts or those persons exempted from rehabilitation through labour by law such as

mental patients, the mentally retarded, the blind, the deaf, the dumb, patients of serious diseases, pregnant women or women breastfeeding children less than one year old.

At present, there are 284 organs in charge of rehabilitation through labour in China accommodating 240,000 persons undergoing rehabilitation through labour. Among them, 40 per cent are interned for offences of larceny, fraud and gambling; 20 per cent for offences of disturbing public order such as assembling crowds to pick quarrels and stir up troubles; 40 per cent for offences of repeatedly taking drugs, prostitution and whoring. It is evident that citizens who are not interned for rehabilitation through labour because of their political views or normal religious activities. The organs in charge of rehabilitation through labour in China strictly follow the principle that all citizens are equal in respect of the application of laws. The decisions to intern persons for rehabilitation through labour shall be solely based on the illegality of their acts, irrespective of their ethnic communities, professions and religious beliefs.

The organs in charge of rehabilitation through labour safeguard the legitimate rights and interests of persons undergoing rehabilitation through labour. These persons shall not be discriminated against on grounds of sex, religion and race; they have the right to vote in accordance with the law; they enjoy freedom of religious belief; their personal dignity shall not be insulted; they are not subject to corporal punishment and mistreatment; their personal legitimate properties shall not be infringed on; they have freedom to correspondence; their family members may often come to visit them and the couple may cohabit in lodgings provided by the institutions; those who have shown true repentance or whose families are in special circumstances, after obtaining approval, may go home visiting their families or taking holidays; they have the right to make criticisms and suggestions with regard to the work of the institution, and in case of illegal acts and dereliction of duties on the part of the organs or their staff, can lodge complaints, file charges or report to the authorities. The laws and regulations in China contain explicit provisions that officials and policemen involved in the work of rehabilitation through labour shall not violate the legitimate rights of persons undergoing rehabilitation through labour. The organs in charge of rehabilitation through labour extensively practise the policy of “transparent work” in respect of questions of immediate interest to interned persons. In this was, they put their work under the supervision of the society in general and those interned and their families in particular. The activities of these organs are constantly monitored by the people’s procuratorates, which regularly dispatch inspection teams to these organs to conduct on-the-spot checks or install letter boxes to receive complaints from the interned persons. Once they discover violations of the laws and disciplines by officials and policemen, they move forward to suppress them or make criticism, mete out sanctions or even start criminal proceedings in the light of the circumstances.

The work of rehabilitation through labour in China is guided by the principle of “educating, persuading to change and remedying”, with the emphasis on educating and with an aim at remedying. The organs in charge of rehabilitation through labour serve as special schools to educate and remedy (as a matter of fact, most of these organs are named and run as schools for rehabilitation through labour). Staff and policemen engaging in this type of work must have a relatively high cultural level and certain professional qualifications. Before taking up the job, they shall receive special training, in order to have a good command of the laws, regulations and relevant professional knowledge in this field. During their work, they receive periodic on-the-job training in light of the needs of the work. These organs shall be manned with full-time or part-time teachers in proportion to the number of persons undergoing rehabilitation through labour. The teachers offer courses on elementary legal knowledge, ethics, current affairs and general culture with a view to improve their legal awareness and educational level. The time allocated for these courses shall not be less that three hours a day.

Many persons undergoing rehabilitation through labour become lawbreakers because of their habit of loving ease and hating work as well as their wish to possess others' belongings through illegal means. In view of this situation, the organs in charge of rehabilitation through labour engage them in productive labour and learning skills, in order to change their bad habits of reaping fruits of other people's toil, cultivate their sense of responsibility toward society, help them learn skills of labour, develop their capacity and habit to earn their own living. These organs draw up a series of specific rules and protective measures applied to these persons. For example, their working time and intensity of work shall be less than the average level in the society; such factors as sex, age, physical strength and skilfulness shall be taken into account when assigning work; the system of safe production shall be established and the rules of civilized production observed so as to prevent the occurrence of occupational accidents; articles of labour protection and health care food shall be provided according to the standards applied in the similar state-run enterprises; earnings from productive labour, after deductions to pay a certain amount as remuneration of labour, shall be mainly used to improve the livelihood and study conditions of persons undergoing rehabilitation through labour. With a view to facilitating their employment after release, the organs in charge of rehabilitation through labour shall help persons undergoing rehabilitation through labour learn vocational and technical skills. Many such organs run training courses on computer, tailoring, sewing, repair of electronic appliances, carpentry, cooking, haircutting, driving and maintenance of vehicles. Those who have successfully passed examinations are granted certificates attesting their grade of cultural education and technical skills which are recognized in society.

Persons undergoing rehabilitation through labour are offered adequate living conditions and treatment during their internment. Their living expenses and medical care are covered by the State and the standards correspond to the average level of the local population. The organs in charge of rehabilitation through labour set up canteens for these persons, which try to provide the biggest variety of meals within the financial resources to ensure that the interned persons can have sufficient and healthy food to eat. In the case of minority nationalities, special attention shall be given to their eating habits. The dormitories where these persons live are well lit and ventilated, and installed with necessary heating and air-conditioning facilities as required by the local climate. There are hospitals and clinics with necessary medical equipment so as to give timely treatment to the sick. Those who are seriously ill can seek medical care outside the institutions according to legal procedures. The interned persons have full rest time and enjoy holidays and vacation. Inside these institutions, they can read newspapers, watch television, see films, listen to radio and take part in recreational and sport activities beneficial to their mental and physical health. As for those who perform well and show a tendency to rapid improvement, the institutions will arrange for them "to work to farm and to learn on probation" in society. Those who have good performance and meet the conditions of serving their remaining term outside the institution shall be permitted to do so. Those who show true repentance during their rehabilitation through labour shall be rewarded with reduced terms or advanced release. The number of persons receiving such reward account for 60 per cent of the total.

In order to help persons undergoing rehabilitation through labour rectify their crimes and correct their mistakes so as to facilitate their employment after release, the organs in charge of rehabilitation through labour make efforts to get in touch with their families their former work units and the local government and relevant departments of the regions where they used to live. They adopt the approach of signing "agreements on joint help and education", through which they work together to help and educate persons concerned, encourage them to correct their mistakes, solve their difficulties in their family life, assist them in finding jobs after release. These organs often invite responsible persons, celebrities and some truly repented and successful former interned persons to come to the institutions

to talk about their advice or cite their own experience. In this way, persons undergoing rehabilitation through labour can deeply feel the expectations and demands of the Party, the Government and general public, make firmer determination to correct their mistakes. Those released will suffer no discrimination in their settlement, employment in enterprises or enrolment to schools in the regions where they used to live.

Since its establishment 40 years ago, the system of rehabilitation through labour in China has played an important role in maintaining social order and preventing crimes. It has made possible for those who are on the verge of committing crimes to mend their ways. Most of them come to realize their mistakes and rectify their bad habits. According to statistics, nearly 90 per cent of these persons when released to return to society can abide by discipline and the law, and become persons earning an honest living. Some of them are even selected to be model workers and contribute actively to the construction of the country. Facts prove that rehabilitation through labour is a measure which is suited to the particular circumstances in China and which work effectively and comprehensively in dealing with problems of social security and peace.

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

The measures taken to promote the elimination of all forms of forced or compulsory labour mainly aim to ban forced or compulsory labour by means of legislation.

The Government increases labour inspections in order to detect and deal with the cases of illegal use of forced or compulsory labour.

The International Labour Office has held in China many seminars on international labour standards in which it promotes the principle of eliminating forced or compulsory labour.

Trade unions receive complaints from workers and may request arbitration on behalf of the worker.

The Government will further enhance the enforcement of the laws and ensure the all-round implementation of the laws and regulations prohibiting forced or compulsory labour.

The Government will further promote the relevant laws and regulations and raise people's awareness of these laws and regulations, so that they can know, observe and use the laws. At the same time, it will strengthen the enforcement of the laws, increase cooperation with the International Labour Organization and widely disseminate international labour standards.

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

Copies of this report have been sent to China Enterprises' Federation and All-China Federation of Trade Unions.

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

No observations have been received.

## Democratic Republic of the Congo

### Means of assessing the situation

#### *Assessment of the institutional context*

The principle is recognized in the Democratic Republic of Congo. Article 2 of the Labour Code stipulates the following: "Forced or compulsory labour shall be totally prohibited". It is also recognized in Constitutional Executive Order No. 003 of 27 May 1997 relating to the organization and exercise of power in the Democratic Republic of Congo and in Legislative Ordinance No. 67/310 of 9 August 1967 concerning the Labour Code.

Article 2, paragraph 3, of the Labour Code defines forced or compulsory labour as any form of work or service which is required under threat of any penalty and for which the individual in question has not volunteered of his/her own free will. Article 2 of the Constitutional Executive Order guarantees the exercise of individual and collective rights and freedoms.

No person or category of persons is excluded from the implementation of the principle.

There are categories of jobs and sectors which are excluded. Paragraph 2 of the Labour Code stipulates the following:

> … the following constitute exceptions to this prohibition:
>
> – any work or service which is required by virtue of the laws governing compulsory military service and is assigned to works of a purely military nature;
>
> – any work or service which is part of the statutory civic obligations of general interest or which the authority concerned sets itself of its own accord, such as the establishment or maintenance of communications, improvement and sanitation of housing, the providing of food supplies, area development or the construction of buildings for economic, social and cultural purposes;
>
> – the works or services required in the event of force majeure, i.e. in the event of war, disasters, (…) and in general any circumstances which jeopardize or are liable to jeopardize the life or normal living conditions of the population as a whole or of a sector of the population.

There are no means of implementing the principle.

#### *Assessment of the factual situation*

No statistics and information are available. The Government enlists the aid of the ILO for the collection of statistical data.

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

Various measures have been taken to promote the principle, and these include visits carried out by the Labour Inspectorate. The procedure has been instigated for the ratification of Convention No. 105 concerning the abolition of forced or compulsory labour. To the knowledge of the Government, neither the Organization, nor any other body have deployed any means.

The objectives of the Government are to eliminate all forms of forced or compulsory labour and to guarantee fundamental freedoms and rights in the field of work.

The conditions deemed necessary to meet these objectives are technical cooperation of the ILO to facilitate action to raise public awareness and to popularize the standard in order to prevent recourse to forced or compulsory labour, as well as its assistance in a survey and study within the framework of the tripartite system with a view to defining a national plan of action for combating forced or compulsory labour.

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

*Employers:*

1. Federation of Enterprises of Congo (FEC)
2. National Association of Investment Enterprises (ANEP)
3. Confederation of Congolese small and medium-sized enterprises (COPEMECO)

*Workers:*

1. National Union of Workers of Congo (UNTC)
2. Trade Union Confederation of Congo (CSC)
3. Democratic Confederation of Labour of Congo (CDT)
4. Central InterProfessional Union of Workers and Professionals of Congo (SOLIDARITE)
5. Organisation of Unified Workers of Congo (OTUC)
6. Cooperation of Unions in Public and Private Enterprises in Congo (COOSEPP)

## Observations received from employers' and workers' organizations

The present report has been drawn up with the collaboration of the Fédération des entreprises du Congo (FEC) and of the Union nationale des travailleurs du Congo (UNTC).

# Eritrea

Eritrea has ratified, on 15 October 1999, the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). The relevant instruments of ratification have been sent to the ILO for official registration.

Meanwhile, this report has been prepared, in consultation with social partners, in order to assess the national situation of Eritrea and the Government's objectives to ensure respect, promotion and realization of the principle of elimination of all forms of forced or compulsory labour.

[Note by the Office: Up to 31 January 2000, the original instruments of ratification of the abovementioned Conventions had not been registered with the Director-General of the ILO.]

## Means of assessing the situation

### *Assessment of the institutional context*

The principle of elimination of all forms of forced or compulsory labour is recognized in Eritrea by article 16.2 of the National Constitution of 23 May 1997 which provides that: "No person shall be held in slavery or servitude nor shall any person be required to perform forced labour not authorised by law." In accordance with article 25.3 of the same text, all citizens shall complete their duty in national service.

With respect to the legislative framework, the provisions of the Labour Proclamation No. 8/1991 are being revised by the Government, in consultation with the social partners, in order to take into consideration the suggestions made by the ILO concerning the principle of elimination of all forms of forced or compulsory labour. Further information in this respect will be provided once this revision process is completed.

The means of implementing the principle of the elimination of all forms of forced or compulsory labour are both administrative and legal, especially through the Penal Code, the judiciary and the labour inspection, as well as the Labour Proclamation No. 8/1991 under revision. Further information will be provided once the legislative revision process is completed.

### *Assessment of the factual situation*

Eritrean courts are not familiar with cases of forced or compulsory labour. However, the factual assessment of the national situation in this respect is currently difficult to appraise, due to lack of data and statistical information.

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

The elimination of all forms of forced or compulsory labour is supervised by the Department of Labour (DOL) of the Ministry of Labour and Human Welfare (MOLHW), especially through labour inspection services.

No survey has been yet undertaken to appraise the extent of the possible existence of forms of forced or compulsory labour in the country.

However, labour inspectors, stakeholders (including officers of the Ministry of Justice and prison officers), social partners and NGOs have been generally sensitized on this issue during the National Workshop on International Labour Standards and the 1998 ILO Declaration on Fundamental Principles and Rights at Work organized by the ILO in Asmara in August 1999.

During the same period, the ILO EAMAT, Addis Ababa and lLO Cairo, have assisted the Government in defining its country objective programme under the Support for Policy and Programme Development (SPPD) Project.

In October 1999, a national tripartite delegation participated in the First African Regional Workshop on Promoting the ILO Dec1aration on Fundamental Principles and Rights at Work and its Follow-up organized in Dakar, Senegal.

In November 1999, the Specialist on International Labour Standards briefed the DOL and social partners on the 1998 ILO Declaration and assisted the Government in preparing reports under the 1998 ILO Declaration in consultation with social partners.

Given that no survey has been done in the field of elimination of all forms of forced or compulsory labour, specific actions need to be developed in this respect such as:

(1) sensitizing policy-makers to understand the various forms of forced or compulsory labour;

(2) collecting information on the possible forms and extent of forced or compulsory labour;

(3) gathering, assessing and analysing data on the possible various forms of forced or compulsory labour;

(4) enhancing and promoting the application of the provisions of the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).

These considerations should be taken into account in the framework of a national survey to come up with recommendations for action in promoting the elimination of all forms of forced or compulsory labour.

The national survey on the elimination of all forms of forced or compulsory labour, together with its recommendations should therefore be discussed in a national tripartite forum extended to stakeholders, NGOs and other relevant bodies, in order to define a national strategy to combat and eliminate all forms of forced or compulsory labour.

This national strategy should involve:

— plan of action;

— targets;

— results:

— objectives;

— time-frame;

— evaluation;

— follow-up actions, etc.

In order to successfully develop this strategy, the DOL needs to be trained and strengthened in its action to combat all forms of forced or compulsory labour.

The Government would welcome any ILO assistance to carry out the above national programme of action on the elimination of all forms of forced or compulsory labour.

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

A copy of this report has been sent to:

— the Eritrea Federation of Employers (EFE); and

— the National Confederation of Eritrean Workers (NCEW).

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

Any possible comments made by these organizations will be forwarded to the ILO upon reception by the Government.

### Annexes (not reproduced)

The National Constitution of Eritrea of 23 May 1997.

Labour Proclamation No. 8/1991 (available in Tigrinyan only).

## Ethiopia

### Means of assessing the situation

#### *Assessment of the institutional context*

Even if Ethiopia is not a party to the Convention in question, the country is obliged, as a Member of the ILO to respect, promote and realize in good faith and in accordance with the Constitution the principles concerning the fundamental rights which are the subject of this Convention. Therefore the situation for the elimination of all forms of forced labour is assessed based on the Constitution of the Federal Democratic Republic of Ethiopia, the Labour Proclamation No. 42/1993, the Penal and the Civil Code.

Be it in the formal or informal sectors, freely chosen work remains an essential part of being human. In this regard, article 41(1) and (2) of the Constitution guarantees every Ethiopian citizen the right to freely engage in economic activity and pursue a livelihood anywhere in the national territory, to choose his or her means of livelihood, occupation and profession. Article 18(3) of the Constitution provides that no one shall be required to perform forced or compulsory labour and no one shall also be compelled to work without his/her free consent. In addition to this, the Penal Code of 1957 has stated in article 570/1/a:

> Whosoever, by intimidation, violence, fraud or any other unlawful means, whether alone or with other, compels another, to accept a particular employment or particular conditions of employment, or to refuse or withhold his labour, with the object of imposing on an employer by force the acceptance or modification of terms of employment is punishable.

Furthermore, the Civil Code of the country, states regarding the element of consent, in Article 1679 and 1680:

> Art. 1679 – Consent necessary
>
> A contract shall depend on the consent of the parties who define the object of their undertakings and agree to be bound thereby.
>
> Art. 1680 – Agreement on parties
>
> A contract shall be completed where the parties have expressed their agreement thereto.
>
> Reservations or restrictions intended by one party shall not affect his agreement as expressed where the other party was not informed of such reservations or restrictions.

The principle recognized in the Constitution of the Federal Democratic Republic of Ethiopia, the Labour Proclamation No. 42/1993, the Penal Code and the Civil Code of the country.

Forced labour requires the suppression of forced or compulsory labour in all its forms: certain exceptions are admitted such as military service, emergencies such as wars, fires, earthquakes.

No persons or categories of persons are excluded from the implementation of the principle.

It is indicated in the Constitution, article 18(3), “forced or compulsory labour” shall not include:

(a) any work or service normally required of a person who is under detention in consequence of a lawful order or a person during conditional release from such detention;

(b) in the case of conscientious objectors, any service exacted in lieu of compulsory military service;

(c) any service exacted in cases of emergency or calamity threatening the life or the well-being of the community;

(d) any economic and social development activity voluntarily performed by a community within its locality.

The Ministry of Labour and Social Affairs has been given the mandate in the Labour Proclamation, as an authority entrusted with the supervision of the application of the legislation and regulation through the labour inspection services, to carry out the responsibilities of follow-up.

### *Assessment of the factual situation*

No indicators or statistics are available.

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

The Federal Democratic Republic of Ethiopia dismantled all institutions of repression installed by the previous regimes. Regional prejudices have been redressed and the rights and the interests of the deprived citizens safeguarded by the Government, which is accountable to the people.

In Ethiopia there is no distinction, exclusion, restriction or preference (both in law and in practice) between persons or group of persons on grounds of race, colour, sex, language, religion, political origin, wealth, birth or other status.

The new Labour Proclamation No. 42/1993 ensures that worker/employer relations are governed by the basic principles of rights and obligations with a view to maintaining industrial peace and work in the spirit of harmony in order to safeguard workers/employers relations.

The Federal Democratic Republic of Ethiopia issued different proclamations and proclaimed a Constitution to safeguard the workers' rights in order to eliminate forced or compulsory labour.

The other means deployed by the Government to promote these principles and rights is the issuance of Labour Proclamation No. 42/1993, which guarantees workers' rights by providing for collective agreement among workers and employers to improve the conditions of work.

Tripartite machinery was introduced to serve as a forum for periodic consultation with the social partners on labour-related issues, on the application of international labour standards and labour administration.

The Ethiopian Employers' Federation and the Confederation of Ethiopian Trade Unions have a keen interest in ensuring good working conditions and smooth industrial relations. There is a growing appreciation for social dialogue among the social partners and the Government.

The objectives of the Government are to ensure that worker/employer relations are governed by the basic principles, rights and obligations enshrined in the Constitution of Ethiopia with a view to enabling workers and employers to maintain industrial peace and work in the spirit of harmony and cooperation towards the development of the country.

Based on the Universal Declaration of Human Rights of the United Nations, to respect the individual human rights fully and without any limitation.

To meet these objectives, the Government relies on the effect of the Constitution, the Labour Law, Penal and Civil Codes, and other international agreements, and Conventions concluded and ratified. We have finalized the consideration of this Convention and decided to bring before the competent authority for ratification before 29 February 2000.

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

A copy of the report has been sent to the representative organizations of employers and workers, i.e., the Ethiopian Employers' Federation and the Confederation of Ethiopian Trade Unions (CETU).

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

No observations have been received.

## Gambia

### Means of assessing the situation

#### *Assessment of the institutional context*

The Gambia participated in the Tripartite Workshop on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up mechanisms held in Dakar from 6 to 8 October 1999. The Dakar meeting agreed that participating countries fulfil the reporting obligations and complete the work initiated in Dakar. In that regard, the Department of State for Trade, Industry and Employment, which is responsible for labour matters and is the parent body of the Department of Labour, initiated tripartite consultation to solicit views from workers' and employers' representatives. The objective of the consultation is to seek input on the strategies that need to be adopted in implementing the Declaration and its attendant obligations.

The Gambia has advanced in the ratification of the seven fundamental Conventions. As we write this report, the National Assembly of The Gambia has included the ratification of the seven fundamental Conventions in the agenda of the next sitting of the National Assembly in two weeks. The Conventions have been approved for ratification by the Gambian Cabinet, the Ministry of Justice and the procedure leading to ratification involved extensive consultation with workers and employers as recommended in the relevant ILO Conventions and Recommendations.

Elimination of all forms of compulsory or forced labour is indeed recognised and practised in the Gambia.

It is recognized in the Gambia Labour Act 1990 to the following extent and limits.

It is defined in the Gambia Labour Act 1990.

Circumstances excluded are those relating to natural calamities and the need for mass mobilisation to respond to these.

Other conditions as may be necessary in the event of natural disaster.

Implementing agencies include Inspectorate Unit of the Department of Labour; legal instruments used are as specified in the laws of the Gambia and other national policies and legislation enacted by the National Assembly.

### *Assessment of the factual situation*

There is a lack of accurate, timely and relevant statistics in this area.

Trends cannot be determined as statistics are absent.

Information that could give a better assessment of the situation include the Gambia Poverty Study, the Background Information to the National Employment Policy and the Macroeconomic Framework 1998-2000 and the National Population Census 1993 Report.

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

Measures taken: legislative enactment, ratification of the relevant international Conventions. Planned activities form the strategies to be adopted and implemented.

Means deployed: as for the Government there will be sensitisation of National Assembly members, members of the judiciary and policy-makers in the Government. Also national workshops are planned if funding can be secured.

Objective of the Government will be to promote understanding of the principles, co-opt political leaders and policy-makers into the debate and seek their support for the formulation and implementation of national policies, programmes and projects.

Conditions needed to meet these objectives include: technical cooperation (expert service for review of relevant laws), technical cooperation (financial support for strengthening the various implementing agencies in the Labour Administrative System and in organising workshops, seminars and mass education/sensitisation campaigns), technical cooperation in the design and implementation of surveys, research and workshops/seminars.

Because of the progress made in the ratification process, it has been determined that the Gambia should focus more on follow-up and implementation of the Declaration on Fundamental Principles and Rights at Work. Thus, the three parties (government, employers and workers) have consulted to evolve plans for follow-up and implementation of such plans.

The plans envisaged will be undertaken in various organs such as legislature, civil society, executive (public administration and policy-making environment in government), the judiciary and law enforcement, employers and trade unions. It will also include institutional support and strengthening of the Department of Labour and the Employment Division of the Department of State for Trade, Industry and Employment. It will involve legislative reform (especially of the Gambia Labour Laws) and enactment, mass awareness campaigns using among other things print and electronic media, research and publication, IEC strategies.

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

The employers' organisation which has been sent a copy of this report is the Gambia Chamber of Commerce and Industry (GCCI). The workers' organisations which have been

sent a copy of this report include the Gambia Workers' Union and the Gambia National Trade Union Congress.

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

Input has been received from workers' and employers' representatives.

## India

### 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 India. The Constitution of India, under article 23, prohibits forced labour. Article 23(1) states that "traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law". Various judicial pronouncements have upheld the definitions under article 23(1) of the Constitution of India as indicated further. "Traffic in human beings" includes traffic in women and children, for immoral or other purposes (*Shama v. State of M.P.*, Allahabad 57) "Begar" means "labour of service exacted by government or a person in power without giving remuneration for it" (*Vasudevan v. Mittal*, Bombay 53(67); *Suraj v. State of Madhya Pradesh*, Madhya Pradesh 303). "Forced Labour": Labour may be "forced" not only owing to physical force but also on account of a legal provision such as imprisonment or fine in case the employee fails to provide the service, but also owing to hunger and poverty which compels him to accept employment for remuneration which is less than the statutory minimum wage (*Peoples Union v. Union of India*, Supreme Court 1473; *Sanjit v. State of Rajasthan*, Supreme Court 328).

Laws and regulations in the country do suppress forced or compulsory labour as defined in Article 1 of ILO Convention No. 105. The only exception made is article 23(2) of the Constitution, which states that "nothing in this Article [(23) (1)] shall prevent it from imposing compulsory services for public purposes and in imposing such services the state shall not make any distinction on grounds of only religion, race, caste or class or any of them". The only legislation enacted under the constitutional provisions is the National Service Act, 1972, which envisages requisitioning of the services of doctors, engineers or technologists for a specific period in national emergencies. Though this legislation was enacted in 1972 to meet an emergency no such occasion has so far arisen to invoke the above legislation.

Appropriate legal remedies exist in India to ensure compliance with the principles as specified under Article 1 of ILO Convention No. 105. Violations, if any, are dealt with by the judiciary. Article 23 of the Constitution guarantees the right against exploitation which is a *fundamental right* implying that it cannot be taken away by the legislature.

Forced labour, as defined in Article 1 of Convention No. 105, is punishable in accordance with the law. Appropriate legal and judicial mechanisms and procedures exist to address such violations, if any.

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

The Government of India has instituted administrative, legal and social measures to eliminate all forms of forced or compulsory labour as defined in Article 1 of Convention No. 105. The Constitution of India (article 23) provides safeguards against forced labour. Legal provisions exist to deal with violations. Besides, the Government of India intends to ratify Convention No. 105. The law and procedures in India are by and large in conformity with the ILO Convention and formalities for the ratification of Convention No. 105 are in progress.

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

Copies of this report are being forwarded to the following All India Organisations of Employers' and Workers':

*Employers' organizations:* Council of Indian Employers; Employers' Federation of India; All India Organisation of Employers; Standing Conference of Public Enterprises; All India Manufacturers' Organisation.

*Workers' organizations:* Bharatiya Mazdoor Sangh; Indian National Trade Union Congress; Centre of Indian Trade Unions; Hind Mazdoor Sabha; All India Trade Union Congress; United Trade Union Congress (IS); United Trade Union Congress; and National Front of Indian Trade Unions.

## Observations received from employers' and workers' organizations

No observations were received from them.

# Japan

## Means of assessing the situation

### *Assessment of the institutional context*

The principle of the prohibition of forced labour is recognized in Japan.

The Constitution of Japan specifically provides for freedom from bondage and involuntary servitude through the following:

> Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

In addition, various kinds of freedoms and rights are guaranteed as follows:

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

(Paragraphs 2 and 3 are omitted.)

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organizations shall receive any privileges from the State nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained nor shall the secrecy of any means of communication be violated.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Furthermore, with the view of guaranteeing procedures necessary to secure such freedoms and rights, the Constitution provides the following:

Article 31. No person shall be deprived of life of liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of this counsel.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

There is no legislation that contravenes the above provisions of the Constitution, and furthermore various laws and regulations are enacted in order to realize these guarantees provided for in the Constitution. The following provisions are examples of such laws and regulations and pertain to punishment in cases where a public officer violates the freedom or rights of an individual in the performance of his/her duties, etc.:

The Penal Code (Law No. 45 of 1907)

Article 193. (Abuse of Authority by Public Officer) When a public officer abuses his authority and causes a person to perform an act which he has no obligation to perform, or obstructs a person from exercising a right which he is entitled to exercise, imprisonment at or without forced labour for not more than two years shall be imposed.

Article 194. (Abuse of Authority by Special Public Officer) When a person performing or assisting in judicial, prosecutive or police functions abuses his authority and arrests or detains another, imprisonment at or without forced labour for not less than six months nor more than 10 years shall be imposed.

Article 195. (Violence and Cruelty by Special Public Officials)

1. When a person performing or assisting in judicial, prosecutive or police functions, in the performance of his duties, commits an act of violence or cruelty upon the defendant in a criminal action or another person, imprisonment at or without forced labour for not more than seven years shall be imposed.
2. The same shall apply when a person who is guarding or escorting another person detained in accordance with law or ordinance commits an act of violence or cruelty upon him.

Article 196. (Aggravation by Result) A person who commits a crime provided in the preceding two articles and thereby kills or injures another shall be dealt with the punishments prescribed for the crimes of bodily injury if they be graver.

With regard to employers of private undertakings, the Labour Standards Law (Law No. 49 of 1947) stipulates the prohibition of forced labour.

Article 5. An employer shall not force workers to work against their will by means of violence, intimidation, imprisonment, or any other unfair restraint on the mental or physical freedom of the workers.

Article 117. A person who has violated the provisions of Article 5 shall be sentenced to penal servitude at not less than one year and not more than ten years, or to a fine of not less than 200,000 yen and not more than 3,000,000 yen.

Furthermore, the Mariners Law (Law No. 100 of 1947) applies these provisions of the Labour Standards Law to mariner labour relations and prohibits action taken by a master.

Article 122. If a master has, by abusing his authority, compelled a person on board the vessel to perform an act which he has no obligation to perform, or has obstructed a person from exercising a right which he is entitled to exercise, the master shall be punished with a penal servitude for a term not exceeding two years.

For instance, the provisions in national legislation which may have relation to items (c) to (d) of Article 1 of Convention No. 105 are cited below:

(i) Relation to (c) of Article 1

With respect to national public employees in the regular service, there are provisions which prohibit them from engaging in a certain scope of political activities in view of their special status as public employees in order to keep them politically neutral and to secure the fairness of the administration, and those who violate the provisions will be imposed penalties on including penal servitude.

The National Public Service Law (Law No. 120 of 1947)

(Restriction on Political Activities)

Article 102. Personnel shall not solicit, or receive, or be in any manner concerned in soliciting or receiving any subscription or other benefit for any political party or political purpose or engage in any political activity as defined by rules of the (National Personnel) Authority other than to exercise his/her right to vote.

(Note)

(Paragraphs 2 and 3 are omitted.)

Article 110. A person falling under one of the following cases shall be sentenced to penal servitude not to exceed three years or fined not to exceed one hundred thousand yen.

(Items 1 to 18 are omitted.)

19. A person who violates the restrictions on political activity set forth in paragraph 1 of Article 102.

(Item 20 is omitted.)

(Paragraph 2 is omitted.)

(Note) The National Personnel Authority Rule 14-7 (Political Activity) (1949)

(Scope of Application)

1. The provisions relating to the prohibitions or restrictions of political activity in the law ("Law" refers to the National Public Service Law.) and the Rules ("Rules" refers to the National Personnel Authority Rules) shall be deemed to apply to all personnel in the regular government service including those to be given temporary or conditional appointment, those on leave of absence, temporary retirement, or under suspension from duty, as well as those who are not on duty temporarily for any cause whatever. However, those shall not apply to a case where advisers, consultants, committee members and similar part-time advisory personnel as designated by the National Personnel Authority conduct such activities without being contrary to the prohibitions or restrictions prescribed by other laws and orders.

2. Any political activities of an employee prohibited or restricted by the Law or the Rules shall be deemed to be also prohibited or restricted even in the case where he acts in open or secret cooperation with others.

3. Any political activity that the employee himself is prohibited or restricted from doing by the Law or the Rules may not be carried them out indirectly through an agent representative or employee chosen by him or subject to his control.

4. The prohibitions or restrictions on political activities of the employee prescribed in the Law or the Rules shall apply also outside working hours, except those prescribed in item 16 of paragraph 6.

(Definition of Political Purpose)

5. The "political purpose" referred to in the Law and the Rules shall be deemed to include those listed in this paragraph. No act performed with such political purpose shall be regarded as a violation of paragraph 1, article 102 of

the National Public Service Law, unless such act is included within the definition of political activity in paragraph 6 of this rule:

(1) Supporting or opposing any particular candidate in an election for elective public office as defined in the Rule 14-5.

(2) Supporting or opposing any particular judge at the time of a popular review concerning the appointment of judges of the Supreme Court

(3) Supporting or opposing any particular political party or other political organization.

(4) Supporting or opposing any particular Cabinet.

(5) Asserting or opposing any particular policy with the intention of influencing politics.

(6) Obstructing the administration of policies decided by an agency of the National Government or a public agency (including policies embodied in the law, orders, rules or by-laws of a local public entity).

(7) Enabling the number of signatures to reach, or preventing the number of signatures from reaching, the legally stipulated criterion in a demand for enactment, amendment or revocation of by-law of a local public entity or for inspection of its business under the Local Autonomy Law (Law No. 67 of 1947).

(8) Enabling the number of signatures to reach, or preventing the number of signatures from reaching, the legally stipulated criterion in a demand for dissolution of the assembly of a local public entity under the Local Autonomy Law or for recall of public employees under law, or supporting or opposing the dissolution or the recall based on such demand.

(Definition of political activity)

6. Political activity prescribed by paragraph 1, Article 102 of the Law shall be deemed to include those listed in this paragraph:

(1) Use of position title, power thereof or official or non-official influence for political purpose.

(2) Obtaining, or attempting or offering to obtain any benefit concerning employment, duties, remuneration or other in-service status of an employee or, giving, or attempting or threatening to give any disadvantage in connection therewith, as compensation or reward for giving or not giving any subscription or other benefit for political purpose or for doing or not doing any act with political purpose.

(3) For political purpose, soliciting, or receiving, or being in any manner concerned in soliciting or receiving levies, donations, subscriptions, membership fees or other money.

(4) For political purpose, giving or paying to a national public employee any money as defined in the preceding item.

(5) Planning formation of a political party or other political organization, participating in such formation or assisting such activities, or becoming an

officer, a political adviser, or a member with similar role of such organization.

(6) Conducting any campaign to solicit others to become or not to become members of a particular political party or other political organization.

(7) Publishing, editing, or distributing any newspaper or publication which is an organ of a political party or other political organization or assisting such activities.

(8) Conducting for political purpose any campaign to solicit others to vote or not to vote in the election as defined in item 1 of paragraph 5 or in the voting for a popular review as defined in item 2 of the same paragraph or in the voting for a dissolution or recall as defined in item 8 of the same paragraph.

(9) Planning, or directing for political purpose any campaign to obtain signatures or participating actively in such activities.

(10) For political purpose, planning, organizing or directing a parade or demonstration of masses or assisting such activities.

(11) Making public expressions of opinion as may have political purpose at an assembly or other place where contact may be had with a large number of people or by making use of a loudspeaker, radio or other instrument.

(12) Displaying or allowing the display of any literature or drawings as may have political purpose in any national government building or equipment, or otherwise using or allowing the use of any national government building, equipment, materials or funds for political purpose.

(13) Issuing, circulating, posting, or distributing any signed or unsigned literature or drawing, photographic records or figures as may have political purpose, or reading out such to a crowd or causing it to listen in, or writing or editing any of these for such use.

(14) Presenting or sponsoring any dramatic performance as may have political purpose or assisting such activities.

(15) Making or distributing, for political purpose, flags, armbands, badges, marks and signs or the like used for manifestation of political principles and programs or for identification of a political party or other political organization.

(16) Wearing or displaying for political purpose any of the articles enumerated in the preceding item during working hours.

(17) Doing any act, no matter what its name or form is, for the purpose of evading the prohibition or restriction referred to in any of the preceding items.

7. No provision of this rule shall be deemed to prohibit or restrict any act which is naturally incumbent upon an employee to perform in the prosecution of his proper duties.

8. The head of each ministry or agency of government shall, when any act which is contrary to the provisions relating to the prohibitions or restrictions of political activity as prescribed in the law or the rules or the fact thereof has

come to his knowledge, immediately notify the National Personnel Authority, at the same time taking appropriate measures for the prevention of acts of violation or for their correction.

Furthermore, with respect to some special undertakings of highly public nature, punishment pertaining to non-handling of duties including penal servitude is imposed in order to ensure smooth operation of the services of the relevant undertaking essential to daily life of the people in general.

Mail Law (Law No. 165 of 1947)

(Crime of Failure to Handle Mails, etc.)

Article 79. Any person engaged in the mail service who wilfully and maliciously fails to handle mail or causes it to be delayed, shall be punished with a penal servitude for a term not exceeding one year or a fine not exceeding two hundred thousand yen.

(Paragraph 2 is omitted.)

Telecommunications Business Law (Law No. 86 of 1984)

Article 102.

1. Any person who operates without authority any telecommunications facilities for telecommunications business of a telecommunications carrier and thereby obstructs the provisions of telecommunications service shall be guilty of an offence and liable to penal servitude for a term not exceeding two years or to a fine not exceeding three hundred thousand yen.
2. The provision of the preceding paragraph shall also apply where any person who engages in Type I telecommunications business or Special Type II telecommunications business fails to perform, without due reason, the work of maintenance or operation of telecommunications facilities for telecommunications business of a telecommunications service to be impaired.

(Paragraph 3 is omitted.)

Electric Undertakings Law (Law No. 170 of 11 July 1964)

Article 115.

(Paragraph 1 is omitted.)

2. Any person who operates without authority any electric utility structures provided for electric utility business and thereby obstructs the generation, transformation and transmission or supply of electric power shall be punished with penal servitude not exceeding 2 years or a fine not exceeding 500,000 yen.

3. The provision of the preceding paragraph shall also apply where any person engaged in electric utility business fails to perform, without due reason, or where the work of maintenance or operation of electric utility structures provided for by the electric utility business is impaired or the generation, transformation and transmission or supply is hindered.

(Paragraph 4 is omitted.)

Gas Undertakings Law (Law No. 51 of 31 March 1954)

Article 53.

1. Any person who destroys gas utility structures or damages functions of other gas utility structures and thereby obstructs the supply of gas shall be punished with penal servitude not exceeding 5 years or a fine not exceeding 1,000,000 yen.
2. Any person who operates without authority any gas utility structures and thereby obstructs the supply of gas shall be punished with penal servitude not exceeding 2 years or a fine not exceeding 500,000 yen.
3. The provision of the preceding paragraph shall also apply where any person engaged in gas utility business fails to perform, without due reason, the work of maintenance or operation of gas utility structures is impaired or the supply of gas is hindered.
4. Attempted offences stipulated in paragraphs 1 and 2 shall be punishable.

(ii) Relation to (d) of article 1

As stated above, the Constitution guarantees in article 28 the right of workers to organize and to bargain and act collectively, with the result that proper acts of trade unions (including proper strike) are not subject to any penal sanction (paragraph 2, article 1 of the Trade Union Law (Law No. 174 of 1949)).

National public employees in the regular service in the non-operational sector and local public employees in the regular service in the non-operational sector are prohibited to go on a strike, in view of the special nature of their position, the public nature of their duties, etc. There are no legislative provisions under which those who have engaged in a strike are subjected to a penalty, but, those who have conspired to effect, instigated or incited the perpetration of a strike will be imposed penalties on including penal servitude.

The National Public Service Law

(Duty to Obey Laws and Orders and Orders of Superiors; Prohibition of Acts of Dispute and Other Similar Acts)

Article 98.

(Paragraph 1 is omitted.)

2. Personnel shall not strike or engage in delaying tactics or other acts of dispute against the public represented by the National Government as employer, or resort to delaying tactics which reduce the efficiency of government operations, nor shall personnel or other persons attempt, conspire to effect, instigate or incite such illegal actions.

(Paragraph 3 is omitted.)

Article 110. A person falling under one of the following cases shall be sentenced to penal servitude not to exceed three years or fined not to exceed one hundred thousand yen:

(Items 1 to 16 are omitted.)

17. Any person who conspires to effect, instigates or incites the illegal action defined in the first part of paragraph 2 of Article 98, or attempts such action.

(Items 18 to 20 are omitted.)

(Paragraph 2 is omitted.)

Local Public Service Law (Law No. 261 of 1950)

(Prohibition of Dispute and Other Similar Acts)

Article 37. Personnel shall not resort to strike, slow-down and other acts of dispute against the local people as their employer, represented by the agencies of the local government, or to delaying tactics which reduce the efficiency of operations of the agencies of the local government. Nor shall any persons attempt such illegal actions, or conspire, instigate or incite to perpetrate such actions.

(Paragraph 2 is omitted.)

Article 61. A person falling under one of the following cases shall be sentenced to penal servitude not to exceed three years or fined not to exceed one hundred thousand yen.

(Items 1 to 3 are omitted.)

4. Any person who conspires, instigates or incites to perpetrate the illegal actions defined in the first part of paragraph 1 of Article 37, or attempts such actions.

(Item 5 is omitted.)

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 the local branches are established, and the appropriate number of necessary personnel are allocated at these agencies.

Furthermore, the Seafarers Department of the Maritime Technology and Safety Bureau in the Ministry of Transport and District Transport Bureau as the local branches are established in order to operate the Mariners Law, etc., and the proper number of necessary personnel are allocated at these agencies.

Incidentally, in 1932 Japan ratified the ILO Convention No. 29 (Convention concerning forced or compulsory labour).

### *Assessment of the factual situation*

The number of violations and cases sent to the prosecutor's office pertaining to article 5 of the Labour Standards Law (prohibition of forced labour) includes one violation during periodical inspection in 1998 and one case sent to the prosecutor's office in 1997.

No violations or cases were sent to the prosecutor's office pertaining to article 122 (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) of the Mariners Law from 1994 to 1998.

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

In order to ensure the implementation of the Labour Standards Law, etc., instructions are made to establishments deemed to have problems as a matter of the Labour Standards Law. When an establishment violates the related laws and regulations its correction is being promoted.

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

Copies of this report have been sent to the Japan Federation of Employers' Association and the Japanese Trade Union Confederation.

## Observations received from employers' and workers' organizations

The Japanese Trade Union Confederation requests the "early ratification of ILO key labour standards and promotes the reaching of an agreement on its global necessity". (Request for a 1999 to 2000 policy framework.)

## Japan

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

*Prohibition of forced labour*

Japan has not ratified Convention No. 105 on forced labour. It is very regrettable that Japan has not ratified this Convention. The application of this Convention in Japan has no problem as to its legal as well as actual situation in the private sector.

*Universal prohibition of the strike, restriction of bargaining rights, criminal and disciplinary punishments.*

According to the Government's report, it gives the impression that only the administrative employees are under prohibition, and only those who conspire, instigate or incite strikes would be under criminal punishment. The prohibition in fact covers also manual workers as well as employees of state and municipal enterprises. They can be also punished by less than three years' forced labour or by the fine of less than 100,000 yen.

The universal prohibition of strikes … is against Article 1 of Convention No. 105 that prohibits the punishment by forced labour for strike action, except in the case of strikes in essential services.

[References to state law and practice in respect of ratified Conventions have been deleted.]

*Universal prohibition of political activities and criminal and disciplinary punishment*

According to the Government's report, it gives the impression that only the white-collar employees of State and municipalities are prohibited the political activities, and under possible criminal punishment of less than three years' forced labour or less than 100,000 yen fine. The political activities that may incur punishment are very wide as explained in the Government's report.

# 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 several occasions 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, though the experts were on the verge of

considering that the national laws and regulations might contradict the principles enshrined in the Conventions, they could not make a conclusion and concluded more study would be needed. [1]

- 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 service personnel for the purpose of public interests at national government agencies, local governments, public organizations and social welfare facilities.

  It is not possible to deploy all of the manpower with military obligations to work or service of a purely military character. Therefore, the public 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 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 State Public Officials Act prohibits public officials from being engaged 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 Trade Union and Labour Relations Adjustment Act bans any industrial actions which are not organized by trade unions or are not 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 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 unobliged work (article 123 of the Criminal Act: abuse of authority);

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

— in case a person coerces another to do any unobliged work, 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 unobliged work (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 make investigations into alleged violations and, if the reported cases turn out to be true, 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 secure implementation of the legal provision, penal sanctions are also contained in national laws and regulations.

The Ministry of Labour coordinates and controls: application of the LSA; monitoring the implementation of the Act; labour inspection at workplace; and measures to be taken against the LSA violations. Under the direction and supervision of the Ministry of Labour, labour inspectors of the 46 regional labour offices conduct workplace inspection, 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 prevention and elimination of forced labour.

The implementation of the penal sanctions against violations of the provision of eliminating forced labour, mentioned above in I, (1), (d), are secured 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

- The KEF expressed no opinion.
- The FKTU raised the following question regarding schemes of technical research personnel and skilled industrial personnel:

> Those who are to be drafted for active military service may choose, when they have the required qualifications, to work in a related industry for a certain period of time instead of active military service. The problem is that a dismissal of those working within these special schemes means their immediate transfer to active military service. In this situation, employers, who are aware that a dismissal could be a hard blow to those specially drafted, may take advantage of them under the threat of dismissal. Therefore, more strict supervision and control are called for to ensure that employers do not abuse these special schemes.

# Latvia

## Means of assessing the situation

### *Assessment of the institutional context*

In the Republic of Latvia the issues in respect of forced or compulsory labour are subject to the following legislation:

1. The Labour Code of the Republic of Latvia.

2. The Constitution of the Republic of Latvia.

3. The Law "On State of Exception" of 2 December 1992.

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

Article 106 of the Constitution of the Republic of Latvia states the general prohibition on forced labour, namely:

> Everybody has rights to choose freely his/her occupation and workplace according to his/her abilities and qualification. Forced labour is prohibited. Involvement in elimination of calamities and their consequences and employment as a consequence of a conviction in a court of law are not regarded as forced labour.

Also, article 25 of the Labour Code of the Republic of Latvia states:

An employer is not authorised to demand of a worker to perform work unforeseen by the labour contract.

The legislation of the Republic of Latvia permits voluntary work only and work that is not to be regarded as forced labour. The obligatory military service and involvement in activities for dealing with calamities and their consequences are not to be regarded as forced labour. However, the legislation of the Republic of Latvia permits cases when persons' rights may be infringed, for example, involving them in forced labour. Such cases are subject to article 1 of the Law "On State of Exception", namely:

> The state of exception is a special legal regime for activities of state authorities and government institutions, enterprises, entrepreneurial associations, agencies and organisations that permits, according to the size and procedure stated by this Law, to infringe upon rights and liberties of natural persons and legal entities, as well as to charge them with liability.

It is essential to note that in the draft Labour Code, being developed at present, there are several innovations in regard to the regulations of performing work unforeseen by the labour contract, namely, paragraph 1 of article 54 of the aforementioned draft states:

> An employer has rights to appoint a worker for a period of time not longer than one month for performing work unforeseen by the labour contract in order to eliminate consequences caused by some insuperable force, an accidental event or other extreme circumstances which affect or may affect in an unfavourable way the usual process of work in the enterprise. In a case of downtime an employer has rights to appoint a worker for performing work unforeseen by the labour contract for a period of time not longer than two months of a calendar year.

In addition, paragraph 3 of article 54 of the aforementioned draft provides for that:

> For performing work unforeseen by the labour contract the employer is obliged to pay a corresponding payment, the size of which cannot be less than the previous average wages of the worker.

The legislation of the Republic of Latvia does not state liability directly for forced or compulsory labour but there exist general regulations in the field of labour rights (including employment) for the violation of which both criminal liability and administrative liability set in. Thus, article 280 of the Criminal Law of the Republic of Latvia states:

> For violation of restrictions or regulations of employing a person, if this has been committed by the employer and if this has been committed repeatedly within a year,—
>
> a penalty of confinement for a period of time up to one year or an arrest, or forced labour, or a pecuniary penalty of up to fifty minimum salaries is imposed.

Paragraph 1 of article 41 of the Administrative Code of the Republic of Latvia, in turn, states that:

> For violation of labour or labour protection laws, or other legislation regulating these issues —
>
> a pecuniary penalty up to two hundred and fifty lats is imposed on employers or officials.

It follows from the aforementioned that in the Republic of Latvia the principle of abolition of forced labour has been acknowledged.

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

Copies of the report have been sent to the Latvian Free Trade Unions' Association and the Latvian Employers' Confederation.

# Mozambique

## Means of assessing the situation

### *Assessment of the institutional context*

Mozambique has ratified five of the seven fundamental ILO Conventions: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Abolition of Forced Labour Convention, 1957 (No. 105) and the Equal Remuneration Convention, 1951 (No. 100). Government is proceeding with preparatory work on the following Conventions with a view to submitting them to the Assembly of the Republic of Mozambique: the Forced Labour Convention, 1930 (No. 29); the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

# Namibia

## Means of assessing the situation

### *Assessment of the institutional context*

The Namibian Labour Act (Act 6 of 1992), Part XIV, section 108 defines forced labour as:

- 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, or caused to such person by any other person, in the event that the person first mentioned is not performing or rendering any such work or service;
- any work performed by any child under the age of 18 years under any arrangement or scheme in any undertaking, and who is for any reason required to perform such work in the interest of such an employer;
- any work performed by a person by virtue of the fact that such a person is, for any reason, subjected to the control, supervision or jurisdiction of a traditional chief or headman in his or her capacity as chief or headman.

Persons or categories of persons excluded from the implementation of the principle and right relating to the elimination of all forms of forced or compulsory labour are identified in the relevant section referred to above (not reproduced), either explicitly or because they are not covered by the relevant legislation on the subject.

According to article 9 of the Constitution of Namibia, the expression “forced labour” shall 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 reasonable/necessary in the interest of hygiene;
- any labour required of members of the defence force, the police force and the prison service in pursuance of their duties;

- 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;
- any labour reasonably required as part of reasonable and normal communal or other civic obligation.

According to the Labour Act (Act 6 of 1992), 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 (Part XIV, page 141).

The Labour Inspection form DL 1 provides for the detection, recording and reporting of and about the presence of forced labour at workplaces. The form is attached for reference (not reproduced).

### *Assessment of the factual situation*

Normal labour inspection has not yet detected any forced labour related activities. Such data would be available once the analysis of the child labour survey is completed.

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

In its agenda for November 1999, the Labour Advisory Council was expected to consider the possibilities of ratification of the remaining five ILO core Conventions. These include Convention No. 29 on forced labour.

The measures taken to promote the elimination of all forms of forced or compulsory labour are:

- criminalization of forced labour;
- awareness campaign on the Constitution and Labour Act;
- labour inspection.

Means have been deployed to promote the elimination of all forms of forced or compulsory labour by:

(i) the Government:
- criminalizing forced labour;
- labour inspection;

(ii) the ILO:
- campaign to promote the Declaration of principles;

(iii) other bodies:
- workers' and employers' organizations; National Union of Namibian Workers and the Namibian Employers' Federation;
- the Labour Advisory Council.

The objectives of the Government with a view to the observance, promotion or realization of these principles and rights are:

- strengthening of capacity of labour inspectors;
- strengthening of capacity of social partners;
- encouraging research through Labour Advisory Council.

The conditions deemed necessary to meet these objectives, include a proper analysis of the feasibility (legal and economic readiness) within the Namibian legal structures.

# Nepal

## 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 Nepal. The Constitution of the Kingdom of Nepal, 1991, article 20, states as follows:

> Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law.
>
> Prohibited that nothing herewith shall be a bar to providing by law for compulsory service for public purposes.
>
> In the likewise manner, the civil code of the country in its Chapter 4.1 also states that no one shall engage in any work for anybody against his/her will.

### *Assessment of the factual situation*

Apart from the constitutional provisions, there is no other legislation on this topic.

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

Apart from the constitutional provisions, in some of the districts in the mid-western and far-western development regions, there is traditional practice of engaging workers in partially verbal debt bondage in the agricultural field. In fact, they are agricultural workers and will be provided remuneration in cash and kind which is not adequate for their subsistence level. Considering this social evil, His Majesty's Government, the Ministry of Land Reform and Management, has implemented a *"crash"* programme specifically targeting those in bonded labour *(kamaiya)*. And trade unions, and non-governmental organizations have also been involved in addressing the issues and implementing various intervention programmes. Different donor agencies have also been supporting the abovementioned agencies to implement intervention programmes, especially skill development and income-generation activities.

The Ministry of Land Reform and Management has also been working to devise necessary legal instruments in compliance with the constitutional provisions.

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

This report has been communicated to the trade unions and employers' organization for their information.

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

No observations have been received.

## Philippines

### 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 Philippines. The Philippines ratified the Abolition of Forced Labour Convention, 1957 (No. 105) on 17 November 1960.

The Constitution of the Republic of the Philippines provides:

> Article III. Bill of Rights
>
> Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.
>
> (2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been convicted.
>
> Article II. Declaration of Principles and State Policies
>
> Section 11. The State values the dignity of every human person and guarantees full respect for human rights.
>
> Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted.
>
> (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall de dealt with by law.
>
> Article XIII. Social Justice and Human Rights Labor
>
> Section 3. The State shall afford protection to labor, focal and overseas organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The Civil Code of the Philippines (Republic Act No. 386) provides:

Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable for the latter for damages:

(8) the right to the equal protection of the laws;

(14) the right to be free from involuntary servitude in any form.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offence, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Article 1703. No contract, which practically amounts to involuntary servitude, under any guise whatsoever, shall be valid.

The Revised Penal Code (Act 3815) punishes forced labor as follows:

Article 272. Slavery. The penalty of *prision mayor* and a fine of not exceeding 10,000 pesos shall be imposed upon anyone who shall purchase, sell, kidnap or detain a human being for the purpose of enslaving him.

If the crime be committed for the purpose of assigning the offended party to some immoral traffic, the penalty shall be imposed in its maximum period

Article 273. Exploitation of child labour. The penalty of *prision correccional* in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon anyone who, under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian, or person entrusted with the custody of a minor, shall against the latter's will, retain him in his service.

Article 274. Services rendered under compulsion in payment of debts. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, in order to require or enforce the payment of debt, shall compel the debtor to work for him, against his will, as household servant or a farm labourer.

Article 286. Grave coercion. The penalty of *prision correccional* and a fine not exceeding 6,000 pesos shall be imposed upon any person who, without any authority of law shall, by means of violence, threats or intimidation, prevent

> another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

Forced or compulsory labour is defined as stated by 1aw.

No persons or categories of persons are excluded from the implementation of the principle and right relating to the elimination of all forms of forced or compulsory labour.

Under the Civil Code of the Philippines (RA 386) and the Revised Penal Code (Act No. 3815) no categories of jobs or work or sectors are excluded or omitted from legislation regarding this principle.

#### *Assessment of the factual situation*

Organized data to be gathered.

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

The measures taken to promote the elimination of all forms of forced or compulsory labour are legislative and court action.

The means deployed to promote the elimination of all forms of forced or compulsory labour by the Government is to ratify Convention No. 29 within the year.

The conditions deemed necessary to meet these objectives are constant social dialogue.

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

All workers' and employers' organizations represented in the Tripartite Industrial Peace Council shall be furnished a copy of this report.

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

The Tripartite Industrial Peace Council, the legal body tasked to study ILO Conventions, adopted a resolution endorsing the ratification of Convention No. 29.

## Qatar

### Means of assessing the situation

#### *Assessment of the institutional context*

Labour Law No. 3 of 1962 makes no reference to any of the forms of forced labour referred to in Article 1 of the Convention. In the same way it does not provide for forced or compulsory labour as penalties for violation. The Law does however allow workers to strike after the Conciliation Committee has considered the dispute between them and their

employer in accordance with article 68 of the Labour Law. The Law prohibits lockouts by the employer and prescribes against the dismissal of any worker before the Conciliation Committee has ruled on the dispute in accordance with article 68 of the Law.

Article 70 provides that striking workers may not commit aggression against the employer or his agents or against other workers who are willing to continue working. Under no circumstances may they take over property that does not belong to them. Article 71 bans strikes by workers in water, electricity, gas, health, firefighting air-conditioning or telecommunication establishments without addressing the legal notice provided for in article 18 of the Law knowing that such strike action or abandonment of service would have grave consequences on public health or endanger the life of any group of people by depriving them of services or would cause serious damage to public or private property. The Law however does not impose forced or compulsory labour in case of such violations.

The Public Civil Service Law No. 9 of 1967 prohibits workers who are members of political organizations or parties or working for them from participating in any advocacy work for such organizations (article 60). It does not, however, provide for compulsory work as penalty for violation of this article.

The Qatar Penal Code No. 14 of 1971 and its amendments lists, in articles 83 to 107, the offences related to illegal societies, unlicensed strikes, demonstrations or public gatherings which are liable to punishment. Forced labour is not one of the punishments stipulated for violations of these articles.

Article 38 of the Penal Code allows courts to pass sentences of imprisonment with hard labour in cases where sentences exceed one year and where the court finds that the crime and the circumstances justify such sentence. Such sentences are discretionary for courts with regard to crimes other than the cases referred to in Article 1 of the Convention. Furthermore, such sentences are not considered forced or compulsory labour since they are passed by courts of law and since the labour exacted is carried out under the supervision and control of the public authority.

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

- the Qatar Chamber of Commerce and Industry (Employers);
- the Workers Committee at the Qatar General Establishment for Oil (Workers).

## Observations received from employers' and workers' organizations

No comments have been received from either.

## Annexes (not reproduced)

Labour Law No. 3 of 1962 and its amendments.

The Public Civil Service Law.

The Penal Code, together with laws attached to individual reports.

# Sri Lanka

## Means of assessing the situation

### *Assessment of the institutional context*

Comparative analyses of both the Conventions Nos. 29 and 105 would show that Convention No. 29 (adopted in 1930), in Article 2, sets out certain exemptions to the strict adherence to the provisions of the said Convention. At present the Sri Lankan laws contain provision which could be interpreted in a manner indicative of forced/compulsory labour. However, the majority of the relevant provisions fall within the exemptions as enumerated in Article 2 of Convention No. 29.

Whereas in Convention No. 105 (adopted in 1957), the restrictions on forced labour, as contained in Article 1 cover a very wide area which, if given a strict interpretation, would run contrary to certain provisions of our law. Albeit paragraphs (a), (d) and (e) of Article 1 are appropriate, paragraphs (b) and (c) could if strictly enforced curb certain provisions of the law of Sri Lanka being utilized to achieve the purposes for which such laws were passed by Parliament.

Listed below are some of the enactments that may need to be re-examined and amended in the event of Sri Lanka ratifying Convention No. 105.

- 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 Service Act No. 70 of 1961.

# Ukraine

## Means of assessing the situation

### *Assessment of the institutional context*

The Abolition of Forced Labour Convention, 1957 (No. 105), requires every Member of the International Labour Organization which ratifies it 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 means 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.

This principle is recognized in the Ukraine by the following:

Article 43, Part 3, of the Constitution of Ukraine prohibits the use of forced labour.

Article 2 of ILO Convention No. 29 concerning forced or compulsory labour (1930) contains a definition of the term *forced or compulsory labour* as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Under the Constitution of Ukraine, the use of forced labour is prohibited.

The Government cited Article 2, section 2, of ILO Convention No. 29 concerning forced or compulsory labour (1930) in relation to what the term "*forced or compulsory labour"* shall not include.

#### *Assessment of the factual situation*

No indicators or statistics are available.

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

The text of the report was submitted for approval to the Federation of Trade Unions of Ukraine and the Ukrainian Federation of Industrialists and Entrepreneurs.

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

The comments and proposals of those organizations were taken into account in the final drafting of the report and will be given consideration in the further work of the Government.

## United States

### Means of assessing the situation

#### *Assessment of the institutional context*

The principle of the elimination of all forms of forced or compulsory labor is clearly recognized in the United States.

In the nineteenth century, the United States engaged in an extremely bloody civil war a principal issue of which was whether slavery should exist in the United States. Following that war, the United States amended its Constitution to include the Thirteenth Amendment.

The Thirteenth Amendment of the United States Constitution is the principal constitutional provision concerning forced or compulsory labor in the United States. The Thirteenth Amendment specifically outlaws slavery and involuntary servitude, except as punishment for a person duly convicted of a crime. The Amendment states:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

The Thirteenth Amendment is self-executing and thus ancillary legislation is not required to abolish slavery. See *Civil Rights Cases, 109 U.S. 3, 20 (1883)*. However, pursuant to the enforcement powers afforded to Congress by section II of the Thirteenth Amendment, legislation has been enacted to assist enforcement of the Thirteenth Amendment. The provisions of 42 U.S.C. § 1994 abolish peonage and prohibit anyone from holding or arresting a person and returning that person to peonage, or causing or aiding in the arresting or returning of a person to peonage (see *Clyatt v. United States*, 197 U.S. 207 (1905); *United States v. Gaskin*, 320 U.S. 527 (1944)). The provisions of 18 U.S.C. §§ 1581-1588 provide criminal penalties in connection with these and related practices.

The language of the Thirteenth Amendment which forbids slavery or involuntary servitude "within the United States or any place subject to their jurisdiction" thereby prohibits these practices by the federal Government, state governments, and territories subject to United States jurisdiction. Further, unlike most other provisions of the Constitution of the United States which prescribe the powers and limitations of federal and state governments, the Thirteenth Amendment applies directly to the actions of individuals. Of course, inasmuch as Article IV of the Constitution of the United States establishes the Constitution and other federal law as the supreme law of the land, the prohibitions of the Thirteenth Amendment override any inconsistent state action, whether it is judicial, legislative, or executive action.

Additional protection of the rights encompassed in the Thirteenth Amendment against infringement by the states is afforded by the "equal protection clause" of the Fourteenth Amendment, which provides that no state shall "deny to any person within its jurisdiction the equal protection of the law". Thus, no agency of a state nor the officers or agents by whom its powers are exerted may deny the protection of the Thirteenth Amendment to any person within its jurisdiction, based on that person's race, color, or nationality. (*Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Levy v. Louisiana*, 391 U.S. 68, 70 (1968); *Graham v. Richardson*, 403 U.S. 365, 371 (1971)).

Beyond the constitutional protections described above, the United States has specific federal legislation which requires "every employer" to pay "each of his employees" a minimum wage (29 U.S.C. § 206). This system of minimum wages is zealously enforced by the federal Government. Any person who violates the requirements of the federal statute may be subject to damages, fines or imprisonment (29 U.S.C. § 216). This system of minimum wage standards, as much as any constitutional provision, is instrumental in providing the United States with a completely voluntary and compensated labor system. In addition, the United States has specific federal legislation requiring overtime pay (29 U.S.C. § 207), as well as prohibitions against child labor (29 U.S.C. § 212), and employment discrimination (42 U.S.C. § 2000e). These provisions also help to establish and maintain the country's voluntary and compensated labor system.

As the United States has informed the ILO in previous reports, the courts in the United States often define legislative or constitutional terms in their decisions. Under United States court cases, the words "involuntary servitude" have for a long time had a much larger meaning than slavery. In *Plessey v. Ferguson*, 163 U.S. 537 (1896), the Supreme Court defined involuntary servitude to mean the control of the labor and services of one man for the benefit of another and the absence of a legitimate right to dispose of one's own

person, property, or services. Further, the Thirteenth Amendment's prohibition of "involuntary servitude" has been determined by the Supreme Court to ban the practice of peonage, which is broadly defined as "compulsory service in the payment of a debt". *Baily v. Alabama*, 219 U.S. 219, 242 (1911). See also Peonage Cases, 123 F. 671 (D.C. Ala. 1903).

The Thirteenth Amendment has a very broad scope. The Supreme Court has observed that its purpose was not just to end slavery following the American Civil war, but to maintain a system of completely voluntary labor. *Pollock v. Williams*, 322 U.S. 4, 17 (1944). In addition, an early Supreme Court decision observed that the Thirteen Amendment forbids all slavery and not just slavery with respect to blacks. *Slaughter House Cases*, 83 U.S. 36, 69-72 (1872).

The Thirteenth Amendment, in fact, has been construed so broadly as to prohibit "all practices" that involve any form of subjection having the incidents of slavery "either directly by a state's using its power to return the servant to the master ... or indirectly, by subjecting person who left the employer's service to criminal penalties". *United States v. Shackney*, 333 F.2d 475, 485 (2d Cir. 1964).

The ILO has expressed concern with the trend in industrialized countries such as the United States toward the privatization of prison administration and the contracting out of prison labor to private enterprises. As a result, the ILO has requested all governments to indicate what their present law and practice is with regard to these issues. The United States will continue to provide the ILO with additional information regarding its law and practice and is seeking ways to assess ongoing developments in these areas.

### *Assessment of the factual situation*

Many jurisdictions in the United States have established private prisons and permitted the contracting out of prison labor. In the past two decades, the practices of private prisons and the contracting out of prison labor have increased in the United States as they have in several other developed countries. For example, approximately 77,000 individuals are incarcerated in state and local facilities which are owned or managed by profit-making corporations. This represents around 4 per cent of the total inmate population in the United States. The United States has included among its attachments to previous reports, the tenth edition of the Private Adult Correctional Facility Census. This census is prepared by the Private Corrections Project of the Center of Studies in Criminology and Law at the University of Florida. The census describes in great detail the state of private adult correctional facilities in the United States and elsewhere. The census also describes the growth in the use of private prisons, particularly during the past decade.

State and local prisons have also increased the practice of contracting out inmates to work for private companies. According to United States Justice Department figures, 30 states have legalized the contracting out of prison labor since 1990.

The federal prison system in the United States does not currently permit private prisons or make individuals available to work for private companies. The federal prisons, however, do operate facilities within the prisons which produce goods for the federal Government (see 28 C.F.R. §§ 345.10-345.84.

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

In addition, certain general aspects of private prisons in the United States should be explained. First, the decision of whether to permit private prisons in a state or locality is made by the elected officials of that state or locality. Second, the Government retains supervisory control over the operation of the private institution. This control is usually achieved by the imposition of various minimum standards for private prisons and correctional facilities. These minimum standards are contained either in statutes or in the contract that the private company signs with the Government in order to build or operate a prison.

Similarly, with regard to the practice of contracting out prison labor, the Government retains considerable oversight and control through legislation and contractual arrangements. The practice has generally been undertaken to alleviate the costs of a rapidly growing prison population. In addition, it is believed that prisoners who work while in prison will develop the necessary skills and work habits to increase their chances of working upon release and remaining out of prison.

As discussed above, the Thirteenth Amendment is intended to provide the United States with a completely voluntary labor system. *Pollack v. Williams*, 322 U.S. 4 (1944). No categories of jobs or sectors of the labor force are excluded from the application of the Thirteenth Amendment.

Although, as mentioned above, the Thirteenth Amendment is self-executing, pursuant to the enforcement powers afforded to Congress by section 2 of the Thirteenth Amendment, legislation has been enacted to assist enforcement. For example, the provisions of 18 U.S.C. § 241, which are applicable to both private individuals and public officials, and the provisions of 18 U.S.C. § 242, which are only applicable to public officials, provide criminal penalties for the exaction of forced labor in violation of the Thirteenth Amendment. Sections 241 and 242 forbid the deprivation of rights guaranteed by the United States Constitution and, in pertinent part, specifically provide as follows:

> If two or more persons conspire to *injure*, oppress, threaten or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in *disguise* on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured –
>
> They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.
>
> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States ... shall be fined not more than $1,000 or fined under this title or imprisoned not more than ten years, or both; and if death results, shall be subject to imprisonment for any term of years or for life.

18 U.S.C. §§ 241-2.

Additionally, the provisions of 42 U.S.C. § 1994, which apply to both public and private action, abolish peonage, a form of involuntary servitude based upon real or alleged indebtedness. The provisions of 18 U.S.C. §§ 1581-1588 provide criminal penalties in connection with peonage and related practices. Section 1581 provides as follows:

> (a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.
>
> (b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

Further protections against the deprivation of rights under the Constitution or laws of the United States are found in 42 U.S.C. §§ 1983 and 1985. The provisions of 42 U.S.C. § 1983 generally allow a private right of action against persons who, under color of state law, deprive other individuals of their rights under the Constitution or other laws of the United States. The provisions of 42 U.S.C. § 1985 allow a private right of action against persons who conspire to deprive others of their civil rights, including equal protection rights.

It should be noted that in the United States, the enforcement of the Thirteenth Amendment's forced labor prohibition generally is not carried out by regular inspections of the Government. Aggrieved individuals have a private right of action in federal district court for violation of their civil rights, including illegal forced labor, under the Thirteenth Amendment.

In addition, public officials who violated the Thirteenth Amendment or individuals who violated the peonage statutes could be prosecuted under the enforcement provisions described above (see 18 U.S.C. §§ 241-2 and 18 U.S.C. § 1581).

As previously mentioned, the United States maintains an employment system in which each worker must receive at least a minimum wage, overtime pay and which contains prohibitions against child labor. These provisions are enforced by the United States Secretary of Labor.

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

Copies of this report have been mailed to the United States Council for International Business as well as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). In addition, the draft report was reviewed by members of the *Tripartite Advisory Panel on International Labor Standards*, a subgroup of the President's Committee on the ILO, which includes representatives from the US Council and the AFL-CIO.

## Observations received from employers' and workers' organizations

No observations have been received.

## **Annexes** (not reproduced)

*Cases:*

*Slaughter-House Cases*, 83 U.S. 36 (1872)

*Civil Rights Cases*, 109 U.S. 3 (1883)

*Yick Wo v. Hopkins*, 118 U.S. 356 (1886)

*Plessy v. Ferguson*, 163 U.S. 537 (1896)

*Clyatt v. United States*, 197 U.S. 207 (1905)

*Bailey v. State*, 219 U.S. 219 (1911)

*United States v. Gaskin*, 320 U.S. 527 (1944)

*Pollock v. Williams*, 322 U.S. 4 (1944)

*Levy v. Louisiana*, 392 U.S. 68 (1968)

*Graham v. Richardson*, 403 U.S. 365 (1971)

*Peonage Cases*, 123 F. 671 (D.C. Ala. 1903)

*United States v. Shackney*, 333 F.2d 475 (2d Cir. 1964)

*Statutes:*

18 U.S.C. § 241

18 U.S.C. § 242

18 U.S.C. §§ 1581-1588

29 U.S.C. § 206

29 U.S.C. § 207

29 U.S.C. § 212

29 U.S.C. § 216

42 U.S.C. § 1983

42 U.S.C. § 1985

42 U.S.C. § 1994

42 U.S.C. § 2000e

*Regulations:*

28 C.F.R. §§ 345.10-345.84

# Viet Nam

## 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 laws and legislation of Viet Nam.

In particular, this recognition is articulated in article 5, paragraph 2, of the Labour Code of Viet Nam.

There is no forced or compulsory labour in Viet Nam. No categories of jobs or work or sectors are excluded or omitted from legislation regarding this principle.

The means of implementation: Viet Nam has realized this principle by issuing legal instruments and by state administration through supervision of labour inspection, administrative ban and penal sanctions.

### *Assessment of the factual situation*

At the time being, there is no forced and compulsory labour in Viet Nam.

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

The measures taken to promote forced or compulsory labour are: information dissemination on legislation and promoting inspection, examination and penal sanctions.

Means deployed by the Government: issuing legal instrument by the Ministry of Labour, Invalids and Social Affairs, including:

— disseminating information laws, inspections and penalties;

— requiring its provincial branches (Department of Labour, Invalids and Social Affairs) to draw up their yearly, quarterly and monthly reports on labour matters.

The objective of the Government is to prohibit the existence of all forms of forced or compulsory labour in Viet Nam.

Conditions deemed necessary to meet this objective are that the principle is recognized in Vietnamese legislation, particularly article 5, paragraph 2, of the labour Code, which states that “maltreatment of workers and all forms of forced labour are prohibited”.

Basically, for the Government and the ILO, there are differences of definition of forced labour and public works duties for the citizens of Viet Nam. Therefore, it was high time for Viet Nam to ratify the two Conventions (Nos. 29 and 105) in order to prevent misunderstandings.

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

This report has been sent to the Viet Nam General Confederation of Labour, the Viet Nam Chamber of Commerce and Industry and the Viet Nam National Council of Cooperatives, Small and Medium Enterprises.

## Observations received from employers' and workers' organizations

So far, no comments have been received from those organizations.