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### Report III (Part 1B)

General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)

Third item on the agenda:  
Information and reports on the application  
of Conventions and Recommendations

Report of the Committee of Experts  
on the Application of Conventions and Recommendations  
(articles 19, 22 and 35 of the Constitution)

International Labour Office Geneva

# **Eradication of forced labour**

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## Executive summary

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Principles embodied in the ILO forced labour Conventions Nos. 29 and 105 have found practically universal acceptance and endorsement and have become an unalienable part of the fundamental rights of human beings. They have been incorporated in various international instruments, both universal and regional. The prohibition of the use of forced or compulsory labour in all its forms is considered now as a peremptory norm of modern international law on human rights. These two fundamental ILO Conventions are the most widely ratified of all the ILO instruments, and further ratifications are envisaged in the near future.

These Conventions aim at guaranteeing to all human beings freedom from forced labour, irrespective of the nature of the work or the sector of activity in which it may be performed. The two instruments effectively supplement each other, and their concurrent application should contribute to the complete eradication of forced or compulsory labour in all its forms.

Since the previous General Survey on the subject, the Committee has noted with satisfaction numerous cases of progress, which cover measures taken, both in legislation and in practice, to ensure better observance of the Conventions in various countries of the world. Thus, a number of legislative provisions allowing the exaction of forced or compulsory labour for purposes of production or service have been repealed or amended, with a view to ensuring compliance with the Conventions. It appears that systematic state practices of imposing compulsory labour on the population have declined worldwide and practically disappeared in the great majority of countries. The Committee has also noted with satisfaction the repeal or amendment of provisions authorizing the imposition of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or as a punishment for various breaches of labour discipline or for having participated in strikes.

However, regrettably, in spite of the universal condemnation of forced labour and the adoption of constitutional and legislative provisions abolishing it, the problem of forced or compulsory labour continues to exist in a number of countries and many people around the world are still subjected to it. Thus, there are instances of vestiges of slavery and other slavery-like practices which still survive in certain countries, sometimes connected with abductions of men, women and children in the context of armed conflicts in various parts of the world. There still remain widespread practices of entrapment of people through various forms of debt bondage, and through trafficking in human beings for the purposes of sexual and labour exploitation, which may involve not only adults, but also children, and which became the subject of renewed international concern towards the end of the twentieth and the beginning of the twenty-first centuries. At the same time, there are also still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards. In relation to such instances of forced labour imposed by the State, they may be either for purposes of

production or service, such as various kinds of the national service obligations; or as a punishment, following a conviction in a court of law, for example, where convicted persons are hired to or placed at the disposal of private parties.

Examination of national law and practice has shown that the effective application of the forced labour Conventions continues to present problems in certain countries, often due to new trends and relatively new issues that have emerged in the past decades, which are noted by the Committee. Since the last General Survey on the subject, the Committee has noted the following developments:

- An increasing trend towards two related issues in certain countries, which has had a marked effect on the application of Convention No. 29. One is an increase in the numbers of prisoners in publicly administered prisons who are working for private enterprises, both inside and outside prison premises. The other is that in some cases prison administration has been contracted to private firms, and prisoners are working for purposes of production in these prisons. The Committee has devoted particular attention to this topic having regard to the uncertainties raised by some member States as to the impact of this phenomenon on the observance of Convention No. 29. The Committee has concluded that the existence of privatized prisons and the privatization of prison labour are not incompatible with the Convention, but instead need to be designed and implemented on the understanding that there are additional requirements that must be fulfilled to ensure compliance. Although it is difficult for such arrangements to fall within the exclusions contained in Article 2, paragraph 2(c), of the Convention, privatization of prisons and privatized prison labour may be consistent with Article 2, paragraph 1, provided that such labour is performed voluntarily and not under the menace of any penalty. The Committee has provided guidance on the factors which should be taken into account in order to assess the compatibility with the Convention.
- The Committee has also noted some further trends as follows. Many countries have adopted legislation intended to introduce a new penal sanction: that of community work, which is regarded as an alternative to imprisonment and may have a bearing on the observance of the Convention; another growing trend that has invited scrutiny by the Committee under provisions of Convention No. 29 has entailed the adoption in some countries of policies that impose compulsory work requirements as a condition for receiving unemployment insurance benefits; the Committee has also examined certain situations in which a requirement to work overtime could represent an infringement of Convention No. 29.

Examination of national law and practice has shown that certain problems of application of Convention No. 105 noted in the earlier surveys still continue to exist in some countries. There are cases where freedom of expression still remains subject to restrictions enforced by sanctions involving compulsory labour. Similar sanctions are applicable for various breaches of labour discipline to public servants or seafarers, or for participation in strikes. Often provisions imposing such sanctions are too general in scope to be compatible with the Convention, though the governments concerned sometimes express their intention to repeal or amend the provisions in question in order to ensure compliance.

The Committee draws attention again to the effective enforcement of the prohibition of forced or compulsory labour and, in particular, to the obligation of ratifying States to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are really adequate and strictly enforced, as required by

Convention No. 29. The Committee observed that effective application of legislation depends largely on the sound functioning of the authorities charged with enforcement, such as the police, the labour inspectorate and judiciary. The Committee therefore has asked governments on numerous occasions to indicate the measures taken to ensure that judicial proceedings were initiated and pursued, as well as the measures adopted to protect victims and encourage them to turn to the authorities.

The Committee considers that the full implementation of the forced labour Conventions still require various complex issues to be resolved. It hopes that the survey will contribute to a better application of the two fundamental Conventions on forced labour with a view to its complete eradication, that it will clarify certain points and will further the knowledge and the understanding of these Conventions, both by governments and the social partners. The Committee calls on those remaining member States which have not yet ratified one or the other or both Conventions to consider this possibility in the near future, and on those which have accepted international obligations under these instruments to do everything possible to fully apply their principles, both in letter and in spirit.

# Chapter I

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## Introduction

### 1. Background of the General Survey. Magnitude of the problem

1. Freedom from forced or compulsory labour is one of the most important of the human rights coming within the sphere of competence of the International Labour Organization (ILO). Historically, it was among the first basic human rights subjects within the Organization's mandate to be dealt with in the international labour standards. Today, forced or compulsory labour is almost universally banned, and the two ILO Conventions on the subject are the most widely ratified of all international labour Conventions.<sup>1</sup> Moreover, in the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its 86th Session in 1998, the International Labour Conference "Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: ... the elimination of all forms of forced or compulsory labour ...".

2. However, in spite of the universal condemnation of forced labour, millions of persons around the world are still subjected to it, and the eradication of all forms of forced or compulsory labour still remains a major preoccupation of the ILO. The persistence of forced labour is an affront to human dignity. In June 2005, the Director-General of the ILO, while presenting to the International Labour Conference the second Global Report on forced labour for discussion under the follow-up to the Declaration on Fundamental Principles and Rights at Work, observed:

This year for the first time we have estimated that there are at least 12.3 million victims of forced labour around the world. Of these, 9.8 million are exploited by private agents, including more than 2.4 million in forced labour as a result of human trafficking. The remaining 2.5 million are forced to work by the State or by rebel groups. I hope that this Report raises further awareness of an unacceptable practice that should never be tolerated. ... Eradicating forced labour is difficult but possible. Through a multi-stakeholder global alliance, we should be able to muster the will – from local communities to international organizations – to end forced labour.<sup>2</sup>

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<sup>1</sup> See para. 24 below.

<sup>2</sup> See "Director-General's introduction to the ILC: Consolidating progress and moving ahead", ILC, 93rd Session, 2005, Report I(A).

Nowadays, forced labour is present in some form on all continents, in almost all countries, and in every kind of economy. There are persistent cases of what may be termed “traditional” forms of forced labour. These include entrenched bonded labour systems in parts of South Asia, debt bondage affecting mainly indigenous peoples in parts of Latin America, and the residual slavery-related practices most evident today in certain parts of Africa. In numerous countries, domestic workers are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers’ homes through threats or violence. Forced labour today also affects sizeable numbers of migrant workers who are transported away from their countries or communities of origin. In Europe and North America, an increasing number of women and children, but also men, are victims of trafficking for sexual and labour exploitation. There are also various forms of forced labour exacted by the State for either economic or political purposes, e.g. as a punishment for expressing one’s political views. Over the past few years, there has been a greater realization that forced labour in its different forms can pervade all societies, whether in developing or industrialized countries, and is by no means limited to a few pockets around the globe.<sup>3</sup>

3. In accordance with article 19, paragraphs 5(e) and 7(b), of the ILO Constitution, the Governing Body of the International Labour Office decided, at its 291st Session (November 2004), to invite Members which have not ratified the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), to submit reports in 2006 on the position of their law and practice in regard to the matters dealt with in these instruments.<sup>4</sup> These reports, together with those supplied under articles 22 and 35 of the Constitution by the States parties to the Conventions concerned, allowed the Committee of Experts on the Application of Conventions and Recommendations to prepare a General Survey on the effect given to the instruments under consideration, both in ratifying States and in those which have not yet ratified both or either of these Conventions.

4. The present General Survey is the fourth survey of this kind covering both ILO Conventions dealing with forced labour. The first was carried out in 1962,<sup>5</sup> shortly after the entry into force of Convention No. 105. Since the new aspects of the forced labour problem were taken up in the 1957 Convention – that is, forced labour as a means of political coercion or as a punishment in certain circumstances – the comments made in that survey were necessarily of a preliminary nature. With regard to the compulsory call-up of labour for economic purposes, the 1962 survey noted the considerable influence which Convention No. 29 had had in the progressive reduction and even elimination of forced labour in many countries. The second survey, which was carried out in 1968,<sup>6</sup> on the occasion of the International Year for Human Rights, provided an opportunity to assess the developments which had taken place in national law and practice relating to the call-up of labour since the previous survey and to evaluate a considerable volume of

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<sup>3</sup> See *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005, paras 3 and 11.

<sup>4</sup> See GB.291/9(Rev.), para. 73.

<sup>5</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), ILC, 46th Session, Geneva, 1962, Part Three: Forced labour.

<sup>6</sup> *Forced labour*, General Survey on the reports concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). *Extract from the report of the 52nd (1968) Session of the Committee of Experts on the Application of Conventions and Recommendations*, Geneva, 1968. [Hereafter: *Forced labour*, General Survey of 1968.]

material supplied by the governments in relation to the application of Convention No. 105. The 1968 survey showed that the full implementation of the standards laid down in the two forced labour Conventions still required various complex issues to be resolved, within the general process of economic and social development, in regard to industrial relations or in the field of civil rights.

5. The third survey was prepared in 1979<sup>7</sup> and reflected almost 50 years' experience of the application of Convention No. 29 and more than 20 years' experience of the application of Convention No. 105. It noted numerous cases of progress which covered measures taken to ensure better observance of the Conventions in countries with widely differing political, economic and social structures throughout the world. Since the second survey, a number of laws providing for forced or compulsory labour for purposes of production or service had been repealed and various of the more archaic forms of compulsory labour had disappeared from most national legislations. The 1979 survey noted the positive measures taken by certain governments to ensure a better application of the Conventions with regard to the requisitioning of labour in exceptional situations, including the repeal of texts conferring excessively broad powers on authorities. Several cases of progress concerned the amendment of the legislation imposing compulsory labour on unconvicted prisoners or permitting administrative authorities to impose penalties involving compulsory labour. With regard to conditions governing the use of prison labour, the survey highlighted that the Committee noted with satisfaction that a number of countries had repealed provisions allowing the placing of prisoners at the disposal of private enterprises; that in an increasing number of countries prisoners work for private enterprises, both inside and outside the prison, in conditions approximating those of free workers; and that certain States had amended their legislation so as to require the express agreement of the prisoners concerned to work for private enterprises and to improve their situation with regard to wages, conditions of work and social security. Other governments have indicated that in practice they are not placed at the disposal of private individuals and enterprises and that measures have been taken or are being considered to amend the legislation accordingly. As regards the application of Convention No. 105, the 1979 survey noted several instances where governments had abolished imprisonment (involving compulsory prison labour) for certain offences or amended the substantive legislative provisions in order to ensure observance of the Convention. On the other hand, it noted that the scope of Convention No. 105 is subject to the limitations inherent in the very rights and freedoms whose exercise is to be protected against any coercion through compulsory labour; these limitations include the rights of other people. Thus, penalties involving compulsory labour imposed on those who endanger the life or health of other people do not come under the Convention. Similarly, the scope of the Convention in respect of punishment for participation in a strike is subject to certain normal restrictions on the right to strike, particularly in respect of essential services and employment involving the safety of others, or situations of acute national crisis. The 1979 survey noted a number of instances showing positive developments in the legislation and practice in this regard.

6. Besides the three General Surveys referred to above, the Committee presented a Special Survey in 1969 based on the reports requested in accordance with article 19 of the ILO Constitution in which the governments were asked to indicate the extent to

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<sup>7</sup> *Abolition of forced labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 65th Session, 1979. [Hereafter: *Abolition of forced labour*, General Survey of 1979.]

which it was proposed to give effect to the terms of the Conventions dealing with forced labour and other important Conventions and any difficulties which prevented or delayed ratification.<sup>8</sup> Another Special Survey was prepared in 1997<sup>9</sup> on the basis of the reports requested under article 19 of the ILO Constitution, following the decision taken by the Governing Body at its 264th Session (November 1995). In the context of a discussion in the Governing Body concerning the strengthening of the ILO supervisory machinery, it was decided that the special procedure under article 19 for the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), would be extended to all other basic human rights instruments. That procedure was intended to allow an examination, outside the context of the General Surveys also conducted under article 19, of the obstacles to ratification of these fundamental instruments, the prospects for their ratification, and the difficulties encountered in the absence of ratification. The 1997 Special Survey also covered recent trends in the fields covered by the forced labour Conventions, in national law and practice, and discussed other issues raised by certain governments, e.g. the application of the Conventions in respect of a requirement to perform work as a condition for receiving unemployment benefits or a requirement to perform work outside normal working hours. Special emphasis was given in the survey to the recent developments in the field of prison labour, concerning the work of prisoners for private companies, both in publicly administered prisons and in privately run prisons. This procedure was shortly thereafter replaced by the review procedure under the 1998 Declaration on Fundamental Principles and Rights at Work.

## 2. Historical background and ILO standards relating to forced or compulsory labour

7. International action against forced or compulsory labour has historically been directed towards the fight against slavery. The first international instrument to condemn slavery was the Declaration Relative to the Universal Abolition of the Slave Trade, adopted in 1815 by the Congress of Vienna.<sup>10</sup> It was followed by a number of agreements, both multilateral and bilateral, which contained provisions prohibiting such practices in times of war and peace.<sup>11</sup> However, forced labour issues as such became the subject of systematic study and standard setting at the international level only after the First World War, following the work of the League of Nations regarding mandated territories and of the adoption of the 1926 Slavery Convention.<sup>12</sup> In 1926, the ILO

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<sup>8</sup> ILO: *The ratification outlook after 50 years: 17 selected Conventions* (Geneva, 1969).

<sup>9</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 86th Session, 1998, Part I: General Report, paras 94–125 [references to Part I of the reports of the Committee of Experts (General Report) are hereafter indicated by the abbreviation RCE – General Report, followed by the year].

<sup>10</sup> Declaration Relative to the Universal Abolition of the Slave Trade, 8 February 1815, *Consolidated Treaty Series*, Vol. 63, No. 473.

<sup>11</sup> For more details see *Abolishing slavery and its contemporary forms*, by David Weissbrodt and Anti-Slavery International, Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva, 2002, para. 5.

<sup>12</sup> Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, *League of Nations Treaty Series*, Vol. 60, p. 253. The Convention contained a definition of slavery (art. 1(1)) and also distinguished forced labour, stipulating that “forced labour may only be exacted for public purposes” and requiring States parties “to prevent compulsory or forced labour from developing into conditions analogous to slavery” (art. 5).

Governing Body appointed a Committee of Experts on Native Labour, whose task was the study of the existing systems of forced or compulsory labour, especially in countries which were not self-governing.<sup>13</sup> At that time, forced labour was viewed as largely a colonial phenomenon. Many areas of the world were then under a colonial administration and various forms of coercion were in use in order to obtain labour for the development of communications and the general economic infrastructure, as well as for the working of mines, plantations and other activities. The compulsion to work developed within a system of colonial administration and frequently relied on traditional tribal relationships. The work of the Committee of Experts on Native Labour led to the adoption in 1930 of the Forced Labour Convention (No. 29), the Forced Labour (Indirect Compulsion) Recommendation (No. 35), and the Forced Labour (Regulation) Recommendation (No. 36).<sup>14</sup> Though Convention No. 29 took special account of the problems existing at that time in territories under colonial administration and in certain independent States at a similar stage of economic and social development, the Conference nonetheless decided that the Convention should be of general application.<sup>15</sup>

8. After the Second World War, when significant political and economic changes had taken place, the ILO adopted new approaches to the problem of forced labour. In 1947, the issue of forced labour was also brought before the United Nations. Following the discussions which took place on this subject in the Economic and Social Council, the ILO Governing Body and the United Nations Economic and Social Council established jointly an ad hoc Committee on Forced Labour. The international inquiries carried out by the UN-ILO ad hoc Committee in 1951–53, and subsequently by the ILO Committee on Forced Labour in 1956–59, revealed the existence throughout the world of various types of forced labour – as a means of political coercion, as a punishment for infringement of labour discipline and for economic purposes. These extensive inquiries led to the adoption in 1957 of the Abolition of Forced Labour Convention (No. 105), which was aimed at the abolition of compulsory mobilization and use of labour for economic purposes, as well as at the abolition of forced labour as a means of political coercion or punishment in various circumstances.

(a) Measures called for by the forced labour Conventions

9. *Forced Labour Convention, 1930 (No. 29)*: The States which ratify Convention No. 29 undertake “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period”.<sup>16</sup> This obligation on the States to suppress the use of forced or compulsory labour includes both an obligation to abstain and an obligation to act. The States must neither exact forced or compulsory labour nor tolerate its exaction. They must repeal any laws or regulations which provide for or allow the exaction of forced or compulsory labour, so that any such exaction, be it by public bodies or private persons, is rendered illegal under national law. Forced or compulsory labour is defined in the Convention in such a way as to exclude from its scope, under certain conditions, specific kinds of clearly defined obligations (such as compulsory

<sup>13</sup> For more details see *Forced labour*, report and draft questionnaire, ILC, 12th Session, Geneva, 1929, pp. 1–5.

<sup>14</sup> The Forced Labour (Regulation) Recommendation, 1930 (No. 36) had been considered obsolete (outdated instrument) and was withdrawn by the ILC at its 92nd Session, 2004, at the proposal of the Governing Body, together with several other international labour Recommendations.

<sup>15</sup> See *Forced labour*, Report I, ILC, 14th Session, Geneva, 1930, pp. 126–128.

<sup>16</sup> Art. 1, para. 1, of the Convention.

military service, certain forms of prison labour, work exacted in cases of emergency, etc.).<sup>17</sup> Finally, the States parties to the Convention must ensure that “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence” and “that the penalties imposed by law are really adequate and are strictly enforced”.<sup>18</sup>

10. *Present status of Article 1, paragraph 2, and Articles 3–24 of Convention No. 29:* While the ratifying States are obliged “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period”,<sup>19</sup> Convention No. 29 provides that: “With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.”<sup>20</sup> However, since the Convention adopted in 1930 calls for the suppression of forced labour within the shortest possible period, it appears to be no longer possible to invoke these transitional provisions to the detriment of its main purpose. For a State to now be seen to rely on these transitional provisions would appear to disregard their transitional function and contradict the spirit of the Convention. Moreover, the status of the abolition of forced or compulsory labour in general international law as a peremptory norm from which no derogation is permitted, would make any such attempt contrary to the international standards.<sup>21</sup> Consequently, the Committee has considered that use of any form of forced or compulsory labour falling within the scope of the Convention as defined in Article 2 may no longer be justified by invoking observance of the provisions of Article 1, paragraph 2, and Articles 3–24 (transitional provisions).<sup>22</sup>

11. *Abolition of Forced Labour Convention, 1957 (No. 105):* Convention No. 105 does not constitute a revision of Convention No. 29, but was designed to supplement it.<sup>23</sup> Though Convention No. 105 does not contain a definition of forced or compulsory labour, the definition contained in the earlier instrument has been considered generally valid and can thus serve to determine what constitutes “forced or compulsory labour” within the meaning of the 1957 Convention.<sup>24</sup> While Convention No. 29 calls for the

<sup>17</sup> Art. 2, paras 1 and 2, of the Convention. For the analysis of the definition of forced or compulsory labour given in the Convention and the exceptions from its scope, see Ch. II, paras 35–66 below.

<sup>18</sup> Art. 25 of the Convention.

<sup>19</sup> Art. 1, para. 1, of the Convention.

<sup>20</sup> Art. 1, para. 2, of the Convention. However, even during the transitional period, the immediate abolition of forced labour was required by the Convention in the following instances: for women, for men under 18 years of age, for men over 45 years of age, for disabled persons, where the work was for the benefit of private individuals or associations, in respect of work underground in mines, in respect of work for public purposes which was not of present or imminent necessity, in respect of compulsory cultivation which was not of present or imminent necessity and was not a precaution against famine or a deficiency of food supplies, when used as a method of collective punishment.

<sup>21</sup> See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 1998 [references to the reports of the Committee of Experts are hereafter indicated by the abbreviation RCE, followed by the year], p. 100, observation concerning *Bangladesh*; RCE, 2000, p. 108, observation concerning *Myanmar*. See also report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by *Myanmar* of the Forced Labour Convention, 1930 (No. 29) (ILO, *Official Bulletin*, Special Supplement, Vol. LXXXI, 1998, Series B), para. 218.

<sup>22</sup> *ibid.*

<sup>23</sup> *Abolition of forced labour*, General Survey of 1979, paras 9 and 104. See also report of the Committee on Forced Labour, *Record of Proceedings*, ILC, 40th Session, Geneva, 1957, p. 708, para. 6.

<sup>24</sup> *ibid.*, para. 39; see also *Forced labour*, General Survey of 1968, para. 42. For more details concerning the scope of Convention No. 105 in relation to Convention No. 29, see paras 141–144 below.

general prohibition of forced or compulsory labour in all its forms (subject to certain exceptions), Convention No. 105 requires the abolition of any form of forced or compulsory labour in the five specific cases listed in its Article 1:

- 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;
- as a method of mobilizing and using labour for purposes of economic development;
- as a means of labour discipline;
- as a punishment for having participated in strikes;
- as a means of racial, social, national or religious discrimination.

(b) Other ILO instruments

12. In addition to the two forced labour Conventions, the ILO has at its disposal several other instruments, which address the issue of forced labour, either directly or indirectly.

13. The *Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35)*, exhorts governments to avoid taking measures resulting in indirect compulsion to labour through the imposition of excessively heavy taxation, through restrictions on the possession, occupation or use of land, through extension of the meaning of vagrancy or through the adoption of pass laws.

14. The *Special Youth Schemes Recommendation, 1970 (No. 136)*, addresses problems of employment and training of young people in relation to the application of the forced labour Conventions. The Recommendation indicates that participation in special youth schemes (i.e. schemes designed to enable young persons to take part in activities directed to the economic and social development of their country and to acquire education, skills and experience facilitating their subsequent economic activity and promoting their participation in society) should be voluntary. Exceptions may be permitted only by legislative action and where there is full compliance with the terms of existing international labour Conventions on forced labour and employment policy.

15. The *Employment Policy Convention, 1964 (No. 122)*, requires ratifying States to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment (Article 1(1)). From the freedom of workers perspective, it is important to note that the said policy aims at ensuring, among other things, that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for a job for which the worker is well suited (Article 1(2)(c)).

16. The *Worst Forms of Child Labour Convention, 1999 (No. 182)*, requires that each ratifying State take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency (Article 1). Article 3(a) of Convention No. 182 provides that the worst forms of child labour include “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”. In view of the fact that Convention No. 182 does not itself contain any definition of forced labour, the definition

contained in Article 2 of Convention No. 29 has been considered valid for the purposes of Convention No. 182.<sup>25</sup> The Convention requires ratifying States to take effective measures to prevent the engagement of children in the worst forms of child labour and to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration (Article 7(2)(a) and (b)).

17. The *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, which revised an earlier instrument, the *Indigenous and Tribal Populations Convention, 1957 (No. 107)*, lays down a prohibition to exact compulsory personal services from members of the peoples concerned and provides that the exaction of such services shall be a punishable offence (Article 11). The Convention further requires ratifying States to take measures to ensure that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude (Article 20(3)(c)).

18. The *Migration for Employment Convention (Revised), 1949 (No. 97)*, contains provisions aiming at the assistance to migrants for employment, in particular through the establishment of free services to provide them with various kinds of assistance and accurate information. In addition, it requires ratifying States to take all appropriate steps against misleading propaganda relating to emigration and immigration (Articles 2 and 3). These provisions may be viewed in the context, as preventing of conditions conducive to trafficking in persons for the purpose of exploitation. Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties (Article 8 of Annex I and Article 13 of Annex II to the Convention). The *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*, requires each ratifying State to adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other States, to suppress clandestine movement of migrants for employment and illegal employment of migrants (Article 3(a)) and to prosecute the authors of manpower trafficking, from whichever country these activities take place (Article 5).

### 3. Other relevant international instruments

#### (a) United Nations instruments

19. The United Nations has adopted a number of human rights instruments which contain standards and principles concerning various social and labour matters, including forced labour:

- The *Universal Declaration of Human Rights (1948)*, though not a binding treaty, provides a normative basis for other international human rights instruments and lays down a prohibition of slavery and servitude: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (Article 4).
- The *International Covenant on Civil and Political Rights (1966)* addresses forced labour issues in greater detail. After laying down a prohibition of slavery and slave trade in all their forms (Article 8(1)), it provides that “no one shall be required to perform forced or compulsory labour” (Article 8(3)(a)); the Covenant excludes

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<sup>25</sup> ILO, *Record of Proceedings*, ILC, 87th Session, 1999, Geneva, report of the Committee on Child Labour, para. 136. For the definition of forced labour, see paras 35–41 below.

from the prohibition of forced or compulsory labour the performance of hard labour in pursuance of a sentence by a competent court, as a punishment for a crime (Article 8(3)(b)), as well as any other work or service required of a person under detention in consequence of a lawful order of a court or of a person during conditional release from such detention; any service of a military character, or national service required by law of conscientious objectors; any service exacted in cases of emergency or calamity threatening the life or well-being of the community; and any work or service which forms part of normal civic obligations (Article 8(3)(c)).

20. Issues of slavery and trafficking in persons for the purpose of exploitation are covered in a certain number of other United Nations human rights instruments:

- The *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*<sup>26</sup> consolidates a number of pre-existing treaties on the prohibition of slavery, trafficking in women and children and forced prostitution.
- The *1926 Slavery Convention* referred to above<sup>27</sup> was amended by the *1953 Protocol*,<sup>28</sup> which transferred to the United Nations the duties and functions which the original Slavery Convention had invested in the League of Nations.
- The *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)*<sup>29</sup> was adopted by the United Nations. As explained in its Preamble, this Convention was adopted “having regard to the [ILO] Forced Labour Convention of 1930 and to subsequent action by the International Labour Organization in regard to forced or compulsory labour”, and “having decided ... that the Convention of 1926, which remains operative, should now be augmented by the conclusion of a supplementary Convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery”.
- The United Nations *Convention on the Rights of the Child (1989)* requires States parties to take measures to prevent the abduction or sale of, and the trafficking in, children for any purpose or in any form (Article 35).
- The *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*<sup>30</sup> was adopted with the aim of further achieving the purposes of the Convention on the Rights of the Child and the implementation of its provisions. As stated in the Preamble, the Protocol was “extending the measures that States parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography”.

<sup>26</sup> Approved by the UN General Assembly resolution 317(IV) of 2 December 1949.

<sup>27</sup> See para. 7 above and footnote 12.

<sup>28</sup> The 1953 Protocol amending the Slavery Convention, 182 UNTS. 51, approved by the UN General Assembly in resolution 794(VIII), of 23 October 1953.

<sup>29</sup> Adopted by a Conference of Plenipotentiaries convened by the Economic and Social Council resolution 608 (XXI) of 30 April 1956 and signed in Geneva on 7 September 1956.

<sup>30</sup> Adopted by the UN General Assembly resolution A/RES/54/263 of 25 May 2000.

- On 15 November 2000, the General Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, (hereafter “the Palermo Protocol”), as a supplement to the *United Nations Convention against Transnational Organized Crime*.<sup>31</sup> As stated in its Preamble, the Palermo Protocol was adopted “taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons”.

(b) Regional instruments

21. In addition to United Nations instruments, there are a number of regional instruments which also contain provisions concerning forced labour:

- The *European Convention on Human Rights (1950)*,<sup>32</sup> Europe’s principal human rights treaty, prohibits slavery and forced or compulsory labour in terms similar, to a large extent, to those which were to be used later in the International Covenant on Civil and Political Rights (Article 4(1), (2) and (3)).<sup>33</sup>
- The *European Social Charter (1961)* and the *Revised European Social Charter (1996)* adopted by the Council of Europe on 18 October 1961 and 3 May 1996 respectively, require contracting parties “to protect effectively the right of the worker to earn his living in an occupation freely entered upon” (Article 1(2)), thus prohibiting the exaction of forced labour.
- The *Council of Europe Convention on Action Against Trafficking in Human Beings (2005)*<sup>34</sup> requires States parties to take measures to prevent and combat human trafficking, to protect the human rights of the victims of trafficking and to promote international cooperation on action against trafficking. This Convention was inspired by the Palermo Protocol<sup>35</sup> which it took as a starting point; but the Convention also took into account other international legal instruments, both universal and regional, which were relevant to combating trafficking in human

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<sup>31</sup> Adopted by the UN General Assembly resolution 55/25 of 15 November 2000. Two other protocols were adopted on the same date, also as supplements to the UN Convention against Transnational Organized Crime; these were the Protocol against the Smuggling of Migrants by Land, Air and Sea, and the Protocol against the illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

<sup>32</sup> European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), as amended by Protocol No. 11 (ETS No. 155), which entered into force on 1 November 1998.

<sup>33</sup> Art. 4, paras 1, 2 and 3 of the European Convention on Human Rights read as follows: “1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this Article, the term ‘forced or compulsory labour’ shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Art. 5 of this Convention ... or during conditional release from such detention; (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; (d) any work or service which forms part of normal civic obligations”.

<sup>34</sup> Adopted on 3 May 2005 at the 925th meeting of the Ministers’ Deputies and signed in Warsaw on 16 May 2005.

<sup>35</sup> See para. 20 above.

beings. The Convention sought to strengthen the protection afforded by those instruments and to raise the standards which they lay down.<sup>36</sup>

- The *American Convention on Human Rights*, which was adopted by the Organization of American States (OAS) in 1969.<sup>37</sup> This Convention prohibits slavery or involuntary servitude, as well as the slave trade and traffic in women (Article 6(1)) and provides that “no one shall be required to perform forced or compulsory labor ... Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner” (Article 6(2)).<sup>38</sup>
- The *African [Banjul] Charter on Human and Peoples’ Rights*,<sup>39</sup> adopted by the Organization of African Unity (OAU) in 1981, stipulates that “all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited” (Article 5).
- The *North American Agreement on Labor Cooperation* (NAALC)<sup>40</sup> of 1993, a side agreement to the North American Free Trade Agreement (NAFTA), includes the prohibition of forced labour among the guiding “Labor Principles” which the signatory parties are committed to promote, subject to each party’s domestic law.
- In the *Social and Labour Declaration (Declaración Sociolaboral)* adopted by the Heads of State of MERCOSUR in Rio de Janeiro on 10 December 1998, the States parties (Argentina, Brazil, Paraguay and Uruguay) undertook to eliminate the use of all forms of forced or compulsory labour, incorporating principles and provisions elaborated in ILO Conventions Nos. 29 and 105.

#### 4. Major developments since 1979 to date

22. The present survey provides an opportunity to review the tangible progress that has been made since 1979 in eliminating forced or compulsory labour – more than 100 cases of progress have been noted by the Committee in the measures adopted by governments to introduce the necessary changes in the legislation or practice or both of their respective countries (see Appendix V). At the same time, the Committee notes that the effective application of these Conventions continues to present problems in certain countries. Problems are often due to the new trends and relatively new phenomena that

<sup>36</sup> See *Council of Europe Convention on Action Against Trafficking in Human Beings*, Explanatory report, Council of Europe, Committee of Ministers, CM Documents, CM(2005)32 Addendum 2 Final, 3 May 2005, para. 6.

<sup>37</sup> The Convention was adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, on 22 November 1969 and entered into force on 18 July 1978.

<sup>38</sup> The American Convention on Human Rights, like the European Convention, defines its concept of forced or compulsory labour negatively, stipulating only the forms of labour *excluded*: work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority; such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person (Art. 6(3)(a)); military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service (Art. 6(3)(b)); service exacted in time of danger or calamity that threatens the existence or the well-being of the community (Art. 6(3)(c)); and work or service that forms part of normal civic obligations (Art. 6(3)(d)).

<sup>39</sup> The African [Banjul] Charter on Human and Peoples’ Rights, adopted on 27 June 1981, OAU doc. CAB/LEG/67/3 rev. 5, entered into force on 21 October 1986.

<sup>40</sup> North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, 13 September 1993.

have emerged in the last decades and have already been noted by the Committee. In its General Report submitted to the International Labour Conference at its 89th Session, 2001, and in a number of comments addressed to individual countries, the Committee has drawn attention to the problem of trafficking in human beings for forced labour purposes, which in recent years has become the subject of renewed international concern. Since the last General Survey on the subject, the Committee has also noted an increasing trend towards two related phenomena in certain countries, which has had a marked effect on the application of Convention No. 29: one is that prisoners in publicly administered prisons are more often working for private companies, both inside and outside prison premises; the other is that in some cases prison administration has been contracted to private companies, and prisoners are working for purposes of production of goods or services in these prisons. In recent years, the Committee has also observed that many countries have adopted legislation intended to introduce a new penal sanction: that of community work, which is regarded as an alternative to imprisonment and may have a bearing on the observance of the Convention. Another growing trend which has invited scrutiny by the Committee under provisions of Convention No. 29 is the adoption in some countries of policies imposing compulsory work as a condition for the receipt of unemployment insurance benefits. Finally, the Committee has examined certain situations in which a requirement to work overtime could represent an infringement of Convention No. 29.

23. Each of the issues mentioned in the preceding paragraph (trafficking in persons for the purpose of exploitation; privatization of prisons and prison labour; compulsory labour performed by persons serving a sentence of community work; compulsory work as a condition for receiving unemployment benefits; compulsory work to be performed outside normal working hours) are considered in Part II of Chapter II.<sup>41</sup>

## 5. Ratifications: Prospects and obstacles

24. The forced labour Conventions are among the most ratified of all ILO Conventions. To date, Conventions Nos. 29 and 105 have received 170 and 164 ratifications respectively.<sup>42</sup> Consequently reports have been requested only from the limited number of countries which were not bound by the obligations arising from these instruments: ten countries<sup>43</sup> in the case of Convention No. 29, and 15<sup>44</sup> in the case of Convention No. 105. It is noted with interest that, following the Office requests for reports from these countries, *Vanuatu* ratified Conventions Nos. 29 and 105 on 28 August 2006, and *Latvia* ratified Convention No. 105 on 2 June 2006.<sup>45</sup> Four countries responded to the request for reports on Convention No. 29, namely *Canada, China, the United States* and

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<sup>41</sup> See paras 73 et seq. below.

<sup>42</sup> This figure does not include the ratifications of Malaysia and Singapore, which denounced Convention No. 105 on 10 January 1990 and 19 April 1979 respectively.

<sup>43</sup> *Afghanistan, Canada, China, Republic of Korea, Latvia, Samoa, Timor-Leste, United States, Vanuatu* and *Viet Nam*.

<sup>44</sup> *China, Japan, Republic of Korea, Lao Peoples' Democratic Republic, Madagascar, Malaysia, Myanmar, Nepal, Qatar, Samoa, Singapore, Solomon Islands, Timor-Leste, Vanuatu* and *Viet Nam*.

<sup>45</sup> Following the request for the report, *Montenegro* on 14 July 2006 became the 179th Member of the ILO. Conventions Nos. 29 and 105 were applicable to Montenegro when it was part of the former Republic of Serbia and Montenegro. The Government of Montenegro should indicate in the near future whether it wishes these Conventions to continue to apply to its territory.

*Viet Nam*, and seven countries to requests for reports on Convention No. 105, namely *China, Japan, Madagascar, Malaysia, Myanmar, Qatar* and *Viet Nam* (see Appendix IV). In addition, the Committee also took into account information contained in the replies of countries which had been sought in connection with the campaign to ratify the fundamental Conventions as well as the annual reports under the follow-up to the Declaration on Fundamental Principles and Rights at Work.

(a) Prospects for ratification of Convention No. 29

25. The information available to the Committee indicates that most countries are planning to ratify the Convention:

- The Government of *Viet Nam* has submitted a comparative survey of its national legislation and Conventions Nos. 29 and 105. The survey concludes that the legislation is largely compatible with Convention No. 29, and recommends ratification of that Convention in the near future. The Government, in a communication received in September 2006, confirmed that the process of ratification of Convention No. 29 had begun.
- As part of the information given in the annual reports under the follow-up to the Declaration, the Government of *Afghanistan* indicated that the process of ratifying Convention No. 29 was under way, while the Government of *Samoa* stated its intention to ratify the Convention.
- The Government of *Timor-Leste* stated at the 93rd Session of the International Labour Conference in June 2005 that it was examining the possibility of ratifying the eight fundamental Conventions.
- In addition, according to information submitted earlier as part of the campaign to ratify the eight fundamental Conventions, the Government of the *Republic of Korea* requested that studies be carried out with a view to removing obstacles to the ratification of Conventions Nos. 29 and 105. In that regard, the Committee notes that a tripartite workshop on the prospects of ratification of these Conventions was organized in May 2006.

26. In the case of three countries, certain obstacles to ratification in the immediate future continue to exist. The Government of *Canada* stated in its report that it was concerned by the Committee's narrow interpretation of Article 2, paragraph 2(c), of the Convention with regard to the role of the private sector. The Government has indicated that, in its view, the Committee of Experts has given such narrow scope to the condition that prison labour must be carried out "under the supervision and control of a public authority", stipulated in this Article, that almost any form of prison labour that involves private enterprises would constitute a contravention of the Convention. In Canada, public-private partnerships which offer prisoners meaningful work experiences are considered an essential element of modern prison policies, and the Government expresses the view that such arrangements should not necessarily constitute a violation of the Convention. The Government considers that this question requires further examination, consistent with a more progressive interpretation of Convention No. 29. It has also indicated that it will consider ratifying the Convention once it is satisfied that public-private initiatives benefiting prisoners by providing them with meaningful work experiences are not considered a violation of the Convention. In this regard, the

Committee refers the Government to its analysis of developments in the area of prison labour.<sup>46</sup>

27. The Government of *China* stated that at the moment its national law and practice do not fully meet the requirements of the Convention. The Government and employers' organizations are currently implementing technical cooperation projects with the ILO in the area of forced labour. The Government has indicated that it will consider ratification of the Convention at the appropriate time. The *All-China Federation of Trade Unions* has stated that it favours rapid ratification of the Convention. The *Federation of Chinese Enterprises*, on the other hand, considers that the Convention appears to define forced labour in excessively broad terms (in particular with regard to overtime work<sup>47</sup> and wages). In the light of the level of economic development and the state of industrial relations in the country, the *Federation of Chinese Enterprises* considers that the conditions for ratification of the Convention by China are not yet met.

28. Lastly, the Government of the *United States* has stated in its report that ratification of the Convention is not envisaged for the time being. It has also indicated that the Tripartite Advisory Panel on International Labour Standards suspended further examination on the Convention in the mid-1980s and has not taken up the issue since then, because of questions about the potential effects of this Convention on US prison practices. The Government considers that the primary obstacle to ratification of Convention No. 29 by the United States is the continuing concern that the Convention could be construed and applied to limit the extent to which the private sector may be involved with inmate labour.

(b) Prospects for ratification of Convention No. 105

29. Available information indicates that almost all countries have indicated their intention to ratify the Convention:

- The Government of *Qatar* in its report stated that the trend was in favour of ratification.
- The Government of *Madagascar* reiterated its willingness to eliminate forced labour and stated that, following a national technical workshop on forced labour in December 2005, a resolution was adopted recommending that the ratification process be speeded up and national laws and regulations be brought into line with the forced labour Conventions. More recently, in November 2006 the Government informed the Office that the National Assembly of Madagascar had adopted an Act to ratify the Convention.
- The Government of *Myanmar* indicated that ratification of the Convention will be considered once a new constitution has been drawn up and new labour legislation in conformity with it has been adopted.
- In *Viet Nam*, the study on the compatibility of national legislation (referred to above) with the forced labour Conventions emphasizes that, while much of the national legislation is in conformity with Convention No. 105, certain provisions may be incompatible with Article 1(b) and (c) of the Convention and the legislation needs to be amended or supplemented. In a later communication received in

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<sup>46</sup> See paras 98–122 below.

<sup>47</sup> Concerning the imposition of work to be performed outside normal working hours, see paras 132–134 below.

September 2006 in connection with the campaign for ratification of the fundamental Conventions, the Government stated that it had initiated the ratification procedure. Once the forced labour Conventions have been ratified, the Government will formulate a plan of action with a view to amending or supplementing its legislation to bring it into line with the Conventions.

- The Governments of *Samoa* and the *Solomon Islands*, in their annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at work, indicated their intention to ratify the Convention.
  - The Government of the *Lao People's Democratic Republic* stated, during the 95th Session of the International Labour Conference in June 2006, that it placed great importance on the fundamental Conventions and was examining them with a view to ratification as soon as possible.
  - The Government of *Nepal* stated during the same session that it was planning to ratify the Convention.
  - Similarly, at the 93rd Session of the Conference in June 2005, the Government of *Timor-Leste* indicated that it was considering the possibility of ratifying the Convention.
  - The Government of the *Republic of Korea*, as indicated above in connection with Convention No. 29, is taking steps to ratify Convention No. 105.
30. Only two countries referred to obstacles to the ratification of the Convention:
- Without giving any specific details, the Government of *China* indicated that, as with Convention No. 29, national law and practice do not fully meet the requirements of the Convention and that it planned to ratify the instrument at the appropriate time, while the *All-China Federation of Trade Unions* indicated that it favoured rapid ratification.
  - The Government of *Japan* drew attention to the fact that the interpretation of the precise scope of forced labour practices prohibited by the Convention was not clear enough, and that a survey on the conformity of the relevant national legislation with the Convention was needed.

## 6. Information available and difficulties encountered

31. As indicated above, the present General Survey is based both on reports supplied under article 19 of the ILO Constitution by countries which have not ratified the Conventions concerned and on the reports supplied under articles 22 and 35 of the Constitution by countries bound by these instruments. The total number of reports supplied under article 19 is four in respect of the Forced Labour Convention, 1930 (No. 29), and seven in respect of the Abolition of Forced Labour Convention, 1957 (No. 105).<sup>48</sup> The Committee regrets that, at the time of its sittings, no report under article 19 for the period under consideration had been received from a certain number of countries<sup>49</sup> which have not ratified one or both Conventions. The information provided

<sup>48</sup> Indications on the countries which have supplied these reports are given in Appendix IV.

<sup>49</sup> Countries which have not supplied reports requested under article 19 of the ILO Constitution: *Afghanistan*, *Republic of Korea*, *Lao People's Democratic Republic*, *Nepal*, *Samoa*, *Solomon Islands*, *Timor-Leste*.

under the follow-up procedure to the 1998 Declaration on Fundamental Principles and Rights at Work has also been taken into account.

32. In accordance with its usual practice, the Committee, in addition to examining the information contained in the reports, has also sought to take account of relevant legislation and other relevant material available. Since it is very rare for forced labour issues to be dealt with in a single all-embracing enactment, it is necessary, for each country, in addition to examining the constitutional provisions, to look at:

- enactments dealing particularly with labour issues, for example, labour codes, legislation on employment and organization and functioning of employment services and agencies, legislation on trade unions and settlement of labour disputes, etc.;
- criminal laws, penal codes and codes of criminal procedure;
- laws on sedition and acts prejudicial to the security of the State;
- laws on the press and other media, censorship, societies, political parties, meetings and assemblies, street marches, rallies and demonstrations, etc.;
- prison labour regulations;
- laws on cases of force majeure and emergency;
- laws on compulsory military service or alternative civic service;
- laws on indigenous and tribal peoples;
- laws on trafficking in human beings.

Another difficulty is that it is obviously not always possible to appreciate the scope of legislation simply by examining the texts. It is necessary to also carefully study and assess the way in which these legislative texts are actually implemented in practice – particularly the court decisions which define or illustrate their scope. Only then can it be ascertained whether the standards laid down in the Conventions are really being complied with.

33. As the Committee has already observed in its earlier survey on this subject,<sup>50</sup> a survey on the situation concerning the implementation of the standards on forced labour differs from surveys relating to international labour standards in other fields. Normally, surveys of this kind are designed to ascertain a positive situation, namely, to what extent national law and practice meet, or even go beyond, the positive standards set in the international instruments under consideration. The forced labour Conventions require assessment to be made of a negative situation, namely that certain practices do not exist. As has already been mentioned, in the case of the forced labour Conventions the Committee has to scrutinize a wide range of national laws and regulations in order to satisfy itself that no form of forced or compulsory labour falling within the scope of these Conventions might be imposed as a result of the practical application of such legislation. In the light of the above considerations, the Committee has considered it appropriate on this occasion – in contrast to its usual practice in surveys relating to instruments calling for positive national standards – not to append to this General Survey a comprehensive list of legislation consulted, but to confine itself to indicating relevant

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<sup>50</sup> See *Forced labour*, General Survey of 1968, para. 16.

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national provisions in regard to the specific cases referred to in the survey, as was the case in the two previous General Surveys on this subject.

## 7. Structure of the survey

34. The two previous surveys on the subject prepared in 1968 and 1979<sup>51</sup> reviewed the various kinds of forced or compulsory labour covered by the Conventions by dividing them into two broad categories: forced or compulsory labour for the purpose of production or service and forced or compulsory labour as a sanction or punishment. While recognizing the usefulness of such an approach, the Committee has considered that there is the possibility of overlap of these main categories of forced labour,<sup>52</sup> such as where labour exacted as a means of coercion or punishment is also utilized for the execution of works of economic importance. For this reason, as well as for the sake of better juridical clarity and in order to make it more readable, the present General Survey will deal successively with Convention No. 29 (Chapter II) and Convention No. 105 (Chapter III), following as much as possible the contents of the two Conventions. Thus, the analysis of the information available on the various forms of forced labour falling under the scope of Convention No. 29 and on the present-day problems of implementation of the Convention is preceded by the detailed review of the definition of the term “forced or compulsory labour” and exceptions from the scope of the Convention (Chapter II). Various problems of application of Convention No. 105 are examined in connection with its substantive provisions prohibiting the exaction of any form of forced or compulsory labour in the five specific situations listed in the Convention (Chapter III). The international action taken in the field of forced labour, including the short outline of the relevant ILO standards and other international instruments in this area, is briefly sketched in the introduction (Chapter I).

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<sup>51</sup> See paras 4 and 5 above.

<sup>52</sup> See *Forced labour*, General Survey of 1968, para. 15; *Abolition of forced labour*, General Survey of 1979, para. 15.

## Chapter II

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### Forced Labour Convention, 1930 (No. 29)

#### Part I. Definition of forced or compulsory labour and exceptions from the scope of the Convention

##### 1. Definition of forced or compulsory labour

35. For the purposes of the Forced Labour Convention, 1930 (No. 29), the term “forced or compulsory labour” is defined 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”.<sup>53</sup> The three elements of this definition (*work or service, menace of any penalty and voluntary offer*) are considered below.

##### (a) Work or service

36. As the Committee has already observed in its earlier surveys on this subject,<sup>54</sup> the exaction of work or service may be distinguished from cases in which an obligation is imposed to undergo education or training. The principle of compulsory education is recognized in various international instruments as a means of securing the right to education,<sup>55</sup> and it is also provided for in the ILO instruments.<sup>56</sup> A distinction between work and vocational training is drawn in certain other international labour standards.<sup>57</sup> The Committee of Experts has also pointed out that a compulsory scheme of vocational training, by analogy with and considered as an extension to compulsory general education, does not constitute compulsory work or service within the meaning of Convention No. 29.<sup>58</sup> However, it should be borne in mind that vocational training

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<sup>53</sup> Art. 2, para. 1, of the Convention.

<sup>54</sup> See *Forced labour*, General Survey of 1968, para. 26; *Abolition of forced labour*, General Survey of 1979, para. 20.

<sup>55</sup> Universal Declaration of Human Rights, art. 26; International Covenant on Economic, Social and Cultural Rights, arts. 13 and 14.

<sup>56</sup> Provisions concerning the prescription of a school-leaving age appear, inter alia, in Art. 15, para. 2, of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and in Art. 19, para. 2, of the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82).

<sup>57</sup> In particular, the Special Youth Schemes Recommendation, 1970 (No. 136), indicates that schemes of education and training involving obligatory enrolment of unemployed young people are compatible with the Conventions on forced labour, but requires prior consent for any schemes involving an obligation to serve (Para. 7(1) and (2)(a) and (b)).

<sup>58</sup> *Forced labour*, General Survey of 1968, para. 26; *Abolition of forced labour*, General Survey of 1979, para. 20, referring also to earlier sources.

usually entails a certain amount of practical work, and for that reason, the distinction between training and employment is sometimes difficult to draw. It is therefore only by reference to the various elements involved in the general context of a particular scheme of training that it becomes possible to determine whether such scheme is unequivocally one of vocational training or on the contrary involves the exaction of work or service within the definition of “forced or compulsory labour”.<sup>59</sup>

(b) Menace of any penalty

37. The definition of “forced or compulsory labour” covers work or service which is exacted “under the menace of any penalty”. It was made clear during the consideration of the draft instrument by the Conference that the penalty here in question need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges.<sup>60</sup> This may occur, for instance, where persons who refuse to perform voluntary labour may lose certain rights, advantages or privileges, in a situation when such rights, privileges or other benefits (e.g. promotion, transfer, access to new employment, the acquisition of certain consumer goods, housing or participation in university programmes) depend on the merits that have been accumulated and noted in the worker’s work book.<sup>61</sup>

(c) Voluntary offer

38. In the text of the Convention, the criterion of not having offered oneself voluntarily is distinct from that of “the menace of any penalty”. However, where consent to work or service was already given “under the menace of a penalty”, the two criteria overlap: there is no “voluntary offer” under threat. In considering the freedom to “offer oneself voluntarily” for work or service, account must be taken of the legislative and practical framework which guarantees or limits that freedom.<sup>62</sup>

39. An external constraint or indirect coercion interfering with a worker’s freedom to “offer himself voluntarily” may result not only from an act of the authorities, such as a statutory instrument, but also from an employer’s practice, e.g. where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer; such practices represent a clear violation of the Convention.<sup>63</sup> However, the employer or the State are not accountable for all external

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<sup>59</sup> *ibid.* Reference may also be made to various aspects of training dealt with in the Human Resources Development Recommendation, 1975 (No. 150).

<sup>60</sup> ILC, 14th Session, Geneva, 1930, *Record of Proceedings*, p. 691; see also *Forced labour*, General Survey of 1968, para. 27; *Abolition of forced labour*, General Survey of 1979, para. 21.

<sup>61</sup> See *Cuba – RCE*, 1994, p. 94. The Committee has noted with satisfaction that resolution No. 1 of 5 January 1993 has repealed resolution No. 590 of 11 December 1980, of the Ministry of Labour and Social Security, which provided for inclusion in workers’ labour records of their accumulated merits awarded, among other things, for two categories of voluntary work, namely participation in permanent activities and in voluntary labour organized by the trade union.

<sup>62</sup> Where national law provides for a general obligation to work, i.e. makes it a legal obligation for all able-bodied citizens who are not receiving some kind of instruction to engage in a gainful occupation, the mere freedom to choose the type of work or service is not sufficient to ensure observance of the Convention (*Abolition of forced labour*, General Survey of 1979, para. 45). See also para. 87 below.

<sup>63</sup> See paras 73 et seq. below. See also e.g. report of the Commission of Inquiry appointed under art. 26 of the Constitution of the ILO to examine the observance of certain international labour Conventions by the *Dominican Republic* and *Haiti* with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic (ILO, *Official Bulletin*, Special Supplement, Vol. LXVI, 1983, Series B). See also the United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and

constraints or indirect coercion existing in practice: for example, the need to work in order to earn one's living could become relevant only in conjunction with other factors for which they are answerable.<sup>64</sup>

40. As regards a possibility to revoke a freely given consent to undertake work or service, the Committee has considered, in connection with workers' freedom to leave their employment, that, even in cases where employment is originally the result of a freely concluded agreement, the workers' right to free choice of employment remains inalienable. Accordingly, the effect of statutory provisions preventing termination of employment of indefinite duration (or very long duration) upon notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Convention. This is also the case when a worker is required to serve beyond the expiry of a contract of fixed duration.<sup>65</sup> The Committee has previously addressed such a restriction on the freedom to leave one's employment in different countries, in particular on career military personnel (in time of peace), on persons in government service and on other categories of workers.<sup>66</sup>

41. The Committee also noted that, in relation to child labour, the question arises whether, and under what circumstances, a minor can be considered to have offered himself or herself "voluntarily" for work or service and whether the consent of the parents is required and may be considered sufficient.<sup>67</sup> Most national legislation has established a minimum age limit for concluding a labour contract, which may coincide with the age at which compulsory school attendance ends. However, employment that is likely to jeopardize health, safety or morals is generally prohibited for persons below 18 years of age, in conformity with the relevant ILO Conventions,<sup>68</sup> so that neither the children nor those having parental authority over them may give valid consent to their admission to such employment. The Committee has regularly raised cases of exploitation of children under Convention No. 29,<sup>69</sup> and has also requested that minors engaged in a military career be able themselves to terminate their engagement.<sup>70</sup>

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Punish Trafficking in Persons, Especially Women and Children (United Nations doc. A/55/383 and Add.1); Art. 3, subpara. (b), of the Protocol specifies that "The consent of a victim of trafficking in persons to the intended exploitation set forth in subpara. (a) of this article shall be irrelevant where any of the means [of coercion, fraud, deception, abuse of power, etc.] set forth in subpara. (a) have been used".

<sup>64</sup> Such factors might be, for example, legislation under which persons requesting asylum are normally prohibited from taking up employment, but these very persons may be called upon to perform "socially useful work" which they have no choice but to carry out if they are to maintain their welfare entitlements (see RCE, 1984, p. 77, observation concerning the *Federal Republic of Germany*).

<sup>65</sup> See *Abolition of forced labour*, General Survey of 1979, para. 68.

<sup>66</sup> See paras 96–97 below and corresponding footnotes 249–252. See also *Abolition of forced labour*, General Survey of 1979, paras 69 and 72.

<sup>67</sup> See, for example, *Pakistan* – RCE, 1996, p. 90; see also report of the Commission of Inquiry appointed under art. 26 of the Constitution of the ILO to examine the observance by *Myanmar* of the Forced Labour Convention, 1930 (No. 29) (ILO, *Official Bulletin*, Special Supplement, Vol. LXXXI, 1998, Series B, para. 206).

<sup>68</sup> Minimum Age Convention, 1973 (No. 138), Art. 3, para. 1; Worst Forms of Child Labour Convention, 1999 (No. 182), Arts. 1, 2 and 3, para. (d).

<sup>69</sup> See, for example, *Haiti* – RCE, 2005, p. 156; *India* – RCE, 2005, pp. 159–160; *Indonesia* – RCE, 2005, p. 160; *Sri Lanka* – RCE, 2004, pp. 163–164; *Thailand* – RCE, 2006, p. 175.

<sup>70</sup> See *Abolition of forced labour*, General Survey of 1979, para. 71; see also *Belgium* – RCE, 1982, p. 62 (the Royal Order of 18 May 1981, to amend section 15 of the Royal Order of 8 November 1977 on the enlistment of volunteers in peacetime, introduced a provision allowing a young member of the armed forces engaged on a temporary basis before reaching the age of 18 years to obtain the termination of his engagement from his

## 2. Exceptions from the scope of the Convention

42. For the purposes of the Convention, certain forms of compulsory work or service, which would otherwise have fallen under the general definition of “forced or compulsory labour”, are expressly excluded from its scope.<sup>71</sup> These exceptions are subject to the observance of certain conditions which define their limits. The Committee is therefore obliged to verify in all cases where ratifying States have recourse to the excepted categories of compulsory work or service that the conditions set by the Convention are observed.

### (a) Compulsory military service

43. The Convention exempts from its provisions “any work or service exacted in virtue of compulsory military service laws for work of a purely military character”.<sup>72</sup> The purpose and scope of this exception were explained in the course of the discussions which took place while the draft Convention was under consideration by the Conference, where there was general agreement that compulsory military service as such should remain beyond the purview of the Convention. In particular, considerable discussion occurred about systems existing at the time in various territories, whereby persons liable to military service but not in fact incorporated in the armed forces, might be called up for public works. It was pointed out that the reason and justification for compulsory military service was the necessity for national defence, but that no such reason or justification existed for imposing compulsory service obligations for the execution of public works, and therefore, to simply exclude compulsory military service from the scope of the Convention would without any further condition mean to allow compulsory public works implicitly, which would be contrary to the main purpose of the Convention – namely the abolition of forced or compulsory labour in all its forms. The Conference accordingly decided that compulsory military service should be excluded from the scope of the Convention only if used “for work of a purely military character”.<sup>73</sup>

44. The condition of a “purely military character”, aimed specifically at preventing the call-up of conscripts for public works, has its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of forced or compulsory labour “as a method of mobilizing and using labour for purposes of economic development”.<sup>74</sup> There are, however, specific circumstances in which a non-military activity performed within the framework of compulsory military service or as an

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commanding officer, if he applies for it before reaching the age of 18 years); *Uganda* – RCE, 2006 (the Government has indicated that, under the National Resistance Army (Conditions of Service) (Men) Regulations, No. 7 of 1993, a person below 18 years of age or above 30 years of age shall not be employed in the Ugandan army (section 5(4)).

<sup>71</sup> Art. 2, para. 2, of the Convention.

<sup>72</sup> Art. 2, para. 2(a), of the Convention.

<sup>73</sup> See *Forced labour*, Report I, ILC, 14th Session, Geneva, 1930, pp. 137–140; ILC, 14th Session, Geneva, 1930, *Record of Proceedings*, Vol. I, p. 301.

<sup>74</sup> See below Ch. III, paras 167–170 concerning provisions of Art. 1(b) of Convention No. 105. The ILC reasserted this principle when discussing the draft Special Youth Schemes Recommendation, 1970 (No. 136); the Conference heeded the incompatibility with the forced labour Conventions of a proposal under which young people could have been obliged to take part in special employment schemes directed to national development, provided they were undertaken within the framework of compulsory military service or as an alternative to such service – see ILC, 53rd Session, Geneva, 1969, *Record of Proceedings*, paras 37–60; and ILC, 54th Session, Geneva, 1970, *Record of Proceedings*, para. 23. See also *Abolition of forced labour*, General Survey of 1979, para. 25.

alternative to such service remains outside the scope of Convention No. 29. In the first place, conscripts, like any other citizens, may be called to work in cases of emergency, as defined in the Convention,<sup>75</sup> and their use in such circumstances for non-military purposes would then be covered by the other exception in respect of work or service exacted in cases of emergency. Also, it was accepted by the Conference during the preparation of the Convention that conscripts performing their service in engineering or similar units may be made to join in the building of roads and bridges as a part of their military training.<sup>76</sup> Lastly, while the Convention, unlike certain more recent international instruments,<sup>77</sup> does not mention specifically the issue of conscientious objectors, the Committee has considered<sup>78</sup> that in such cases conscientious objectors are in a more favourable position than in countries where their status is not recognized and where refusal to serve is punishable with imprisonment. The exemption of conscientious objectors from compulsory military service, coupled with an obligation to perform an alternative service, is therefore a privilege granted to individuals on request, in acknowledgement of freedom of conscience.

45. However, more generally, in a situation where a call-up for military service laws may be used to engage in work of a non-military character, when a choice is given between military service proper and non-military work, the Committee has considered that the existence of such a choice does not in itself exclude the application of the Convention. That is because the choice between different forms of service is made within the framework and on the basis of a compulsory service obligation.<sup>79</sup> As the services in question, whether non-military or purely military, result from compulsory call-up, the choice is not between voluntary work and compulsory service, but between two forms of compulsory service, one of which is excluded from the scope of the Convention, while the other is not. In examining whether it is a privilege granted to individuals on their request or whether, on the contrary, national service is being used as a means of pursuing economic and social development through the use of compulsory labour, due account should be taken of the number of persons concerned and the conditions in which they make their choice.<sup>80</sup>

46. It should be kept in mind that the provisions of the Convention relating to compulsory military service do not apply to career military personnel. The Convention therefore does not deal with the use of persons serving in the armed forces on a voluntary basis and consequently is not opposed to the performance of non-military work by these persons. At the same time, for the above reason, the provisions of the Convention relating to compulsory military service cannot be invoked to deprive career military personnel of the right to leave the service in peacetime within a reasonable period, e.g. by means of notice of reasonable length.<sup>81</sup>

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<sup>75</sup> Art. 2, para. 2(d), of the Convention – see paras 62–64 below.

<sup>76</sup> See *Forced labour*, Report I, ILC, 14th Session, Geneva, 1930, p. 138.

<sup>77</sup> International Covenant on Civil and Political Rights, Art. 8; European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 4; American Convention on Human Rights, art. 6(3)(b).

<sup>78</sup> See *Forced labour*, General Survey of 1968, para. 34; *Abolition of forced labour*, General Survey of 1979, para. 30.

<sup>79</sup> See *Forced labour*, General Survey of 1968, para. 35; *Abolition of forced labour*, General Survey of 1979, para. 31.

<sup>80</sup> *Abolition of forced Labour*, General Survey of 1979, para. 31.

<sup>81</sup> *ibid.*, para. 33. See also paras 96–97 below.

(b) Normal civic obligations

47. The Convention exempts from its provisions “any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country”.<sup>82</sup> Three “normal civic obligations” are specifically mentioned in the Convention as exceptions from its scope, namely: compulsory military service,<sup>83</sup> work or service in cases of emergency<sup>84</sup> and “minor communal services”.<sup>85</sup> Other examples of normal civic obligations of citizens could be compulsory jury service and the duty to assist a person in danger.<sup>86</sup> As the Committee has pointed out in its earlier surveys on the subject, the exception of “normal civic obligations” must be read in the light of other provisions of the Convention and cannot be invoked to justify recourse to forms of compulsory service which are contrary to such other provisions.<sup>87</sup> Thus, it is not possible to consider as “normal civic obligations”, within the meaning of Article 2, paragraph 2(b), of the Convention, work undertaken for public purposes that is covered by other provisions of the Convention, such as public works of general importance or compulsory national development service, etc.<sup>88</sup> In addition, the use of such work is prohibited by Convention No. 105 in so far as it constitutes “a method of mobilizing and using labour for purposes of economic development”.<sup>89</sup>

(c) Compulsory labour as a consequence of a conviction in a court of law

48. The Convention exempts from its provisions “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations”.<sup>90</sup> Unlike the other exceptions provided for in the Convention which concern cases of calling up persons for performing particular work or service, this exception relates to the consequences of punishment imposed as a result of the conduct of an individual. Compulsory labour excluded under this provision of the Convention may take the form of compulsory prison labour or labour exacted following the imposition of other kinds of penalty, such as a sentence of community work.<sup>91</sup>

49. In relation to prison labour, the Convention makes no distinction between the system of “hard labour” and the “normal” work exacted from persons sentenced to imprisonment, since there is no fundamental difference between the two systems, as regards compulsion to labour. Reasons for the exemption of prison labour were that

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<sup>82</sup> Art. 2, para. 2(b), of the Convention.

<sup>83</sup> Art. 2, para. 2(a), of the Convention. See paras 43–46 above.

<sup>84</sup> Art. 2, para. 2(d), of the Convention. See paras 62–64 below.

<sup>85</sup> Art. 2, para. 2(e), of the Convention. See paras 65–66 below.

<sup>86</sup> See *Forced labour*, General Survey of 1968, para. 37; *Abolition of forced labour*, General Survey of 1979, para. 34.

<sup>87</sup> *ibid.*

<sup>88</sup> See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), ILC, 46th Session, Geneva, 1962, Part Three: Forced labour, para. 46.

<sup>89</sup> See below Ch. III, paras 167–170 concerning provisions of Art. 1(b) of Convention No. 105.

<sup>90</sup> Art. 2, para. 2(c), of the Convention.

<sup>91</sup> See paras 123–128 below.

imprisonment was historically associated with compulsory labour of various types required to be performed by prisoners initially on a punitive and retributive basis, then later as a form of rehabilitation as described in the ILO Memorandum on Prison Labour.<sup>92</sup> The compulsory form of its exaction was succinctly stated in the ILO Memorandum: “Except in a few rare cases, the prisoner works under compulsion. He cannot choose his employment as the free worker does, but must usually do whatever work is assigned to him. The conditions in which this work is carried out are fixed by unilateral decision of the State; the prisoner has no voice in the matter and cannot as a rule appeal to the courts if he is the victim of injustice.”<sup>93</sup> The benefits of exempting prison labour under the Convention were in the interest of society in general. This interest may be direct, when the labour of prisoners is deployed on public activities such as the construction and maintenance of prisons, roads, public parks and other public works.<sup>94</sup> In addition there were indirect societal benefits as well as personal benefits to prisoners themselves when performing this labour. It is described in the ILO Memorandum in the following terms: “The best method of maintaining a prisoner’s working capacity is to employ him on useful work. The idea that work for prisoners is in all circumstances an evil is a survival from the days when the object of the sentence was to extirpate the criminal from society. Not until it is understood that work is a beneficial distraction for the prisoner will the right to work be recognized. The recognition of this right is an urgent social necessity.”<sup>95</sup>

50. Compulsory labour performed by convicted persons is excluded from the scope of the Convention only if a certain number of conditions are met. The nature and the scope of these conditions are considered below.

(i) *Conviction in a court of law*

51. The Convention provides that work can only be exacted from a person “as a consequence of a conviction in a court of law”. In the first place, it follows from the above wording that persons who are in detention but have not been convicted – such as persons awaiting trial or persons detained without trial – should not be obliged to perform labour (as distinct from certain limited obligations intended merely to ensure cleanliness). However, the Convention does not prevent work from being made available to such persons at their own request, to be performed on a purely voluntary basis.<sup>96</sup> Since the last General Survey on the subject, the Committee has noted the repeal of certain provisions allowing the exaction of penal labour from persons detained without trial.<sup>97</sup> In other cases the governments concerned have assured the Committee that the

<sup>92</sup> See the ILO Memorandum on Prison Labour, *International Labour Review*, Vol. XXV, 1932, pp. 313–314 [hereafter: ILO Memorandum on Prison Labour].

<sup>93</sup> *ibid.*, p. 499.

<sup>94</sup> *ibid.*, p. 324.

<sup>95</sup> *ibid.*, p. 503.

<sup>96</sup> See *Forced labour*, General Survey of 1968, para. 77; *Abolition of forced labour*, General Survey of 1979, para. 90. Concerning the issue of voluntariness, see paras 38–40 above.

<sup>97</sup> Countries which have ratified the Convention: *Colombia* – RCE, 1995, p. 88 (section 79 of the Prison and Penitentiary Code (Act No. 65 of 1993) provides for an obligation to work in prison establishments only for persons who have been convicted. Provisions imposing compulsory labour on all detainees have been repealed); *Nigeria* – RCE, 1982, p. 75 (the Constitution (Certain Consequential Repeals) Act, 1979, has repealed the State Security (Detention of Persons) Acts, under which detained persons were to be confined under the same conditions as may be imposed on persons duly convicted of an offence by a court of law); *Panama* – RCE, 1982, p. 78 (Decree No. 26 of 30 November 1981 has amended sections 3 and 4 of Decree No. 467 of 1942, under

provisions in question are currently being amended or are no longer used and would be repealed.<sup>98</sup>

52. Secondly, it follows from the above wording that compulsory labour imposed by administrative or other non-judicial bodies or authorities is not compatible with the Convention. By using the words “in a court of law” the Convention implicitly demands that penal labour cannot be imposed unless the guarantees laid down in the general principles of law recognized by the community of nations are observed, such as the presumption of innocence, equality before the law, regularity and impartiality of proceedings, independence and impartiality of courts, guarantees necessary for defence, clear definition of the offence and non-retroactivity of penal law.<sup>99</sup> Hence, no compulsory labour may be imposed unless the person concerned has been found guilty of an offence,<sup>100</sup> as a result of the due process of law. However, in some countries the legislation still empowers the administrative authorities to impose compulsory labour under provisions relating to various kinds of offences without a court trial. In some cases, the Committee has noted with satisfaction that the provisions in question have been repealed.<sup>101</sup>

(ii) *Supervision and control of a public authority*

53. Under the terms of the Convention, compulsory work or service exacted from a convicted person is excluded from its scope only if “carried out under the supervision and control of a public authority”. The reason for this requirement is to prevent the conditions under which prisoners work being determined otherwise than by the public authorities, in a situation in which the workers concerned do not enjoy the rights of free workers. The supervision of a “public authority” is therefore required to ensure that conditions remain within acceptable limits.<sup>102</sup> In state prisons, a competent public

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which persons in detention awaiting trial could be required to work in provincial agricultural colonies); *Peru* – RCE, 1987, pp. 99 and 100 (Legislative Decree No. 330 of 6 March 1985 has repealed Legislative Decree No. 17581 of 15 April 1969, which prescribed compulsory labour for all prisoners, including those awaiting trial).

<sup>98</sup> Countries which have ratified the Convention: *Comoros* – RCE, 2005, p. 148 (Order No. 68-353 of 6 April 1968, section 1, under which labour is compulsory for persons in detention. The Government has indicated that in practice remand prisoners are not required to perform any kind of labour and expressed its intention to repeal the Order); *Democratic Republic of the Congo* – RCE, 2006, p. 139 (the Committee requested the Government to adopt measures to formally repeal Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from detainees who have not been convicted, though the Government indicated that the 1938 Ordinance has fallen into disuse and that, under section 64.3 of the Ordinance of 1965 governing prison labour, detainees who have not been convicted are not subject to the obligation to work); *Paraguay* – RCE, 2006, p. 168 (under section 39 of Act No. 210 of 1970, work shall be compulsory for detainees, which include not only convicted persons, but also persons subjected to security measures in a prison establishment (section 10). The Government has indicated that a new Prison Code, which was under examination, would replace the 1970 Act).

<sup>99</sup> See *Forced labour*, General Survey of 1968, para. 78; *Abolition of forced labour*, General Survey of 1979, para. 94. See also Arts. 7–11 of the Universal Declaration of Human Rights, and Arts. 14 and 15 of the International Covenant on Civil and Political Rights.

<sup>100</sup> See *Forced labour*, General Survey of 1968, para. 77; *Abolition of forced labour*, General Survey of 1979, para. 90.

<sup>101</sup> Countries which have ratified the Convention: *Hungary* – RCE, 1980, p. 64 (section 126 of Legislative Decree No. 11 of 1979 of the Council of the Presidency of the Republic respecting the application of penalties and procedures has repealed section 73 of Act No. 1 of 1968, which conferred powers to impose penalties involving an obligation to work on non-judicial authorities); *Nicaragua* – RCE, 1994, pp. 116 and 117 (Act No. 124 of July 1991 to reform penal procedures has repealed Decree No. 559, which empowered the police to impose penalties involving compulsory labour).

<sup>102</sup> See RCE – General Report, 1998, para. 122.

authority responsible both for the organization and supervision of prison labour is the prison administration, which implements the penal policy of the State, following the provisions of the legislation concerning the execution of penal sentences. In connection with the work of prisoners in privately run prisons, which is a relatively new phenomenon,<sup>103</sup> the Committee has raised a question in a number of cases about the degree to which this “supervision and control” is actually being exercised by a “public authority”.<sup>104</sup> Though no general prescription may be laid down which would cover all the possible arrangements for this, the Committee has considered that, if the supervision and control are restricted to a public authority to inspect the premises periodically, this by itself would not appear to meet the requirements of the Convention for supervision and control.<sup>105</sup> As regards a sentence of community work, it is usually carried out under the supervision and control of public officials responsible for the execution of this kind of sentence, such as probation officers.

(iii) *Prohibition on hiring convicted persons to, or placing them at the disposal of, private individuals, companies or associations*

54. The Convention further provides that compulsory work or service exacted from a convicted person is excluded from its scope only if the said person “is not hired to or placed at the disposal of private individuals, companies or associations”. When adopting this provision, the Conference expressly rejected an amendment which would have permitted the hiring of prison labour to private undertakings engaged in the execution of public works.<sup>106</sup> It is therefore not sufficient to limit the use of prison labour to works of public interest, since such works may be carried out by private undertakings. On the other hand, this provision is not limited to work outside penitentiary establishments, but applies equally to workshops which may be operated by private undertakings inside prison premises.<sup>107</sup>

55. In regard to the prohibition on hiring convicted persons to, or placing them at the disposal of, private individuals, companies or associations, and its relationship with the condition of supervision and control of a public authority, the Committee has had the occasion to point out that both conditions are necessary in order to exclude compulsory prison labour from the scope of the Convention. It seems clear from the wording of Article 2, paragraph 2(c), of the Convention that the two conditions apply cumulatively: the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private individuals, companies or associations.<sup>108</sup> If either of the two conditions is not observed,

<sup>103</sup> See paras 98–122 below.

<sup>104</sup> See, for example, *Australia* – RCE, 1999, p. 109; *France* – RCE, 1996, p. 80; *United Kingdom* – RCE, 1998, pp. 130–136.

<sup>105</sup> See RCE – General Report, 1998, para. 124.

<sup>106</sup> ILC, 14th Session, Geneva, 1930, *Record of Proceedings*, pp. 305–308.

<sup>107</sup> See *Abolition of forced labour*, General Survey of 1979, para. 98.

<sup>108</sup> See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 86th Session, 1998, Part One: General Report, III. Action concerning the elimination of forced labour, para. 116; *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 89th Session, 2001, Part One: General Report, II. Application of the Forced Labour Convention, 1930 (No. 29), para. 119.

the situation is not excluded from the scope of the Convention, and compulsory labour exacted from convicted persons under these circumstances is prohibited in virtue of Article 1, paragraph 1, of the Convention.

56. When examining the observance of the Convention in certain countries, particularly where private entities are involved in the process of utilization of prison labour as organizers, supervisors or beneficiaries of the product, the Committee observed that the meaning of the terms “hired to” or “placed at the disposal of” private individuals, companies or associations requires guidance and clarification.<sup>109</sup> Both terms imply that the prisoner has not given his/her agreement to the arrangement.

57. *Hired to.* The normal meaning of the term “hired to” as understood at the time of the adoption of the Convention can be seen in the description of the *lease system*, the *general contract system* and the *special contract system* given in the ILO Memorandum on Prison Labour referred to above.<sup>110</sup>

- (a) *The lease system.* This system is based on a contract between the State and a contractor, under which the prisoners are hired out to the latter, who is often styled the lessee. The contractual obligations of the contractor are the boarding, lodging, clothing, and guarding of the prisoners, and the payment of an agreed per capita rate, in return for which he acquires the right to employ the prisoners for the duration of the contract. In more recent years provision has been made in such contracts for periodic inspection by state officials.
- (b) *The general contract system.* Under this system all the prisoners are hired out to a single contractor, but, in contrast to the lease system, the State supplies the buildings and the necessary equipment for housing the prisoners and guards them. For the latter purpose the State appoints and pays officials. The contractor feeds the prisoners, provides the raw material and tools, and pays the State a lump sum. In return the State hands over the prisoners’ labour to the contractor.
- (c) *The special contract system.* As under the general contract system, the State supplies the buildings and the necessary equipment for housing the prisoners, but in contrast to that system the State retains the whole administration of the prisons. The prisoners, individually or in groups, are allotted to the contractor, the prison authorities selecting the prisoners in each case. The contractor supplies the raw material and tools and his agents direct the work, being admitted to the prison for this purpose. He pays for the prisoners’ work at daily or piece rates. As in the other systems, the entire output belongs to the contractor.<sup>111</sup>

58. *Placed at the disposal of.* In arrangements where the private company is not paying the public authority as provider of the prisoners’ services, but is on the contrary being subsidized by the State for the running of a private prison, the Committee observed that such a situation is different from what would normally be considered as hiring (or lease) arrangements. However, since the position of a person placed by the State with the

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<sup>109</sup> See RCE – General Report, 2001, paras 112 and 121–123.

<sup>110</sup> See footnote 92, ILO Memorandum on Prison Labour, p. 319.

<sup>111</sup> See also RCE – General Report, 2001, paras 97 and 98, in which the Committee referred to the ILO Memorandum on Prison Labour, which notes that “it has not yet been possible to eradicate the lease system entirely”, despite its drawbacks, because “the system offers considerable financial advantages to the State”, and that the general contract system “is now practically a matter of history. The special contract system on the contrary, is still common in prison labour”.

obligation to work in a prison run by a private contractor is not affected by the question of whether the contractor pays the State or the State subsidizes the contractor, the Committee concluded that, for the purposes of the Convention, if in the first case the prisoner is “hired to” the private contractor, in the second he or she is “placed at the disposal of” the latter.<sup>112</sup> The Committee also noted from the preparatory work that the amendment which introduced to Article 2, paragraph 2(c) the words “or placed at the disposal of”, following a proposal of the Workers’ group, was “intended to strengthen the clause”.<sup>113</sup>

59. However, as the Committee has pointed out in its earlier surveys on the subject,<sup>114</sup> in certain countries prisoners may, particularly during the period preceding their release, *voluntarily* accept employment with private employers, subject to guarantees as to the payment of normal wages and social security, etc.<sup>115</sup> The Committee has considered that, provided the necessary safeguards exist to ensure that the persons concerned offer themselves *voluntarily* without being subjected to pressure or the menace of any penalty, such employment does not fall within the scope of the Convention. The question thus arises as to whether prisoners, notwithstanding their captive circumstances, can be in a situation of truly voluntary labour, for which they have offered themselves voluntarily and without the menace of any penalty, including the loss of a right or a privilege (advantage), so that their work does not come under the definition of forced or compulsory labour given in Article 2, paragraph 1, of the Convention.<sup>116</sup> If that is the case, the conditions laid down in Article 2, paragraph 2(c), for compulsory prison labour do not apply, and private employment of prisoners would be compatible with the Convention.

60. It follows from the above that, in order to comply with the Convention, private employment of prison labour must depend on the formal consent of the prisoner concerned.<sup>117</sup> But the requirement of such formal consent is not in itself sufficient to eliminate the possibility that consent be given under the menace of loss of a right or advantage.<sup>118</sup> Prison labour is captive labour in the full sense of the term, namely, the prisoner has no access either in law or in practice, to employment other than under the conditions set unilaterally by the prison administration. The Committee therefore concluded that, in the absence of an employment contract and outside the scope of the labour law, it seems difficult or even impossible, particularly in the prison context, to

<sup>112</sup> *ibid.*, para. 123. See also RCE, 2002, general observation on Convention No. 29, para. 7.

<sup>113</sup> RCE – General Report, 2001, para. 123.

<sup>114</sup> See *Forced labour*, General Survey of 1968, para. 79; *Abolition of forced labour*, General Survey of 1979, para. 97.

<sup>115</sup> Further developments will be discussed in greater detail in paras 98–122 below.

<sup>116</sup> See RCE – General Report, 2001, paras 128 et seq.; see also RCE, 2002, general observation on Convention No. 29, para. 10.

<sup>117</sup> See *Abolition of forced labour*, General Survey of 1979, para. 97; RCE – General Report, 2001, paras 128–132; RCE – General Report, 1998, para. 120.

<sup>118</sup> This is even more evident in the context of privately run prisons. The Committee has had the occasion to note in this connection that, “since the director running the prison on behalf of a private contractor also has legal custody of the prisoner, it would appear both indispensable and very difficult to ensure that the prisoner’s willingness or not to work for the private contractor or its subcontractor had no bearing whatsoever on his conditions of imprisonment and expectation of remission of sentence or early release” (*United Kingdom* – RCE, 1998, p. 136).

exactly replicate the conditions of a free working relationship.<sup>119</sup> However, the Committee has considered that, in assessing whether convict labour for private parties is voluntary, conditions approximating a free labour relationship are the most reliable indicator of the voluntariness of labour.<sup>120</sup>

61. The information available shows that in most countries the various systems of convict labour are in accordance with the above requirements of the Convention, and convicts are either not placed at all at the disposal of private individuals, companies or associations, or this is only permissible with their freely given consent and on terms comparable with those offered to free workers. Since the previous General Survey of 1979, the Committee has had occasion to note the repeal of certain provisions under which prisoners could be placed at the disposal of private individuals or enterprises.<sup>121</sup> Some governments have indicated that, in practice, prisoners are not placed at the disposal of private individuals or enterprises,<sup>122</sup> and that measures have been taken or envisaged to amend the legislation accordingly. In an increasing number of countries prisoners work for private enterprises, both inside and outside prison premises, subject to their freely given consent and under conditions similar to those offered to free workers. Some countries have amended their legislation so as to require the formal consent of the prisoner<sup>123</sup> or to improve their situation as regards wages, conditions of work and social

<sup>119</sup> RCE – General Report, 2001, para. 130.

<sup>120</sup> *ibid.*, para. 143.

<sup>121</sup> A country which has ratified the Convention: *United Kingdom (Gibraltar)* – RCE, 2005, p. 194 (the Prison (Amendment) Regulations, 2003, have deleted the provisions of the Prison Regulations, 1987, according to which prisoners within the wage-earning scheme could be assigned to perform work for an independent contractor; regulation 59 of the Prison Regulations, as amended, provides that the work of prisoners undergoing a sentence of imprisonment shall not include any services for the private benefit of any person).

<sup>122</sup> A country which has ratified the Convention: *New Zealand* – RCE, 2005, p. 178 (the Committee noted with satisfaction that, since 31 July 2002, the Department of Corrections has had no inmates hired to private individuals or private sector organizations for work, as the Department has ceased all contractual arrangements where there had been direct private sector management of industries).

<sup>123</sup> Countries which have ratified the Convention: *Brazil* – RCE, 1985, p. 80 (section 36, subsection 3, of Act No. 7210 of 11 July 1984 respecting the serving of sentences stipulates that performance of labour for private entities is conditional on the explicit consent of the prisoner); *Colombia* – RCE, 2004, p. 129 (under section 62(10) of Agreement No. 011 of the National Penitentiary Institute, voluntary consent of a prisoner is required as regards the work for private enterprises, both profit-making or non-profit-making); *Côte d'Ivoire* – RCE, 2006, p. 138 (Decree No. 2002-523 of 11 December 2002 has amended sections 24, 77 and 82 of Decree No. 69-189 of 14 May 1969 regulating prisons and establishing arrangements for the execution of custodial sentences and provided that prisoners may no longer be hired out without their consent and that, in all cases, there must be individual work contracts between detainees and the employers or private individuals, in addition to the contract between the Ministry of Justice and hirers of prison labour); *France* – RCE, 2003, p. 102 (since the adoption of the Act of 22 June 1987, convicted persons are no longer compelled to work, but may request that work be proposed to them (section D.99(1) of the Code of Criminal Procedure)); *Peru* – RCE, 2004, p. 160 (section 65 of the Code for the Execution of Sentences (Act No. 27187), as amended, provides for the voluntary nature of work performed by convicted prisoners); *Suriname* – RCE, 1990, p. 115 (under section 23 of the Act laying down principles concerning the supervision of detainees and the management and superintendence of penitentiaries and houses of detention (GB. 1979, No. 21), which entered into force on 1 October 1988, work for private individuals, companies or associations, both inside and outside the penal institution, is only to take place if the detainee offers himself voluntarily for it); *United Kingdom (St. Helena)* – RCE, 1984, p. 322 (rule 61 of the Gaols Ordinance, 1960, has been amended to provide that prison labour may not be put at the disposal of private persons or enterprises except with the consent of the prisoners concerned). A country which has not ratified the Convention: *Canada* (according to the Government's 2006 report supplied under article 19 of the ILO Constitution, there is no compulsory prison labour under the federal legislation (Corrections and Conditional Release Act, SC, 1992); the Correctional Service of Canada provides a wide range of programmes designed to address the needs of offenders and contribute to their reintegration into the community; such programmes and employment are a consent-based process; in order to undertake work assignments, offenders must submit written applications).

security.<sup>124</sup> In several other cases the Committee has requested the governments concerned to indicate measures taken or envisaged to ensure that prisoners can only be placed at the disposal of private enterprises with their consent, and provided the safeguards mentioned above exist.<sup>125</sup>

<sup>124</sup> Countries which have ratified the Convention: *Argentina* – RCE, 2004, p. 122 (Act No. 24.660 on the execution of sentences of detention provides that the work of detainees shall be remunerated; where the organization of the work is the responsibility of a mixed or private enterprise, the remuneration shall be equal to the wage of corresponding free workers in the occupational category concerned (section 120)); *Chile* – RCE, 2005, pp. 147 and 148 (Regulations respecting penitentiaries, Judicial Decree No. 518/98: detainees shall have the right to perform work individually or in groups (section 61), the work activities carried out by detainees in the context of agreements implemented by third parties shall be governed by the common labour legislation, and the remuneration paid to detainees by the third parties covered by the contract may not be lower than the minimum wage determined annually by the competent authority for workers who are not detained; the insurance contributions shall also be made to the institutions of the corresponding insurance scheme (section 64)); *Colombia* – RCE, 2004, p. 129 (under section 62(10) of Agreement No. 011 of the National Penitentiary Institute, contracts concluded with private employers involving the use of prison labour must provide for compensation and a form of payment for prisoners; in no case may the said remuneration be inferior to the legally established minimum wage); *El Salvador* – RCE, 2004, p. 132 (Prisons Act, sections 105 and 110: private entities which engage detainees shall pay no less than the minimum wage required for such work and all the rights set forth in the labour legislation shall be applicable to prisons, provided that they are not contrary to the Prisons Act); *France* – RCE, 2003, p. 102 (under section D.102(2) of the Code of Criminal Procedure, the organization, methods and remuneration of work of prisoners shall be as close as possible to those of external occupational activities, with a view to preparing them for the normal conditions of free work; according to section D.106(2), prisoners shall benefit from social security in the same way as other workers, as regards sickness, maternity and old-age insurance; under section D.108, working time by day and by week shall approximate the hours of work in the region or in the type of work concerned, and in no case may they be higher; observance of weekly rest and national holidays shall be ensured; under sections D.109 and D.109-1, the safety and health measures provided for in the Labour Code shall be applicable to work performed within and outside prison establishments, and the intervention of the labour inspection services is envisaged); *Suriname* – RCE, 1990, p. 115 (under section 23 of the 1988 Act, work for private individuals, companies or associations shall take place only against payment to the State of the wages usual for the kind of work outside prison; under section 24, wages to be granted to the detainee are to be fixed by the Minister, account being taken of the remuneration paid by the employer to the State for the work performed by the detainee).

<sup>125</sup> Countries which have ratified the Convention: *Australia* – RCE, 2004, pp. 122–124 (the Committee pointed out that the privatization of prison labour transcends the express conditions provided in Art. 2(2)(c) of the Convention for exempting compulsory prison labour from its scope and observed that in privately operated prisons in Victoria, New South Wales and South Australia the formal consent of prisoners to work does not appear so far to be asked for); *Austria* – RCE, 2005, pp. 134 and 135 (under section 46, para. 3, of the Law on the execution of sentences, as amended by Act No. 799/1993, prisoners may be hired to enterprises of the private sector, which may use their labour in privately run workshops and workplaces both inside and outside prisons; under section 126(3), the prisoner's consent is not required for work in private enterprise workshops on prison premises, but only for such work outside prison premises); *Cameroon* – RCE, 2005, p. 144 (Decree No. 92-052 of 27 March 1992, sections 51 to 56, which allow the transfer of prison labour to private enterprises and individuals without the formal consent of the persons concerned being required; the Government has indicated that a new text concerning the prison system is in the process of finalization); *El Salvador* – RCE, 2006, pp. 143 and 144 (under section 107 of the Prisons Act convicted persons shall be obliged to work, and under section 112 the Ministry of Justice may conclude agreements with national or foreign natural or legal persons to organize agricultural, industrial or commercial undertakings); *Gabon* – RCE, 2006, p. 144 (under section 3 of Act No. 22/84 of 29 December 1984 establishing the rules respecting prison labour, such labour is compulsory for all convicts, subject to penalties; under section 4 prisoners may be hired to private individuals or associations; the Government expressed its commitment to adopt the necessary measures to adapt the law to the requirements of the Convention); *Germany* – RCE, 2006, pp. 144 and 145 (prisoners working for private enterprises in Germany fall into two categories: (a) prisoners performing work on the basis of a free employment relationship outside penitentiary institutions; and (b) prisoners who are obliged to work, without their consent, in workshops run by private enterprises within state prisons, in conditions bearing no resemblance whatsoever to the free labour market; the requirement of the prisoner's formal consent to be employed in a workshop run by a private enterprise, laid down in section 41(3) of the 1976 Act on the execution of sentences, was suspended by the Second Act to improve the budget structure, of 22 December 1981, and has remained a dead letter since that time); *Morocco* – RCE, 2006, p. 153 (Act No. 23-98 concerning the organization and operation of penal establishments, promulgated by Dahir No. 1-99-200 of 25 August 1999, allows prisoners to be assigned to and employed by a private individual or organization under an administrative agreement fixing the conditions of

## (d) Cases of emergency

62. The Convention exempts from its provisions “any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population”.<sup>126</sup> This exception, which involves the concept of emergency, applies in restricted circumstances where a calamity or threatened calamity endangers the existence or well-being of the whole or part of the population. The enumeration of examples in the Convention are “an indication of a restrictive character as to the nature of cases of emergency”,<sup>127</sup> and help to clarify the concept of emergency for the purposes of the Convention, which includes cases of force majeure, i.e. a sudden, unforeseen happening calling for instant countermeasures. In order to respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency, or force majeure. Moreover, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation.<sup>128</sup> On the other hand, the exception in Article 2, paragraph 2(d) concerning emergencies should not be understood as allowing the exaction of any kind of compulsory service in case of war, fire or earthquake; this exception can be invoked only for work or service that is strictly required to counter an imminent danger to the population.<sup>129</sup> While examining reports from countries which ratified the Convention, the Committee is therefore concerned to satisfy itself that both the law and the practice of countries with regard to the exaction of work or service in cases of emergency remain within these limits.

63. In certain countries, legislation allowing the call-up of labour in cases of emergency is worded in terms broad enough to permit its application in a wider range of circumstances, for example, where the inhabitants of regions lacking roads suitable for mechanized transport may be called up for work of public interest;<sup>130</sup> where the mobilization of the civilian population may be ordered in the event of serious economic crisis;<sup>131</sup> where persons and goods may be requisitioned in order to satisfy national

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employment and remuneration (section 40)); *United Kingdom* – RCE, 2004, p. 175 (the Committee requested the Government, with regard to contracted-out prisons and prison industries, to take the necessary measures to ensure that any work by prisoners for private companies be performed under the conditions of a freely consented upon employment relationship).

<sup>126</sup> Art. 2, para. 2(d), of the Convention.

<sup>127</sup> See *Forced labour*, Report I, ILC, 14th Session, Geneva, 1930, pp. 142–143.

<sup>128</sup> A similar approach has been adopted, for example, in the International Covenant on Civil and Political Rights, which permits derogations from its provisions in time of public emergency which threatens the life of the nation, to the extent strictly required by the exigencies of the situation (Art. 4).

<sup>129</sup> See *Forced labour*, General Survey of 1968, para. 39; *Abolition of forced labour*, General Survey of 1979, para. 36.

<sup>130</sup> A country which has ratified the Convention: *Congo* – RCE, 2006, p. 138 (Act No. 24/60 of 11 May 1960 on requisitioning, under which persons requisitioned who refuse to work are liable to a penalty of imprisonment).

<sup>131</sup> A country which has ratified the Convention: *Turkey* – under article 18 of the Constitution, the term “forced labour” does not include services required from citizens during a state of emergency, which may be declared, under article 119 of the Constitution, inter alia, in the event of a serious economic crisis; under section 10 of the State of Emergency Act (No. 2935, of 25 October 1983), the Council of Ministers may issue decrees to determine obligations and measures to be taken in the event of serious economic crisis, which may concern, inter alia, labour issues (see a direct request on Convention No. 29 made in 2004).

needs and to protect the nation's vital interests;<sup>132</sup> or for the purpose of promoting the country's economic and social development.<sup>133</sup> These provisions appear to go far beyond the exception concerning emergencies provided for in Article 2, paragraph 2(d), of Convention No. 29 and permit mobilization of labour "for purposes of economic development" within the meaning of Convention No. 105.<sup>134</sup> In certain other cases, powers to call up labour originally granted during a period of emergency appear to have been maintained in force for longer periods, even after the immediate conditions which occasioned the emergency have ceased to exist.<sup>135</sup>

64. In order to avoid any uncertainty as to the scope of national provisions or their compatibility with the Convention, it should be clear from the legislation itself that recourse to compulsory labour as an emergency measure is confined within the limits indicated above. Where emergency powers are granted by ad hoc legislation, the authority to impose compulsory labour should be given only in circumstances constituting an emergency within the meaning of the Convention. In all cases, recourse to compulsory labour should continue only as long as strictly required to meet the emergency situation, and then (unless automatically limited in duration) should be terminated by a formal and public decision or declaration.

(e) Minor communal services

65. The Convention also exempts from its provisions "minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services".<sup>136</sup> The Committee has drawn attention to the criteria which determine the limits of this exception and serve to distinguish it from other forms of compulsory

<sup>132</sup> A country which has ratified the Convention: *Morocco* – RCE, 2006, p. 153 (the Dahirs of 10 August 1915 and 25 March 1918, as contained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963; the Committee requested the Government to take steps to ensure that requisitioning could only be decided upon under conditions strictly limited to situations endangering the existence or well-being of the whole or part of the population; the Government has indicated in its report in 2003 that this issue was debated during discussions held with the social partners and that the accord concluded following these discussions contains a specific provision on the need to repeal the Dahir of 13 September 1938).

<sup>133</sup> A country which has ratified the Convention: *Côte d'Ivoire* – Act No. 63-4 of 17 January 1963 on the use of persons for the purpose of promoting the country's economic and social development allows the requisitioning of individuals or of groups for the performance of certain tasks which are in the national interest (sections 1, 2, 4 and 6); the Government has indicated that the Act applies only in exceptional circumstances, referring to implementing Decree No. 63-48 of 9 February 1963; the Committee has noted, however, that the circumstances covered by the Decree (section 2) do not amount to cases of force majeure, disaster or, in general, circumstances endangering the whole or part of the population (see direct requests addressed to the Government on Convention No. 29 in 2002 and 2005).

<sup>134</sup> See below Ch. III, paras 167–170 concerning provisions of Art. 1(b) of Convention No. 105.

<sup>135</sup> For example, a country which has ratified the Convention: *Sri Lanka* – RCE, 2006, p. 173 (the Committee referred to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1989; the Government has indicated that this matter was looked into in a tripartite workshop held with the assistance of the ILO to promote ratification of Convention No. 105, and that a tripartite committee including secretaries of the ministries concerned was appointed to follow up its recommendations).

<sup>136</sup> Art. 2, para. 2(e), of the Convention.

services which, under the terms of the Convention, must be abolished (such as forced labour for general or local public works).<sup>137</sup> These criteria are as follows:

- the services must be “minor services”, i.e. relate primarily to maintenance work and, in exceptional cases, to the erection of certain buildings intended to improve the social conditions of the population of the community itself (a small school, a medical consultation and treatment room, etc.);
- the services must be “communal services” performed “in the direct interest of the community”, and not relate to the execution of works intended to benefit a wider group;
- the “members of the community” (i.e. the community which has to perform the services) or their “direct” representative (e.g. the village council) must “have the right to be consulted in regard to the need for such services”.

66. Such “minor services”, which should not impinge upon the performance of ordinary employment, might also include works connected with village cleanliness, sanitation, the maintenance of paths and tracks, of watering places, cemeteries in the immediate vicinity of the communities concerned, village night-watching, the clearance of silt in small irrigation channels and streams of purely local interest, etc.<sup>138</sup> The small scale of such works must also be reflected in their short duration, which should be such as to make these services really “minor”.<sup>139</sup>

## **Part II. Progress and present-day problems in the implementation of the Convention**

### **1. General prohibition of forced or compulsory labour**

67. As previously mentioned, forced or compulsory labour is now almost universally banned, and the two ILO Conventions on the subject are the most widely ratified of all international labour Conventions.<sup>140</sup> Guarantees of freedom of labour are generally embodied in national constitutions and often made effective by provisions of criminal legislation punishing violations of individual liberties, through which individuals may seek protection against unlawful interference with their freedom, whether by private persons or public authorities. Specific prohibitions of forced labour have also been incorporated in the labour codes or general employment legislation of many countries.

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<sup>137</sup> See *Forced labour*, General Survey of 1968, para. 40; *Abolition of forced labour*, General Survey of 1979, para. 37. See also report of the Committee of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) (ILO, *Official Bulletin*, Special Supplement, Vol. LXXXI, 1998, Series B), para. 213.

<sup>138</sup> See *Forced labour*, report and draft questionnaire, ILC, 12th Session, Geneva, 1929, pp. 282 and 299; see also a direct request of 2004 addressed to *Turkey*, where the Committee has considered that certain kinds of work listed under section 13 of the Village Affairs Act No. 442, of 18 March 1924 (such as building and repairing roads leading from the village to the government centre or neighbouring villages, or building bridges over such roads, etc.) do not seem to meet the criteria of “minor services” or “communal services”.

<sup>139</sup> This might be illustrated by a comparison with the “public works of general interest” (Art. 12 of the Convention), which were tolerated during a transitional period (see para. 10 above): these works were not only strictly regulated but also restricted to a maximum of 60 days per year. The minor nature of “minor services”, which are entirely excluded from the scope of the Convention, must be consequently reflected in an incomparably smaller duration.

<sup>140</sup> See paras 1 and 24 above.

Thus, in many ratifying States national constitutions or labour legislation contain a definition of forced or compulsory labour drawn upon the wording of the Forced Labour Convention, which frequently follows very closely the terms of the definition contained in this instrument.<sup>141</sup> When applied in conjunction with the relevant Criminal Code provisions, constitutional and labour legislation provisions prohibiting forced or compulsory labour seem on the whole sufficient to protect individuals from illegal imposition of forced labour. It seems clear, however, that any such provisions may become inoperative where forced or compulsory labour is imposed by legislation itself.<sup>142</sup>

68. Since the last General Survey on the subject, the Committee has continued to note a number of instances in which changes have been made in national legislation and practice to take account of the requirements of the Convention. It has noted, however, that, in spite of the adoption of the above general provisions, certain problems still continue to exist in a number of countries regarding the effective abolition of all forms of forced or compulsory labour for purposes of production or service. Thus, there are instances of vestiges of slavery and other slavery-like practices which still survive in certain countries, sometimes connected with abductions of men, women and children in the context of armed conflicts in various parts of the world, as well as the entrapment of people through various forms of debt bondage, and trafficking in human beings for the purposes of sexual and labour exploitation, which may involve both adults and children. There are also instances of various forms of forced or compulsory labour imposed directly by the State, in violation of the international standards, either for purposes of production or service (such as the general obligation to work and all kinds of national service obligations, e.g. the use of conscripts for non-military purposes, as well as powers to call up labour outside emergency circumstances and restrictions on the freedom of workers to terminate employment), or as a punishment, following a conviction in a court of law (e.g. where convicted persons are hired to or placed at the disposal of private parties). These various forms of forced or compulsory labour and their bearing on the application of the Convention are considered below.

## 2. Slavery, slavery-like practices and other illegal forms of compulsion to work

69. Slavery was once a feature of many societies where certain communities exacted slave labour from subservient tribes or social groups, or seized large numbers of people during warfare. In spite of the prohibition of slavery and similar practices at the international level<sup>143</sup> and significant progress made by States in adopting legislation to eliminate these practices, many such practices, which may be associated with traditional forms of slavery, still survive in certain countries today. Thus, the Committee for many years has been examining the situation in one country in connection with the status of descendants of former slaves, who were subjected to conditions of labour covered by the

<sup>141</sup> See, for example, countries which have ratified the Convention: *Belize* (Labour Act, section 157); *Botswana* (Employment Act, section 2(1)); *Cameroon* (Labour Code, section 2(3), (4) and (5)); *Chad* (Labour Code, section 5); *Gambia* (Forced Labour Act, section 2); *Ghana* (Labour Act, section 117); *Kyrgyzstan* (Labour Code, section 10); *Madagascar* (Labour Code, section 4); *Malawi* (Employment Act, section 3); *Uzbekistan* (Labour Code, section 7).

<sup>142</sup> See paras 86–97 below.

<sup>143</sup> See paras 7 and 20 above.

Convention in so far as they were obliged to work for a person who claimed the right to be able to impose such work in his or her capacity as “master”. This situation could be characterized as the *vestiges of slavery*, which survived despite the existence of national legislative provisions abolishing slavery.<sup>144</sup> In another country, the Committee has noted that conditions of slavery continue to be transmitted by birth to individuals from certain ethnic groups. These groups are compelled to work for their master without payment, principally as shepherds, agricultural workers or domestic workers, in spite of anti-slavery legislation and positive measures taken by the Government to eradicate these practices.<sup>145</sup>

70. Though the physical *abduction of persons* for slavery and forced labour purposes is no longer common, it still takes place in a situation of armed conflict in certain regions. Thus, over the past decades the Committee has been examining information concerning the practices of abduction, trafficking and forced labour affecting thousands of women and children, and also men, in the context of civil conflicts in a number of countries. The Committee has observed that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, combined with ill-treatment which may include torture and death, as well as sexual exploitation. The Committee has considered that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic.<sup>146</sup>

<sup>144</sup> A country which has ratified the Convention: *Mauritania* – RCE, 2007, pp. 198–200 (section 5 of the new Labour Code (2004) provides for a general prohibition of forced labour; the Committee has noted the report of the fact-finding mission (May 2006) which referred to the acknowledgement of the existence of the vestiges of slavery by the Government and to its commitment to combat them. The Committee has noted with interest the measures already taken by the Government, including those with a view to adopting a national strategy to eliminate the vestiges of slavery. The Committee encouraged the Government to conduct a study, with the assistance of the ILO, in order to offer better guidance for the action to be taken by the public authorities. It considered that all the actors which have a role to play in combating the vestiges of slavery, namely the social partners, the police and law enforcement agencies, the judicial system, the labour inspectorate and civil society, including religious authorities, should be stakeholders in this strategy).

<sup>145</sup> A country which has ratified the Convention: *Niger* – According to the study conducted in August 2001 under the auspices of the ILO on the identification of obstacles to the implementation of fundamental principles and rights at work and proposed solutions in Niger, there exists an archaic form of slavery which is found in nomadic communities; a slave is placed at the disposal of the master without charge or in exchange for payment; the relations between master and slave are based on direct exploitation; slavery is prohibited under article 12 of the Constitution; Act No. 2003-025 of 13 June 2003 amended the Penal Code by adding a provision criminalizing slavery and punishing it with imprisonment and a fine; the Committee sought information on the programmes and measures specifically adopted by the Government for former slaves or descendants of slaves to prevent them from falling back into slavery as a result of lack of means of subsistence (RCE, 2004, p. 153). Since then, the Committee has learned about the adoption of Order No. 0933/MFP/T of 4 August 2006 on the establishment of the National Committee to Combat Forced Labour and Discrimination, which has been assigned a task, in particular, to prevent the persistence of forced labour and to elaborate a national action plan in this field.

<sup>146</sup> Countries which have ratified the Convention: *Sudan* – RCE, 2005, pp. 184–185 (the Committee asked the Government to take urgent measures in order to combat the practice of the exaction of forced labour through abduction of women and children, which had been conducted on a massive scale in those regions of the country where an armed conflict was under way; it took note of the positive measures taken by the Government, including the re-establishment of the Committee for the Eradication of Abduction of Women and Children (CEAWC), setting up of special courts for the prosecution of abductors, as well as the Government’s renewed commitment to resolve the problem; it also noted that, in May 2004, the Government of Sudan signed three peace protocols, including a protocol on power-sharing, which contained provisions on human rights and fundamental freedoms and refers in this connection to international instruments, including those concerning the rights of the child and abolition of slavery; the Government stated that the implementation of these agreements would lead to the solution of the problems raised); *Uganda* – RCE, 2006, p. 177 (the Government stated that the large scale of abductions of children had been one of the most tragic aspects of the northern region conflict, forcing the vulnerable and innocent to become a part of the conflict, either as child soldiers, human shields and hostages or

71. Unlawful practices of *debt bondage*, under which labourers and their families are forced to work for an employer in order to pay off their actually incurred or inherited debts,<sup>147</sup> are still widespread in some countries and affect a significant number of people. The victims of debt bondage are the poorest people, often illiterate and relatively easy to deceive and be kept in ignorance of their rights; if they try to leave their employment, they are usually caught and returned by force. According to the reports, bonded labour is widespread in agriculture, but has been also detected in mines, brick kilns, leather, fish processing and carpet factories.<sup>148</sup> In some regions, members of indigenous and tribal peoples are the most affected.<sup>149</sup> Since debt is the root cause of bonded labour, legal action is required to declare such bondage unlawful and to provide for penal sanctions against those employers who hold their workers in bondage. Such legal action should be accompanied by supplementary measures of economic assistance and rehabilitation of bonded labourers, so as to ensure that they do not fall back into a bonded labour situation. However, the identification of bonded labourers sometimes presents certain difficulties in practice. The Committee has noted, in relation to the application of the Convention, that the countries which are experiencing the most serious problems of bonded labour have adopted specific legislation on the subject<sup>150</sup> and/or national action plans, or

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victims of sexual exploitation; it indicated that abducted children who had been retrieved were kept in children centres where counselling services were provided and measures were taken for their reunification with their families; other positive measures taken by the Government to prevent such practices included sensitization of communities, political and military authorities in the armed conflict areas about proper handling of the children; sensitization on peaceful conflict resolution and ensuring the rights of the child; setting up of disaster management committees in all districts of insurgencies; etc.); see also *Liberia* – RCE, 2006, p. 150 (the Government was requested to take specific action to investigate the situation in the south-eastern region as regards practices of forced labour, including allegations that children were held hostage by adults as captive labour, and to take urgent measures with a view to the effective elimination of all forms of compulsory labour, including the establishment of a national committee to trace and reunite displaced women and children taken captive during the war, as well as appropriate investigation of any acts of alleged forced labour, intimidation, harassment, maltreatment, in the framework of the National Reconciliation and Reunification Programmes).

<sup>147</sup> Art. 1(a) of the *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* (1956), defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.

<sup>148</sup> See, for example, *Stopping forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2001, pp. 32–33.

<sup>149</sup> For example, countries which have ratified the Convention: *Bolivia* – substantial numbers of mainly indigenous agricultural workers are in conditions of debt bondage, mostly as a result of wage advances made to workers by private labour contractors (see *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005, para. 180); *Nepal* – victims of the *kamaiya* system of bonded labour in western parts of the country have been mainly from among the Tharu indigenous people (ibid., para. 141); *Peru* – RCE, 2006, pp. 168–169 (the report of the Multisectoral Committee (established by Decision No. 083-88-PCM, and composed of various bodies of the Ministries of Labour, Justice, Agriculture and the Peruvian Institute on Indigenous Questions) indicated that “the indigenous communities in Atalaya, who are known as ‘captives’, are subject to servitude in large and medium-sized stock-raising and/or timber estates, providing free or semi-free labour under the system of ‘advances’ (*habilitacion* or *enganche*); this system consists of advances provided by an employer to an indigenous worker in the form of work utensils, meals or money, in order to obtain the wood with which, in theory, he can subsequently repay the initial debt and obtain income; thus, obliged to repay the original advance, as well as interest on it, the indigenous workers are caught in a vicious circle of exploitation and poverty which becomes their permanent condition”; according to the report, 17 estates were denounced and found to be engaging in slavery and servitude).

<sup>150</sup> For example, countries which have ratified the Convention: *India* (the Bonded Labour System (Abolition) Act, 1976, which prohibits bonded labour and provides for the establishment of vigilance committees at district and subdivisional levels for the identification, liberation and rehabilitation of bonded labourers); *Nepal* (the *Kamaiya Labour Prohibition Act*, 2002, which prohibits debt bondage and provides for rehabilitation of freed *kamaiyas*, by creating the Freed *Kamaiya* Rehabilitation and Monitoring Committees); *Pakistan* (the Bonded

amended the existing provisions,<sup>151</sup> with a view to prohibiting this phenomenon, rehabilitate the victims and punish perpetrators. However, the application of this legislation in practice is sometimes hampered by some difficulties,<sup>152</sup> often due to the absence of adequate labour inspection machinery<sup>153</sup> or the lack of resources of the labour inspectorate.<sup>154</sup> The Committee has consequently requested the governments concerned to take all the measures necessary to identify, release and rehabilitate bonded labourers and to punish perpetrators, through strengthening labour inspection and law enforcement machinery, and by imposing adequate penal sanctions, as required by Article 25 of the Convention.<sup>155</sup>

72. The Committee has also noted the existence of vestiges of other traditional forms of enslavement and servitude, which still can be found in some regions. Thus, it has been

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Labour System (Abolition) Act, 1992, which prohibits bonded labour and declares void and inoperative any custom or tradition or practice or any contract, agreement or other instrument, by virtue of which any person, or any member of his family, is required to do any work or render any service as a bonded labourer; the Act provides for special enforcement measures, including the setting up of vigilance committees at district level; see also the National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers, 2001); *Peru* (Supreme Decision No. 028-2005-TR, to establish the National Intersectoral Commission for the Eradication of Forced Labour to investigate and examine the problem (including the practice of *habilitacion/enganche*) and formulate a plan of action).

<sup>151</sup> For example, a country which has ratified the Convention: *Brazil* – RCE, 2005, pp. 139-142 (section 149 of the Penal Code, which established a penalty of imprisonment for the crime of imposing upon a person a condition similar to that of slavery, has been amended by Act No. 10.803 of 11 December 2003, so as to cover the following acts: subjecting a person to forced labour or to arduous working days or subjecting such person to degrading working conditions or restricting, in any manner whatsoever, such person's mobility by reason of a debt contracted in respect of the employer; see also the National Plan of Action for the Elimination of Slave Labour, launched in March 2003 by the President of the Republic, which included a recommendation to adopt the proposed amendment to article 243 of the Constitution providing for the expropriation without compensation of agricultural establishments in which the use of slave labour has been identified).

<sup>152</sup> For example, a country which has ratified the Convention: *India* – RCE, 2005, pp. 158–159 (the Government has expressed the view that in India, which is a vast country with federal structure, having a wide range of religious, linguistic and cultural diversities, a centralized survey for identification of bonded labour may not be feasible or practicable; as regards the law enforcement, the Government stated that one of the major factors for the lesser number of prosecution and conviction cases, is the Indian social and anthropological system and the psyche of the people living in the rural and informal sector of the country where an “informal system of equilibrium” is in place to cater to their needs, which also includes the system of grievances and disputes resolution through conciliation).

<sup>153</sup> For example, a country which has ratified the Convention: *Pakistan* – RCE, 2006, pp. 161–162.

<sup>154</sup> For example, a country which has ratified the Convention: *Brazil* – RCE, 2005, p. 141.

<sup>155</sup> See, for example, countries which have ratified the Convention: *India* – RCE, 2005, pp. 157–159 (the Committee has referred to the urgent need to compile accurate statistics of the number of persons who continue to suffer under bonded labour, using a valid statistical methodology, with a view to identification and release of bonded labourers, and sought information on measures taken to increase efficiency of vigilance committees; as regards the law enforcement problem, the Committee sought information on the number of prosecutions, convictions and acquittals in various states under the Bonded Labour System (Abolition) Act, 1976, and also questioned the adequacy of the penalties imposed); *Pakistan* – RCE, 2006, pp. 161–162 (the Committee sought information on measures taken to ensure the effective implementation of the 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers, as well as a special Programme of Action to Combat Forced/Bonded Labour carried out with technical assistance from the ILO, and in particular, about the progress made in the preparation of a statistical survey on bonded labour throughout the country, using a valid methodology in cooperation with employers' and workers' organizations and with human rights organizations and institutions; information was also sought about actions that both the district magistrates and vigilance committees were taking to ensure the effective implementation of the Bonded Labour System (Abolition) Act, 1992); *Peru* – RCE, 2006, pp. 168–169 (the Government was requested to undertake energetic and sustained action to combat effectively practices of *habilitacion/enganche* and to provide information on the implementation of the Plan of Action for the Eradication of Forced Labour, as well as on the number of cases of forced labour which have been denounced, on their investigation, prosecution and convictions obtained).

examining for a number of years the situation in one country in connection with the persistence of traditional attitudes and exploitative and abusive practices of ritual servitude and enslavement of girls (the *trokosi* system), which continues to exist despite the adoption of penal provisions criminalizing this phenomenon and punishing perpetrators, as well as other positive measures undertaken by the Government with a view to liberate and rehabilitate the victims.<sup>156</sup>

### 3. Trafficking in persons for the purpose of exploitation

73. In its General Report submitted to the International Labour Conference at its 89th Session, 2001, the Committee has drawn attention to the problem of trafficking in human beings for forced labour purposes.<sup>157</sup> This problem has in recent years become the subject of renewed international concern. Human trafficking for forced labour was described as the “underside of globalization” in the first Global Report on Forced Labour (2001) under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,<sup>158</sup> and since then has taken on new forms and dimensions, linked to recent developments in technology, transportation and transnational organized crime.<sup>159</sup> The Committee has noted the growing awareness of the present-day trafficking in persons, which affects developing countries, countries in transition and industrialized market economy countries, as countries of origin or destination of victims, or both. This awareness has been reflected in the elaboration of the new international anti-trafficking instruments<sup>160</sup> and in a number of international meetings with the participation of

<sup>156</sup> A country which has ratified the Convention: *Ghana* – under the *trokosi* system, which has been practised in some parts of the Volta region and in the Greater Accra region, young girls of about 10 years of age are pledged into perpetual bondage to serve fetish shrines in atonement of offences allegedly committed by their relatives; section 314A of the Criminal Code (Amendment) Act (No. 554), adopted in 1998, has criminalized any form of ritual or customary servitude or any form of forced labour related to a customary ritual; due to the sensitization and liberation campaign implemented by the Government in collaboration with ILO/IPEC and some NGOs, 3,000 *trokosi* victims have been liberated since 1996; they are being rehabilitated by providing them with vocational skills and income-generating activities, in order to facilitate their integration into society. Since Ghana has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182); the Committee accordingly asked the Government to refer in this connection to its comments on the application of the latter Convention (see a direct request on Convention No. 29 addressed to *Ghana* in 2005).

<sup>157</sup> RCE – General Report, 2001, paras 72–81.

<sup>158</sup> *Stopping forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2001, p. 47.

<sup>159</sup> See *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005, para. 4. The report sheds further light on the linkages between forced labour and the various aspects of globalization, including increased global competition, migration and labour market deregulation (*ibid.*, para. 288). During the last decade, trafficking in persons (mostly women and children, but also men) – mainly for prostitution and domestic service but also for work in construction, agriculture and sweatshop work – has increased throughout the world. According to the second Global Report of 2005, the estimated minimum number of persons in forced labour at a given time as a result of trafficking is 2.45 million, which represents about 20 per cent of all forced labour and about one-quarter of the forced labour exacted by private agents. However, there are important geographical variations. For example, in industrialized countries, transition countries and the Middle East and North Africa region trafficking accounts for more than 75 per cent of forced labour and is thus the main route into forced labour in these parts of the world. Most people are trafficked into forced labour for commercial sexual exploitation (43 per cent) but many are also trafficked for economic exploitation (32 per cent). The remainder are trafficked for mixed or undetermined reasons (25 per cent) (*ibid.*, paras 56–59).

<sup>160</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, (the “Palermo Protocol”), which supplemented the *United Nations Convention against Transnational Organized Crime* (2000), and the *Council of Europe Convention on Action Against Trafficking in Human Beings* (2005) (see paras 20–21 above).

governments and intergovernmental as well as non-governmental organizations seeking to stem this scourge, which has become a major activity of transnational organized crime. The new instruments conveyed a growing consensus that trafficking in persons included trafficking for purposes other than sexual exploitation, such as forced labour, slavery and servitude. Their adoption and ratification contributed to rapid changes in the legislation and practice of many countries as regards combating trafficking in human beings and led to the adoption of new policies in this field.

74. While the magnitude of the problem has been thus generally recognized, the new policies and measures in this field have not always been adequately reflected in government reports supplied under article 22 of the ILO Constitution on Convention No. 29, in particular in relation to industrialized market economy countries, which are choice destinations of the trafficking in persons. This might be partly explained by the fact that the victims have been quite often perceived by the authorities as illegal aliens<sup>161</sup> rather than as victims of transnational organized crime. The Committee has previously drawn attention to Article 1, paragraph 1, of Convention No. 29, by which ratifying States are bound to suppress all forms of forced or compulsory labour within the shortest possible period, and under Article 25, under which the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

75. The Committee therefore formulated a general observation intended to elicit information from all States bound by the Convention on measures taken or contemplated to ensure that, in practice, those responsible for trafficking in persons for the purpose of exploitation can and will indeed be strictly punished, and that trafficking in persons is really suppressed.<sup>162</sup> In its general observation, the Committee requested information, in particular, on the provisions of national law aimed at punishment of the exaction of forced or compulsory labour, trafficking in persons and exploitation of prostitution of others, and the information on measures taken to ensure that such provisions are strictly enforced against perpetrators. Also, the Committee sought information regarding the measures designed to encourage victims to turn to the authorities, such as permission to stay in the country; efficient protection from reprisals of victims willing to testify and of their families; measures designed to inform victims and potential victims of trafficking; as well as other measures relating to investigation, training of law enforcement officers and international cooperation in all these fields.<sup>163</sup> Governments' replies to these

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<sup>161</sup> The smuggling of migrants is the subject of a separate Protocol adopted by the General Assembly on 15 November 2000, the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, supplementing the *United Nations Convention against Transnational Organized Crime*. That Protocol, as well as the Palermo Protocol concerning trafficking in persons, is relevant to the application of other ILO standards, particularly those on migrant workers.

<sup>162</sup> RCE, 2001, general observation on Convention No. 29, pp. 119–120.

<sup>163</sup> The Committee sought information on the following aspects of law and practice: (1) provisions of national law aimed at the punishment of the exaction of forced or compulsory labour, trafficking in persons and the exploiters of the prostitution of others; (2) measures taken to ensure that the penal provisions referred to above are strictly enforced against those responsible for the forced labour of legal or illegal migrants, inter alia in sweatshops, prostitution, domestic service and agriculture; in particular, measures required in practice for court proceedings to be initiated and completed, including: (a) measures designed to encourage the victims to turn to the authorities (such as: permission to stay in the country at least for the duration of court proceedings, and possibly permanently; efficient protection of victims willing to testify and of their families from reprisals by the exploiters both in the country of destination and the country of origin of the victim, before, during and after any court proceedings, and beyond the duration of any prison term that might be imposed on the exploiter; and the participation of the Government in any forms of intergovernmental cooperation set up for this purpose; measures

questions have been carefully examined by the Committee, together with other information on the subject already available from a number of countries bound by the Convention, which has been reflected in the comments made by the Committee under article 22 of the ILO Constitution.

76. The Committee has noted that the Palermo Protocol contains the following legal definition of trafficking in persons, which now may be considered as universally accepted:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>164</sup>

77. A crucial element of the definition of trafficking is its purpose, namely, exploitation, which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation. The notion of exploitation of labour inherent in this definition allows for a link to be established between the Palermo Protocol and Convention No. 29,<sup>165</sup> and makes clear that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour provided under Article 2, paragraph 1, of the Convention.<sup>166</sup> This conjecture facilitates the task of implementing both instruments at the national level.

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designed to inform victims and potential victims of trafficking of the above measures, with due regard to any barriers of language and circumstances of physical confinement of victims); (b) measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, the exploitation of the prostitution of others, and the running of sweatshops (such as: the provision of adequate material and human resources to law enforcement agencies; the specific training of law enforcement officers, including those working in immigration control, labour inspection and vice squads, to address the problems of trafficking in persons in a manner conducive to the arrest of the exploiters rather than of the victims; international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons); (c) cooperation with employers’ and workers’ organizations as well as non-governmental organizations engaged in the protection of human rights and the fight against the trafficking in persons; (3) any difficulties encountered by the authorities in seeking to prevent or suppress the exaction of forced labour to which legal and illegal migrants may be subjected in practice, and measures taken or contemplated to overcome these difficulties (ibid.).

<sup>164</sup> Palermo Protocol, art. 3(a). The definition of trafficking in human beings contained in the *Council of Europe Convention on Action against Trafficking in Human Beings* of 2005 is identical to the above definition of trafficking in persons given in the Palermo Protocol.

<sup>165</sup> It seems interesting to note that forced labour exploitation has been identified as the “crucial element” of the Palermo Protocol in the report of an Experts Group on Trafficking in Human Beings convened by the European Union in 2003, in which it was pointed out that, in order to counter trafficking effectively, “policy interventions should focus on the forced labour and services, including forced sexual services, slavery and slavery-like outcomes of trafficking – no matter how people arrive in these conditions – rather than (or in addition to) the mechanisms of trafficking itself. States should criminalize any exploitation of human beings under forced labour, slavery or slavery-like conditions, in line with the major human rights treaties that prohibit [their] use” (European Commission: *Report of the Experts Group on Trafficking in Human Beings* (Brussels, 22 December 2004), p. 53).

<sup>166</sup> Trafficking activities might not be limited to cross-border trafficking, but may also include trafficking within national borders. In some cases, transnational organized crime may not be involved. For more details, see *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement*, ILO, Special Action Programme to Combat Forced Labour, 2005, p. 15.

78. While a certain distinction has been drawn in the above definition between trafficking for forced labour or services and trafficking for sexual exploitation, this should not lead to a conclusion that coercive sexual exploitation does not amount to forced labour or services, particularly in the context of human trafficking. The inclusion of “exploitation for the prostitution of others” may create difficulties in this sense, since there is no duty to criminalize prostitution, either under the Palermo Protocol, or under Convention No. 29, and consequently prostitution and related matters falling outside the scope of trafficking in persons should be dealt with by individual countries in accordance with their national laws and policies.<sup>167</sup> Nonetheless, it seems clear that *coercive* sexual exploitation and *forced* prostitution do come within the scope of the definition of forced or compulsory labour in Article 2, paragraph 1, of the Convention. The Committee on a number of occasions has made comments on this subject in connection with the application of the Convention.<sup>168</sup>

79. Another important element of the definition of trafficking in persons in the Palermo Protocol, from the point of view of the application of Convention No. 29, is the means of coercion used against an individual, which include the threat or use of force, abduction, fraud, deception, the abuse of power or a position of vulnerability, etc., which definitely exclude voluntary offer or consent of the victim.<sup>169</sup> With regard to the latter, the Palermo Protocol contains a qualifying provision that the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the abovementioned means have been used.<sup>170</sup> It means, for example, that a person’s awareness of being employed in the sex industry or in prostitution, does not exclude such person from becoming a victim of trafficking. While being aware of the nature of that work, a person may be misled as to the conditions of work, which have turned out to be exploitative and coercive.<sup>171</sup> Where the victim is a child, the crime of trafficking in persons can be established irrespective of the use of means of coercion or deceit referred to above.<sup>172</sup>

80. Trafficking in persons leads to the imposition of forced or compulsory labour or services and to the violation of other fundamental human rights of the victim, and therefore should be punished as a criminal offence, both under Article 25 of the Convention and article 5 of the Palermo Protocol.<sup>173</sup> While the penal legislation of most

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<sup>167</sup> *ibid.*, p. 10; see also *A global alliance against forced labour*, op. cit., para. 24.

<sup>168</sup> For example, *Brazil* – RCE, 2004, p. 128; *India* – RCE, 2005, p. 160; *Thailand* – RCE, 2006, pp. 175–176.

<sup>169</sup> Concerning the issue of voluntariness as an element of the definition of forced or compulsory labour in Article 2, paragraph 1, of the Convention, see paras 38–41 above. It is significant that the Protocol, in addition to physical coercion, also refers to indirect forms of coercion, such as “abuse of a position of vulnerability” which is a form of psychological coercion often employed to induce consent of the victim.

<sup>170</sup> Palermo Protocol, article 3(b).

<sup>171</sup> As regards the links between the definition of forced or compulsory labour in Article 2, paragraph 1, of the Convention, and exploitative or abusive conditions of work, see paras 132–134 below.

<sup>172</sup> Palermo Protocol, article 3(c); “child” is defined as any person under 18 years of age (article 3(d)). Concerning the issue of “voluntariness” in connection with child labour, see para. 41 above.

<sup>173</sup> Under article 5 of the Palermo Protocol (Criminalization): 1. Each State party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally; 2. Each State party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: (a) subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with para. 1 of this article; (b) participating as an

countries having ratified Convention No. 29 provides for the punishment of the illegal exaction of forced or compulsory labour, many countries have also introduced into their national legislation specific provisions aimed at punishing trafficking in persons, either by amending their criminal codes,<sup>174</sup> or by adopting special anti-trafficking laws,<sup>175</sup> often as a result of ratification of the Palermo Protocol or the Council of Europe Convention.<sup>176</sup> A number of other countries are currently in the process of adopting such specific provisions.<sup>177</sup>

81. Penal laws punishing trafficking in persons in the countries which have ratified the Palermo Protocol mostly adopt the definition of trafficking in persons inspired by the

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accomplice in an offence established in accordance with para. 1 of this article; and (c) organizing or directing other persons to commit an offence established in accordance with para. 1 of this article.

<sup>174</sup> For example, countries which have ratified the Convention: *Armenia* (Criminal Code, section 132, adopted in August 2003); *Australia* (Criminal Code Amendment (Trafficking in Persons Offences) Act, 2005 (No. 96, 2005), which amends certain provisions of the Criminal Code Act, 1995); *Austria* (Criminal Code, section 217, as amended in February 2004 to expand the definition of trafficking so as to include exploitation of labour); *Belarus* (Act No. 15 of 4 May 2005 to amend and supplement several codes of the Republic of Belarus on matters relating to the increase of responsibility for trafficking in persons and other related crimes); *Brazil* (Act No. 10.803 of 11 December 2003 and Act No. 9777 of 1998, which introduced amendments to section 149 of the Penal Code); *France* (Act No. 2003-239 of 18 March 2003, which introduced amendments to the Penal Code (section 225-4-1)); *Russian Federation* (Criminal Code, as amended in 2003, defines crimes related to trafficking in human beings for the purpose of exploitation and provides for sanctions of imprisonment (section 217.1)); *Serbia* (Penal Code of 29 September 2005, section 388); *The former Yugoslav Republic of Macedonia* (Act of 16 January 2002 to amend the Criminal Code (Text No. 64), which introduced article 418-a concerning trafficking in human beings); *Ukraine* (Act No. 3316 of 12 January 2006 to amend the Penal Code and increase responsibility for trafficking in human beings). A country which has not ratified the Convention: *Canada* (Act to Amend the Criminal Code (trafficking in persons) of 25 November 2005 (Ch. 43, sections 279.01–279.04, 486, 487.04, 490.011(1) and 738(1)(b))).

<sup>175</sup> For example, countries which have ratified the Convention: *Azerbaijan* (Law on Trafficking in Persons and Presidential Decree on Enactment of the Law on Trafficking in Persons, of 5 August 2005); *Belgium* (the Suppression of Trafficking of Human Beings and Child Pornography Act, of 13 April 1995, which also amended other laws, such as the Criminal Code and the Immigration Law regarding access to the country, stay, residence and removal of organs; Act of 10 August 2005 to amend several provisions with a view to combating more effectively the trafficking of human beings and the practices of abusive landlords (section 433 *quinquies* to section 433 *novies*); *Bulgaria* (Act of 7 May 2003 on combating trafficking in human beings); *Dominican Republic* (Act No. 137-03 on the smuggling of migrants and trafficking in persons, entered into force on 7 August 2003); *Georgia* (Law on Combating Human Trafficking, of 28 April 2006); *Ghana* (Human Trafficking Act, 2005); *Italy* (Act No. 228 of 23 August 2003 on measures against the trafficking in persons, which also amended certain provisions of the Penal Code); *Mauritania* – (Act No. 2003-025 of 17 July 2003 on combating trafficking in persons); *Nigeria* (Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003); *Pakistan* (Prevention and Control of Human Trafficking Ordinance, 2002); *Philippines* (Anti-Trafficking in Persons Act, 2003); *Spain* (Organic Law 4/2000, of 11 January, as amended by Organic Law 8/2000, of 22 December, on the rights and freedoms of aliens and their social integration, which contains provisions concerning protection of victims of trafficking in persons and prosecution and punishment of perpetrators; it has also introduced amendments to the Penal Code (sections 312, 318)); *Tajikistan* (Act No. 47 of 15 July 2004 on the fight against trafficking in persons); *Thailand* (Measures in Prevention and Suppression of Trafficking in Women and Children Act, 1997). A country which has not ratified the Convention: *United States* (Victims of Trafficking and Violence Prevention Act, Public Law 106-386 of 28 October 2000).

<sup>176</sup> All countries that are members of the European Union must also comply with the EU Council Framework Decision of 19 July 2002 and criminalize all forms of trafficking in persons (see Council Framework Decision of 19 July 2002 on combating trafficking in human beings, Official Journal of the European Communities, L 203/1).

<sup>177</sup> For example, countries which have ratified the Convention: *Russian Federation* – RCE, 2006, p. 171 (a draft Law on Combating Trafficking in Human Beings which provides for a system of bodies to combat trafficking and contains provisions concerning prevention of trafficking, as well as protection and rehabilitation of victims, is currently under elaboration); *Bolivarian Republic of Venezuela* – RCE, 2007, pp. 207–209 (a draft law on trafficking in persons is under elaboration by the Ministry of the Interior and Justice).

Protocol,<sup>178</sup> though in some cases their approaches have varied, particularly as regards certain aspects of trafficking and related crimes.<sup>179</sup> Some countries have altered their definition of forced labour for the purposes of their penal codes, so as to cover acts connected with trafficking in persons.<sup>180</sup> In the definitions of trafficking, labour exploitation as its main purpose is often associated with particularly harsh and abusive conditions of work, or “conditions of work inconsistent with human dignity”.<sup>181</sup>

82. The Palermo Protocol also contains a series of provisions related to the prevention of trafficking in persons and the protection of victims of trafficking.<sup>182</sup> In accordance with these provisions, many signatory States have already adopted, or are in the process of drafting, their national action plans outlining anti-trafficking measures, including

<sup>178</sup> For example, countries which have ratified the Convention: *Armenia* (Criminal Code, section 132); *Azerbaijan* (Law on Trafficking in Persons, 2005, section 1); *Bulgaria* (Act of 7 May 2003 on combating trafficking in human beings, Additional Provision, section 1); *France* (Penal Code, as amended in 2003, section 225-4-1); *Philippines* (Anti-Trafficking in Persons Act, 2003, section 3(a)); *Serbia* (Penal Code of 29 Sep. 2005, section 388); *The former Yugoslav Republic of Macedonia* (Penal Code, as amended in 2002, section 418-a). A country which has not ratified the Convention: *Canada* (Act to Amend the Criminal Code (trafficking in persons) of 25 November 2005, Ch. 43, section 279.01(1)).

<sup>179</sup> Thus, in some countries, seizure of identity documents (without reasonable excuse) has been identified as the preferred modus operandi of many traffickers and has been criminalized (for example, a country which has ratified the Convention: *The former Yugoslav Republic of Macedonia* – Penal Code, section 418-a; a country which has not ratified the Convention: *United States* – Victims of Trafficking and Violence Prevention Act of 2000, section 112, which amends section 1592(a) of chapter 77, title 18, United States Code). There are different approaches in the national laws as regards a definition of “abuse of vulnerability” as a mode of coercion (for example, countries which have ratified the Convention: *Germany* – Penal Code, section 233; *Italy* – Law No. 228 of 23 August 2003, section 600; *Luxembourg* – Penal Code, section 379bis; *Republic of Moldova* – Penal Code, section 165; a country which has not ratified the Convention: *United States* – Victims of Trafficking and Violence Prevention Act of 2000, section 112, which amends section 1589 (2) and (3) of chapter 77, title 18, United States Code).

<sup>180</sup> For example, a country which has ratified the Convention: *Italy* (Act No. 228 of 23 August 2003 on measures against the trafficking in persons, which amended certain provisions of the Penal Code, giving a fuller definition of reducing or maintaining a person in slavery or servitude (section 600) and of trafficking in persons in a situation of slavery or servitude (section 601); these provisions are very broad in scope and cover the exploitation of persons in general, as well as, in particular, incitement to or exploitation of prostitution, begging, and the performance of work in conditions where the worker is exploited or subjugated by the employer).

<sup>181</sup> For example, countries which have ratified the Convention: *Belgium* (Act of 10 August 2005 to amend several provisions with a view to combating more effectively the trafficking of human beings and the practices of abusive landlords, section 433 *quinquies*, which stipulates: “It constitutes an infraction of trafficking in human beings to commit the act of recruitment, transport, transfer, hosting and receiving a person, or to pass or transfer control of a person to a third party, with the intent of putting the person to work or permitting the person to be put into work where conditions are contrary to human dignity”); *France* (Penal Code, as amended in 2003, section 225-4-1, which stipulates: “Human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put him at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanour”); *Germany* (Penal Code, section 231, which defines trafficking in persons for the purpose of forced labour by referring to “working conditions that show a *crass disparity* to the working conditions of other employees performing the same or comparable tasks”).

<sup>182</sup> Art. 9 of the Protocol stipulates that “States Parties shall establish comprehensive policies, programmes and other measures: (a) to prevent and combat trafficking in persons; and (b) to protect victims of trafficking in persons, especially women and children, from re-victimization”; preventive measures shall include research, information, mass media campaigns, and social and economic initiatives (Art. 9.2); the Protocol also refers to cooperation with civil society (Art. 9.3), developmental measures and other strengthening measures such as the conclusion of bilateral labour agreements (Art. 9.4), as well as measures, such as educational, social or cultural measures, that discourage demand for victims of trafficking (Art. 9.5).

prevention and protection measures.<sup>183</sup> Such measures are essential for the efficient eradication of trafficking in human beings for the purpose of exploitation and thereby contribute to the suppression of all forms of forced or compulsory labour, as required in Article 1, paragraph 1, of Convention No. 29. In this perspective, the Committee has noted with interest on numerous occasions the adoption of such national plans and other policy measures by ratifying States and has sought information on their application in practice.<sup>184</sup>

83. The protection of victims of trafficking (as well as, more generally, protection of witnesses) may contribute to law enforcement and to the effective punishment of perpetrators,<sup>185</sup> as required both under article 5 of the Palermo Protocol and Article 25 of Convention No. 29. In this connection, the Palermo Protocol requires that States parties “shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases”.<sup>186</sup> In its general observation referred to above<sup>187</sup> concerning trafficking in persons for the purpose of exploitation, the Committee requested information on measures designed to encourage the victims to turn to the authorities. Since the adoption of the Palermo Protocol, many countries have adopted provisions of this kind, allowing victims to remain in the country following detection and ensuring other victim/witness protection measures.<sup>188</sup>

<sup>183</sup> For example, countries which have ratified the Convention: *Armenia* (National anti-trafficking action plan for 2004–06, adopted by Government Decision No. 58-N of 2004); *Czech Republic* (National Strategy of Combating Trafficking in Human Beings for the Purpose of Sexual Exploitation, approved in September 2003); *Denmark* (National Action Plan to Combat Trafficking in Women, published in December 2002 and became fully effective in 2003); *Georgia* (Plan of Action against Trafficking in Human Beings, 2005–06, approved by Decree of the President of Georgia No. 623 of 29 December 2004); *India* (National Plan of Action to combat trafficking and commercial sexual exploitation of women and children, 1998); *Indonesia* (National Action Plan for Abolishing Woman and Child Trafficking, adopted on 30 December 2002); *The former Yugoslav Republic of Macedonia* (National Action Plan for Illegal Trafficking in Humans and Illegal Migration, 2002); *Bolivarian Republic of Venezuela* (National Plan of Action to Prevent, Suppress and Penalize Trafficking in Persons and to Provide Global Assistance to Victims of Trafficking, 2006).

<sup>184</sup> See, for example: *Bangladesh* (RCE, 2005, p. 136); *Dominican Republic*, (RCE, 2005, p. 152); *India* (RCE, 2005, p. 160); *Indonesia* (RCE, 2005, pp. 161, 162); *Pakistan* (RCE, 2006, p. 163); *Russian Federation* (RCE, 2006, p. 171); *Thailand* (RCE, 2006, p. 175).

<sup>185</sup> From a law enforcement perspective, poor victim protection measures discourage victims of trafficking from seeking assistance from law enforcement officials for fear of mistreatment, deportation and potential risks to their personal safety. Sometimes, strict enforcement of immigration laws could also result in detention and return of migrants to their home countries without assessing whether these individuals are victims of forced labour exploitation (see ILO/Rohit Malpani, *Legal aspects of trafficking for forced labour purposes in Europe*, Geneva, International Labour Office, 2006, pp. 22, 32).

<sup>186</sup> Palermo Protocol, art. 7; other protective measures include the right to seek compensation, protection of the victim’s identity, privacy and physical safety and safe repatriation of trafficking victims to origin countries (ibid.).

<sup>187</sup> See para. 75 above and footnotes 162 and 163.

<sup>188</sup> For example, countries which have ratified the Convention: *Cyprus* (Protection of Witnesses Law No. 95(I) of 2001, which provides a comprehensive scheme for the protection of victims/witnesses, including residence permits); *Estonia* (Witness Protection Law, which came into force on 21 July 2005); *Hungary* (Aliens Act 39/2001, which provides for a possibility to grant a residence permit to foreigners who cooperate with the criminal justice authorities to detect offenders of trafficking); *Italy* (Immigration Law 286/98, Art. 18, which provides for witness/victim protection); *Malta* (Police Act, Ch. 164, Title IV, which regulates the protection of witnesses and victims, including the setting up of a witness protection programme and the granting of residence permits); *Poland* (Aliens Act of 13 June 2003, section 33, which provides for a short-term residence permit to support prosecution); *Portugal* (Statutory Law No. 244/98, section 137-B, which provides for a possibility to give a residence permit to a foreigner who cooperates with the investigation of criminal activities); *Spain* (Organic

84. The Committee has noted that the penal legislation of most countries having ratified Convention No. 29 provides for the punishment of the illegal exaction of forced or compulsory labour, and in many cases for specific sanctions aimed at the trafficking in persons in accordance with the Palermo Protocol. However, the persistence of trafficking in persons tends to show that in actual practice the enforcement of the legislation is often jeopardized by difficulties which remain to be analysed and solved in order to comply with the requirements of the Convention.<sup>189</sup> Labour inspectors and police both play important roles in law enforcement. The labour inspectors have to monitor workplaces and take measures to ensure that conditions of work prescribed by law are respected. Police have the ability to identify victims, as well as perpetrators of trafficking, and to take corrective measures. A crucial basis of the law enforcement machinery is an effective judicial system,<sup>190</sup> which is a key element in the efficient prosecution of traffickers and strict application of penal sanctions, as required under Article 25 of the Convention. Therefore, in its general observation on trafficking in persons, the Committee sought information on measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons. In particular, information as to the provision of adequate material and human resources to law enforcement agencies; the specific training of law enforcement officers working in immigration control, labour inspection and vice squads; and international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons.<sup>191</sup> The Committee also sought information on cooperation with employers' and workers' organizations as well as non-governmental organizations engaged in the protection of human rights and the fight against trafficking in persons. This information was sought in recognition of the vital role which is being played by the social partners and NGOs in preventing and combating trafficking in human beings for the purpose of exploitation. In comments addressed to a number of countries under article 22 of the ILO Constitution, the Committee has requested information on prosecutions and judicial proceedings initiated against those responsible for trafficking, as well as information on convictions obtained and penalties imposed.<sup>192</sup> In some other cases, the Committee has also requested ratifying States, more generally, to adopt effective measures to combat trafficking in persons.<sup>193</sup>

85. In a number of cases, the Committee has closely followed the issue of child trafficking, which has been often raised in connection with trafficking and commercial sexual exploitation of women,<sup>194</sup> but also as a separate issue. Where a country in question has also ratified the Worst Forms of Child Labour Convention, 1999

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Law 4/2000, of 11 January, as amended by Organic Law 8/2000, of 22 December (Aliens Law), section 59, which regulates victim/witness protection).

<sup>189</sup> RCE – General Report, 2001, para. 80.

<sup>190</sup> Concerning the role of police and labour inspectors and judicial authorities in the law enforcement, see *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement*, op. cit., pp. 49–54.

<sup>191</sup> See para. 75 above and footnotes 162 and 163.

<sup>192</sup> See, for example: *Bangladesh* (RCE, 2005, p. 137); *Dominican Republic*, (RCE, 2005, p. 152); *Indonesia* (RCE, 2005, pp. 161, 162); *Mexico* (RCE, 2004, pp. 145, 146); *Thailand* (RCE, 2006, p. 176); see also direct requests addressed to *Mali* (2005) and *Nicaragua* (2004).

<sup>193</sup> See, for example: *El Salvador* (RCE, 2006, p. 143); *Kuwait* (RCE, 2006, pp. 148, 149).

<sup>194</sup> See, for example: *India* (RCE, 2005, p. 160).

(No. 182),<sup>195</sup> the Committee usually expressed the view that this problem can be examined more specifically under Convention No. 182, since the protection of children is enhanced by the fact that the latter Convention requires ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee has accordingly asked the governments concerned to refer in such cases to its comments on the application of Convention No. 182.<sup>196</sup>

#### 4. Forced or compulsory labour imposed by the State for the purposes of production or service

##### (a) General obligation to work

86. In some countries, national constitutions expressly refer to a “duty to work”,<sup>197</sup> as the counterpart of the “right to work”, if such right is granted to citizens in the constitution. In most cases, such a provision remains a general statement of principle and means a moral duty, which is not translated into a precise legal obligation enforceable with sanctions and therefore does not affect the application of the Convention.

87. As the Committee has noted in its earlier surveys on the subject,<sup>198</sup> in some countries national legislation created a legal obligation for all able-bodied citizens to engage in a gainful occupation; failure to do so made them liable to penal sanctions, which is incompatible with the Convention.<sup>199</sup> Since the last General Survey, the Committee has noted with satisfaction that many of the texts which provided for a general obligation to work or punished any able-bodied person (or persons of a certain age group) refusing to take up employment or leading a “parasitic way of life”, or “anti-social life”, have been repealed or amended in order to ensure compliance with the Convention.<sup>200</sup> In some cases, the repeal or amendment of such provisions has been

<sup>195</sup> Art. 3(a) of Convention No. 182 provides that the worst forms of child labour include “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour”.

<sup>196</sup> See, for example: *Bangladesh* (RCE, 2005, p. 136); *Côte d’Ivoire* (RCE, 2006, p. 138); *Gabon* (RCE, 2006, p. 144); *Democratic Republic of the Congo* (RCE, 2006, pp. 139, 140); *Mali* (RCE, 2004, p. 143); *Mauritius* (RCE, 2005, p. 169); *Oman* (RCE, 2005, p. 178); *Qatar* (RCE, 2005, p. 181); *Togo* (RCE, 2005, p. 189); *United Arab Emirates* (RCE, 2006, p. 179).

<sup>197</sup> For example, countries which have ratified the Convention: *Colombia* (article 25); *Costa Rica* (article 56); *Cuba* (article 45); *Ecuador* (article 35); *Guatemala* (article 101); *Japan* (article 27); *Panama* (article 60); *Peru* (article 22); *Spain* (article 35); *Turkey* (article 49); *Bolivarian Republic of Venezuela* (article 87).

<sup>198</sup> See *Forced labour*, General Survey of 1968, para. 55; *Abolition of forced labour*, General Survey of 1979, para. 45.

<sup>199</sup> As the Committee has pointed out, the exception of “normal civic obligations” in Article 2(2)(b) of the Convention must be read in the light of other provisions of the Convention and cannot be invoked to justify such legislation (see para. 47 above).

<sup>200</sup> Countries which have ratified the Convention: *Belarus* – RCE, 1993, p. 92 (Act No. 1233-XII of 14 February 1991 has repealed section 204 of the Penal Code concerning persons “leading a parasitic way of life”); *Iceland* – RCE, 1986, p. 85 (Act No. 42/1985, section 10, which has abolished section 180 of the Penal Code, which empowered the administrative authorities to direct certain classes of “anti-social persons” to any suitable employment under the menace of penal sanctions); *Poland* – RCE, 1990, p. 109, 110 (Act of 29 December 1989 on Employment, section 45, has repealed the Act of 26 October 1982 on the procedure concerning persons evading work, which provided administrative authorities with extensive policing powers in respect of persons whom they considered to be inactive for socially unjustified reasons); *Romania* – RCE, 1990, p. 110 (Legislative Decree No. 9 of 31 December 1989, section 1, subsection 7, has repealed Act No. 25 of 5 November 1976, which

followed by the removal of a reference to a “duty to work” from national constitutions.<sup>201</sup> However, the discrepancies continue to exist in some countries, where an obligation to work is enforceable with penal sanctions, though the governments concerned usually indicate that measures are being taken to repeal or amend this kind of provision,<sup>202</sup> or that they are no longer applied in practice.

88. In its previous surveys on the subject, the Committee has observed that provisions concerning *vagrancy* and similar offences, if defined in an unduly extensive manner, are liable to become a means of compulsion to work and may even result in a situation similar to that where the law imposes a general obligation to work.<sup>203</sup> The Committee has considered that provisions of that kind, which are intended to protect society against disturbances of public order and tranquillity by persons who do not only habitually refuse to work but also do not have any lawful means of subsistence, are compatible with the Convention.<sup>204</sup> Since the last General Survey, the Committee has noted with satisfaction on a number of occasions that provisions on vagrancy have been either repealed or redefined in narrower terms, so as to avoid abuses and confine their applicability to persons who not only habitually refuse to take employment, but also have gained their income illegally.<sup>205</sup> In some other cases, where laws on vagrancy and

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provided for compulsory allocation to a workplace and prescribed that persons placed in employment were to go immediately to the enterprise to which they had been assigned in order to take up employment); *Russian Federation* – RCE, 1994, p. 125 (Act No. 1867 of 5 December 1991 has repealed section 209 of the Penal Code, concerning persons “leading a parasitic way of life”); *Sweden* – RCE, 1982, p. 79 (Act No. 30 of 1981 has repealed Act, No. 450 of 1964, which provided for placement in a workhouse of a person who neglects to support himself by honest means and leads an anti-social life, so that public order or public safety are obviously endangered, and which had not been applied in practice); *Ukraine* – RCE, 1994, p. 142 (Act of 7 July 1992 (No. 2547-XII) has repealed section 214 of the Penal Code concerning “persons leading a parasitic way of life” and the Order of 3 January 1985 of the Supreme Soviet of the Ukrainian SSR on the manner to applying this section).

<sup>201</sup> Countries which have ratified the Convention: *Belarus, Poland, Romania, Russian Federation, Ukraine*.

<sup>202</sup> Countries which have ratified the Convention: *United Republic of Tanzania* – RCE, 2004, pp. 168, 169 (art. 25, para. 1, of the 1985 Constitution, which provides for a general obligation to work; art. 25, para. 3(d), of the Constitution, which provides that no work shall be considered as forced labour if it is relief work that is part of compulsory nation-building initiatives, in accordance with the law, or national efforts in harnessing the contribution of everyone in the work of developing the society and national economy and ensuring success in development; the Committee expressed its concern at the institutionalized and systematic compulsion to work established in law at all levels, in the national Constitution, Acts of Parliament and district by-laws, in contradiction with Convention No. 29 and Art. 1(b) of Convention No. 105, which prohibits the use of compulsory labour for development purposes); *Uganda* – RCE, 2006, pp. 177, 178 (section 2(1) of the Community Farm Settlement Decree, 1975, under which any unemployed able-bodied person may be settled on any farm settlement and required to render service; section 15 of the Decree makes it an offence punishable with a fine and imprisonment for any person to fail or refuse to live on any farm settlement or to desert or leave such settlement without authorization; the Government has indicated that the abovementioned Decree had to be repealed under the laws of Uganda revision exercise by the Uganda Law Reform Commission).

<sup>203</sup> See *Forced labour*, General Survey of 1968, para. 56; *Abolition of forced labour*, General Survey of 1979, paras 46–48.

<sup>204</sup> *ibid.*

<sup>205</sup> Countries which have ratified the Convention: *Burundi* – RCE, 1983, p. 75 (Legislative Decree No. 1-6 of 4 April 1981 revising the Penal Code, section 339, which provides for the definition of vagrancy and ensures that the anti-vagrancy provisions could not be used as a means of establishing a general obligation to work); *Chile* – RCE, 1999, p. 118 (Act No. 19.567 of 22 June 1998 has repealed para. 13 on vagrancy and mendacity, of Title VI, Book II, of the Penal Code, as well as provisions on vagrancy in sections 305 to 312 of the same Title); *Denmark* – RCE, 2002, p. 125 (Act No. 141 of 17 March 1999 has repealed sections 198 and 199 of the Penal Code, under which, in certain cases of habitual idleness, a person able to work could be directed by the police to employment and punished for vagrancy, and which were no longer applied in practice); *Ecuador* – RCE, 1982, p. 67 (under sections 383 and 384 of the revised Penal Code, vagrants shall not be punished for the mere fact of not habitually carrying on a trade or occupation); *Hungary* – RCE, 1990, p. 95 (section 2 of Act No. 27 of 7 July 1989 has repealed section 266 of the Penal Code and section 91 of Act No. 1 of 1968 on contraventions, under

assimilated offences are still worded in such general terms as to lend themselves to application as a means of direct or indirect compulsion to work, the Committee has requested the government concerned to take the necessary measures to repeal such texts<sup>206</sup> or to make amendments so as to limit the scope of the penal provisions in question to the unlawful activities.<sup>207</sup> In one case, the Government indicated that the texts in question have become obsolete and expressed its commitment to revise them and repeal the provisions which are contrary to the Convention.<sup>208</sup>

(b) Imposition of labour for public works or services and other specified purposes

89. It appears that systematic state practices of imposing compulsory labour on the population (e.g., where able-bodied men could be called up for limited periods to perform public works, such as construction and maintenance of public buildings and roads, bridges, dams, as well as reforestation and irrigation works, conservation of natural resources, compulsory cultivation, etc.), to which the Committee has referred in its earlier surveys,<sup>209</sup> have declined worldwide and practically disappeared in the great majority of countries. Exceptions are quite rare and concern rather legislative provisions that still remain in force than remnants of old practices, and the governments concerned often indicate that provisions of this kind have fallen into disuse and that measures are being taken to repeal them. However, in one case the Committee has noted the government's statement that practical difficulties encountered in the application of the Convention were in most cases due to the application of by-laws and directives issued by local authorities imposing compulsory labour on the population, which did not take

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which persons found guilty of the penal offence of idleness could be punished); *Mauritius* – RCE, 1990, p. 101, 102 (the Labour (Amendment) Act of 16 December 1988 has repealed the Rodrigues Labour Regulations 1882, under which persons who have no means of subsistence and who, although fit to work, do not habitually work in any trade or profession, could be sentenced to imprisonment); *Peru* – RCE, 1988, p. 89 (Act No. 24506 of 12 May 1986 has repealed the Vagrancy Act No. 4981 of 18 January 1924); *Bolivarian Republic of Venezuela* – RCE, 1998, p. 136 (in the ruling passed on 14 October 1997, the Supreme Court of Justice declared to be unconstitutional (and therefore null and void) the Act of 1956 relating to vagrants and rogues, which empowered the administrative authorities to order internment in a rehabilitation and labour establishment, an agricultural reformatory colony or a work camp, in order to reform vagrants and rogues or to put them out of harm's way).

<sup>206</sup> See, for example: *Central African Republic* – RCE, 2006, p. 136 (Ordinance No. 66/004 of 8 January 1966 with respect to the suppression of idleness, as amended by Ordinance No. 72/083 of 18 October 1972, under which any able-bodied person aged between 18 and 55 years who cannot prove that she or he is engaged in a normal activity providing for her or his subsistence or that she or he is engaged in studies is considered to be idle and liable to a penalty of between one and three years of imprisonment; Ordinance No. 66/038 of June 1966 respecting the supervision of the active population, under which any person aged between 18 and 55 years who cannot justify belonging to one of the eight categories of the active population shall be called up to cultivate land designated by the administrative authorities and shall also be considered a vagabond if apprehended outside her or his *sous-prefecture* of origin and shall be liable to a sentence of imprisonment; Ordinance No. 75/005 of 5 January 1975 obliging all citizens to provide proof of the exercise of a commercial, agricultural or pastoral activity and making persons in violation of this provision liable to the most severe penalties; the Government has indicated that these texts have become obsolete and that they are being revised).

<sup>207</sup> See, for example: *Syrian Arab Republic* – RCE, 2006, p. 174 (section 597 of the Penal Code, which provides for the punishment of any person who is reduced to seeking public assistance or charity as a result of idleness, drunkenness or gambling; the Committee recalled that, while the punishment of gambling or the abuse of intoxicating liquor is outside the scope of the Convention, the possibility to impose penalties for mere refusal to work is contrary to the Convention).

<sup>208</sup> A country which has ratified the Convention: *Central African Republic* – RCE, 2006, p. 136 (see footnote 206 above).

<sup>209</sup> See *Forced labour*, General Survey of 1968, paras 57–62; *Abolition of forced labour*, General Survey of 1979, paras 74–83.

much into account the provisions of the ILO Conventions and the national Constitution.<sup>210</sup> In another country, compulsory public works or services can be imposed on the population by traditional political authorities, including chiefs.<sup>211</sup> In both cases the Committee urged the governments concerned to take the necessary measures to ensure that the provisions incompatible with the Convention are repealed or amended. The Committee has also requested governments to repeal or amend legislative provisions imposing compulsory labour for national development purposes and aiming at the increase of productivity, under which every able-bodied adult person is required, on pain of penal sanctions, to carry out agricultural and other development work, though these provisions have not been applied in practice.<sup>212</sup> In several other cases the Committee has noted with satisfaction that the provisions of this kind have been repealed.<sup>213</sup>

90. In a small number of countries, national legislation and local by-laws still provide for compulsory cultivation<sup>214</sup> and some other forms of compulsory labour or services, such as the conservation of natural resources,<sup>215</sup> irrigation, etc., as well as the exaction

<sup>210</sup> See *United Republic of Tanzania* – RCE, 2004, pp. 168, 169 (under the Local Government (District Authorities) Act, 1982, the Employment Ordinance, 1952, as amended, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Finances Act, 1982, compulsory labour may be imposed, inter alia, by administrative authority, on the basis of a general obligation to work and for purposes of economic development; several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled “self-help and community development”, “nation-building”, and “enforcement of human resources deployment”, provide for an obligation to work; the Government has indicated that the majority of the texts in question have been addressed by the Task Force of the current Tanzania Labour Policy and Legislation Reform, which will make appropriate recommendations to the Government). The Employment and Labour Relations Act, 2004 (No. 6), has repealed the abovementioned Employment Ordinance, 1952.

<sup>211</sup> See *Swaziland* – RCE, 2006, pp. 173, 174 (the Swazi Administration Order (No. 6 of 1998), sections 6, 27, 28(1)(p), (q) and (u) and 34, which provide for orders requiring compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance; the Order has repealed the Swazi Administration Act, No. 79 of 1950, which contained similar provisions).

<sup>212</sup> See *Democratic Republic of the Congo* – RCE, 2006, p. 139 (Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order No. 00748/BCE/AGRI/76 of 11 June 1976 concerning the performance of civic tasks in the context of the national food production programme; the Government indicated that the Act and its implementing legislation were not applied in practice).

<sup>213</sup> Countries which have ratified the Convention: *India* – RCE, 1980, p. 64 (statutory instruments adopted on 26 May 1977 and 30 December 1978 have repealed Ch. B of the Bihar Gram Panchayat Accounts Rules, 1949, regarding assessment of compulsory labour tax, and section 19A of the Uttar Pradesh Panchayat Raj Act, 1947, which authorized the use of compulsory male labour for works of general public utility); RCE, 1982, p. 69 (the Orissa Compulsory Labour (Amendment) Act, 1981, has repealed section 11 of the Orissa Compulsory Labour Act, 1948, which enforced local customs under which work in connection with irrigation or drainage was usually performed by the joint labour of the village community); *Democratic Republic of the Congo* – RCE, 2005, p. 150 (the Labour Code (Act No. 015/2002 of 16 October 2002) has deleted the provision of section 2 of the 1967 Labour Code which authorized compulsory labour in the public interest beyond the scope of the exceptions allowed by the Convention).

<sup>214</sup> See footnote 220 below.

<sup>215</sup> For example, a country which has ratified the Convention: *Kenya* – RCE, 2006, p. 147 (sections 13 to 18 of the Chief’s Authority Act (Cap. 128), according to which able-bodied male persons between 18 and 45 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year; the amendments introduced by Act No. 10 of 1997 not only failed to bring the legislation into compliance with the Convention, but the non-compliance was aggravated by raising the age limit for call up for compulsory labour to 50 years of age; the Government has indicated that the task force on the review of labour laws addressed the issue of repeal/amendment of sections 13 to 18 of the Chief’s Authority Act to bring them into compliance with the Convention; it has also indicated that the proposed reorganization of the administrative machinery in the country will lead to the abolition of the chief’s role, which will entail the repeal of the Chief’s Authority Act).

of compulsory labour as a means of recovery of taxes.<sup>216</sup> As regards, more particularly, *compulsory cultivation*, it seems clear that, if provisions imposing this kind of labour may be applied only in the event of actual or threatened famine, they fall outside the scope of the Convention as emergency measures, in virtue of Article 2, paragraph 2(d), of the Convention.<sup>217</sup> All other forms of compulsory cultivation, as well as other forms of compulsory labour referred to above, if they fail to meet the criteria of “minor communal services”,<sup>218</sup> are incompatible with Convention No. 29, as well as with Convention No. 105, which prohibits the use of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development.<sup>219</sup> The Committee has therefore addressed comments to certain governments in this connection, asking them to take the necessary measures in order to repeal or amend the provisions in question.<sup>220</sup> In some other cases the Committee has noted the repeal of certain provisions of this kind, including those to which reference has been made in the previous General Survey on the subject.<sup>221</sup>

91. As has already been indicated,<sup>222</sup> legislation allowing the call-up of labour in cases of emergency is sometimes worded in terms broad enough to permit the call-up of labour in a wider range of circumstances, such as, for example, where the inhabitants of regions lacking roads suitable for mechanized transport may be called up for work of public interest; where the mobilization of the civilian population may be ordered in the event of

<sup>216</sup> For example, a country which has ratified the Convention: *Democratic Republic of the Congo* – RCE, 2006, p. 139 (sections 18 to 21 of Legislative Ordinance No. 71/087 of 14 September 1971 on minimum personal contributions, which provides for imprisonment involving compulsory labour, by decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions; the Government has indicated that the provisions of Legislative Ordinance No. 71/087 will be submitted to the Monitoring Committee for examination).

<sup>217</sup> See paras 62–64 above.

<sup>218</sup> See paras 65–66 above.

<sup>219</sup> See paras 167–170 below.

<sup>220</sup> Countries which have ratified the Convention: *Burundi* – RCE, 2006, p. 135 (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953 and Decree of 10 May 1957, which deal with compulsory cultivation, portage and public works, should be formally repealed; Legislative Decree No. 1/16 of 29 May 1979, which establishes the obligation, under penalty of sanctions, to perform community development work, should be amended); *Central African Republic* – RCE, 2006, p. 136 (section 28 of Act No. 60/109 of 27 June 1960 with respect to the development of the rural economy, under which minimum surfaces for cultivation are to be established for each rural community and compulsory labour may be exacted); *Sierra Leone* – RCE, 2006, p. 172 (section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on “natives”; the Government has indicated in its report that section 8(h) is not applicable in practice; it has also stated that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable).

<sup>221</sup> Countries which have ratified the Convention: *Burundi* – RCE, 1984, p. 71 (Presidential Decree No. 100/142 of 30 May 1983 has repealed Ministerial Order No. 050/26 of 24 February 1966 on compulsory cultivation, which provided for the imposition of cultivation outside the cases of emergency as defined in the Convention); *Cambodia* – RCE, 2001, p. 123 (Sub-Decree No. 40 SDE of 4 July 2000 has repealed Sub-Decree No. 10 SDEC of 28 February 1994, which provided for up to 15 days a year of compulsory labour for irrigation works; the new Sub-Decree No. 40 SDE of 4 July 2000 provides for one day of manual work on hydrology, to be held on 4 March every year, which all adult citizens can attend voluntary); *Chad* – RCE, 2007, p. 192 (Act No. 09/PR/2006 of 10 March 2006 adopting the General State Budget has repealed section 982 of the Tax Code which allowed authorities to impose labour for the purpose of tax collection); *Papua New Guinea* – RCE, 1980, p. 71 (the Government indicated that the Native Village Councils Ordinance, under which “natives” could be required to cultivate land, has been repealed); the Committee also noted with interest that Statutory Instruments Nos. 63 and 64 of 1975 had repealed the powers to require the compulsory cultivation of land provided for in the Native Regulation (Papua) and the Native Administration Regulation (New Guinea) (see direct request of 1987).

<sup>222</sup> See paras 62–64 above.

serious economic crisis; or where persons and goods may be requisitioned in order to satisfy national needs and to protect the nation's vital interests or for the purpose of promoting the country's economic and social development.<sup>223</sup> These provisions appear to go far beyond the exception concerning emergencies provided for in Article 2, paragraph 2(d), of Convention No. 29 and to permit mobilization of labour "for purposes of economic development" within the meaning of Convention No. 105. Similar discrepancies sometimes take place as regards the application of another exception permitted by Convention No. 29 which relates to the "minor communal services".<sup>224</sup> The Committee has repeatedly pointed out in this connection, while examining the national provisions imposing various kinds of labour on the population, that in order to be compatible with the Convention, such provisions should be limited in scope. It should be limited to cases of a calamity or threatened calamity endangering the existence or well-being of the population (such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, etc.); or in case of compulsory cultivation to circumstances of famine or a deficiency of food supplies, and always on the condition that the food or produce shall remain the property of the individuals or the community producing it; or, in the case of minor communal services, to situations where work is limited to minor maintenance and its duration is substantially reduced.<sup>225</sup>

92. In contrast to the general tendency of the worldwide decline of state practices of imposing compulsory labour on the population, the Committee has been commenting for a number of years on one extremely serious case of flagrant violation of the Convention by the authorities and the military in a country,<sup>226</sup> in which this grave situation has emerged over the last few decades, and which has also been the subject of overwhelming criticism and condemnation in the Conference Committee on the Application of Standards of the International Labour Conference on ten occasions between 1992 and 2006, in the International Labour Conference at its 88th Session in June 2000, and in the Governing Body, by governments and social partners alike. The major focus of the criticisms by each of the ILO bodies has related to the outcome of a Commission of Inquiry appointed by the Governing Body in March 1997 following a complaint submitted in June 1996 by twenty five Worker delegates to the 83rd Session of the International Labour Conference under article 26 of the Constitution. The Commission of Inquiry concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and in particular, made the following conclusions on the substance of the case:

There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks, none of which comes under any of the exceptions listed in Article 2(2) of the Convention". The Commission's report concludes further that "forced labour in Myanmar is

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<sup>223</sup> See para. 63 and footnotes 130–133 above.

<sup>224</sup> See paras 65–66 above.

<sup>225</sup> See, for example: *Swaziland* – RCE, 2006, p. 174.

<sup>226</sup> A country which has ratified the Convention: *Myanmar* – RCE, 1999, pp. 136–138; RCE, 2000, pp. 106–112; RCE, 2001, pp. 147–154; RCE, 2002, pp. 144–155; RCE, 2003, pp. 140–154; RCE, 2004, pp. 146–152; RCE, 2005, pp. 172–178; RCE, 2006, pp. 155–160; RCE, 2007, pp. 201–206.

widely performed by women, children and elderly persons as well as persons otherwise unfit for work” and adds: “A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law. Whatever may be the position in national law with regard to the exaction of forced or compulsory labour and the punishment of those responsible for it, any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity.”<sup>227</sup>

93. The Commission of Inquiry made the following recommendations: (1) that the relevant legislative texts<sup>228</sup> be brought into line with the Convention; (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and (3) that the penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour be strictly enforced.<sup>229</sup> It also emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring to an end the exaction of forced labour in practice, in particular by the military.<sup>230</sup> The flagrant continuing breaches of the Convention by the Government and the failure to comply with the recommendations of the Commission of Inquiry and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.<sup>231</sup> In its

<sup>227</sup> See ILO: *Forced labour in Myanmar (Burma)*, report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), *Official Bulletin* (Geneva), Vol. LXXXI, 1998, Series B, special supplement [hereafter: *Forced labour in Myanmar (Burma)*], report of the Commission of Inquiry], paras 528, 531, 538. The Commission’s report further concludes: 533. Forced labour is a heavy burden on the general population in Myanmar, preventing farmers from tending to the needs of their holdings and children from attending school; it falls most heavily on landless labourers and the poorer sections of the population, which depend on hiring out their labour for subsistence and generally have no means to comply with various money demands made by the authorities in lieu of, or over and above, the exaction of forced labour. The impossibility of making a living because of the amount of forced labour exacted is a frequent reason for fleeing the country. 534. The burden of forced labour also appears to be particularly great for non-Burman ethnic groups, especially in areas where there is a strong military presence, and for the Muslim minority, including the Rohingyas. 535. All the information and evidence before the Commission shows utter disregard by the authorities for the safety and health as well as the basic needs of the people performing forced or compulsory labour. Porters, including women, are often sent ahead in particularly dangerous situations as in suspected minefields, and many are killed or injured this way. Porters are rarely given medical treatment of any kind; injuries to shoulders, backs and feet are frequent, but medical treatment is minimal or non-existent and some sick or injured are left behind in the jungle. Similarly, on road building projects, injuries are in most cases not treated, and deaths from sickness and work accidents are frequent on some projects. Forced labourers, including those sick or injured, are frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some are killed, and women performing compulsory labour are raped or otherwise sexually abused by soldiers. Forced labourers are, in most cases, not supplied with food ... 536. In conclusion, the obligation under Art. 1, para. 1, of the Convention to suppress the use of forced or compulsory labour is violated in Myanmar in national law, in particular by the Village Act and the Towns Act, as well as in actual practice in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people of Myanmar.

<sup>228</sup> In particular, the Village Act (section 11(d), read in conjunction with section 8(1)(g), (n) and (o)) and the Towns Act (section 9(b)), which provide for the exaction of work or services from any person residing in a village tract or in town ward, failure to comply with a requisition made under these provisions being punishable with penal sanctions under section 12 of the Village Act and section 9A of the Towns Act.

<sup>229</sup> *Forced labour in Myanmar (Burma)*, report of the Commission of Inquiry, para. 539.

<sup>230</sup> *ibid.*

<sup>231</sup> ILO: “Measures recommended by the Governing Body under article 33 of the Constitution – Implementation of recommendations contained in the report of the Commission of Inquiry entitled *Forced labour in Myanmar (Burma)*”, in: ILC, 88th Session, Geneva, 2000, *Record of Proceedings*, Vol. II, Resolutions, p. 37. Under the

observations addressed to the Government, the Committee identified four areas in which measures should be taken by the Government: (i) issuing specific and concrete instructions to the civilian and military authorities; (ii) ensuring that the prohibition of forced labour is given wide publicity; (iii) providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and (iv) ensuring the enforcement of the prohibition of forced labour.<sup>232</sup>

### (c) National service obligations

94. As indicated above,<sup>233</sup> compulsory military service is excluded from the scope of the Convention only if used “for work of a purely military character”, this condition being aiming specifically at preventing the call-up of conscripts for public works or development purposes. In the last General Survey on the subject, while examining national situations in the light of the Special Youth Schemes Recommendation, 1970 (No. 136), the Committee drew attention to the great difference which may exist between legislation and practice in this respect. Some governments stated that, in actual practice, legislation concerning non-military national service activities, including provisions authorizing the *use of conscripts for non-military purposes*, applies only in the case of emergencies or in respect of vocational training. Other governments pointed out that young people engaged in economic development work as part of their compulsory national service are in practice always volunteers.<sup>234</sup> The Committee has pointed out that, in order to avoid any ambiguity in the interpretation and to bring legislation into line with the Convention and the indicated practice, the principle that such non-military tasks are restricted to emergencies or performed exclusively by volunteers should be clearly reflected in the legislation.<sup>235</sup> Since that time, some texts concerning compulsory civic service have been formally repealed,<sup>236</sup> and others are

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Conference resolution, the measures in question included, inter alia, keeping the matter under review at future sessions of the Conference until Myanmar has fulfilled its obligations; recommending to the Organization’s constituents that they review their relations with Myanmar and take appropriate measures to ensure that such relations do not perpetuate or extend the system of forced or compulsory labour in that country; inviting the Director-General of the ILO to inform international organizations working with the ILO to reconsider any cooperation they may be engaged in with Myanmar and, if appropriate, to cease any activity that could directly or indirectly abet forced labour practices; inviting the Director-General to request the United Nations Economic and Social Council (ECOSOC) to place on the agenda of its July 2001 session an item concerning Myanmar’s failure to implement the recommendations of the Commission of Inquiry; requesting the Director-General to submit to the Governing Body a periodic report on the outcome of measures directed to international organizations and the United Nations and to keep them informed of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry.

<sup>232</sup> See *Myanmar – RCE*, 2006, p. 156. In this observation, the Committee has also noted the general evaluation by the Liaison Officer a.i. of the forced labour situation, on the basis of all the information available to him, which “continues to be ... that although there have been some improvements since the Commission of Inquiry, the practice remains widespread throughout the country, and is particularly serious in border areas where there is a large presence of the army” (February 2005 report of the Liaison Officer a.i., document GB.292/7/2, para. 8).

<sup>233</sup> See paras 43–46 above.

<sup>234</sup> See *Abolition of forced labour*, General Survey of 1979, paras 50–52.

<sup>235</sup> *ibid.*

<sup>236</sup> Countries which have ratified the Convention: *Morocco – RCE*, 1999, pp. 134, 135 (Dahir issuing Act No. 46-97-1 of 4 Chaoual 1417 (12 February 1997) has repealed the provisions relating to civic service which had been the subject of previous comments, thus confirming the practice according to which persons called up are made available to public administrations only if they so request); *Tunisia – RCE*, 1997, p. 109 (Act No. 95-9 of 23 January 1995 has repealed the provisions of Act No. 78-22 of 8 March 1978 respecting civilian service, under which any Tunisian of 18 to 30 years of age unable to show that he was in employment or registered in a school

stated to have fallen into disuse.<sup>237</sup> The Committee has also noted with satisfaction the adoption of provisions restricting compulsory military service to work of purely military character<sup>238</sup> and making military service voluntary in time of peace.<sup>239</sup> However, some texts authorizing the use of conscripts for non-military purposes are still in force.<sup>240</sup> In a few countries, persons liable to military service but not in fact called up for such service (e.g. persons surplus to military requirements) may be required to satisfy their national service obligations in non-military forms, such as work for development purposes in production units of factories, public undertakings, etc.<sup>241</sup> There are also cases where legislation concerning compulsory civic service is still in force,<sup>242</sup> sometimes the governments indicate that it is no longer applied in practice, though has not been

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or vocational training establishment could be assigned, for one year or more, to economic and social, or rural or urban development projects and was liable to re-educational labour in case he refused or deserted).

<sup>237</sup> For example, a country which has ratified the Convention: *Netherlands* – RCE, 2001, p. 154 (concerning the use of conscripts for non-military activities, the Committee has noted with satisfaction the Government’s confirmation in its report that compulsory national service and the practice in question concerning the position of conscripts have ended).

<sup>238</sup> A country which has ratified the Convention: *Bulgaria* – RCE, 1997, p. 77 (the Law on the Defence and Armed Forces, adopted on 13 December 1995, section 111(1), which provides for the limitation of compulsory military service to work of a purely military character).

<sup>239</sup> A country which has ratified the Convention: *Honduras* – RCE, 1997, p. 81 (with reference to the comments it has been making for some years concerning the non-military work that conscripts can be required to perform during their compulsory national service, the Committee has noted with satisfaction that article 276 of the national Constitution has been amended and now provides that, in time of peace, military service shall be voluntary).

<sup>240</sup> For example, countries which have ratified the Convention: *Congo* – RCE, 2006, p. 137 (section 4 of Act No. 11-66 of 22 June 1966 establishing the National People’s Army, which provides for active participation by the army in tasks of economic construction for effective production; the Government has indicated that the practice of imposing on recruits work which is not purely military in nature has fallen into disuse); *Tunisia* – Act No. 2004-1 of 14 January 2004, under which any citizen of 20 years of age must carry out national service of one year’s duration of which the aim is to prepare the citizen to defend his country and to participate in the global development of the country; national service may take the form of active military service for the needs of the national army or of national service outside the armed forces’ units intended to meet the needs of global defence and the imperatives of national solidarity, in which case the conscripts are assigned either to armed security forces’ units or to administrations and enterprises, as individual assignments or within the framework of technical cooperation) [see a direct request addressed to the Government in 2005].

<sup>241</sup> For example, countries which have ratified the Convention: *Egypt* – RCE, 2006, pp. 140, 141 (Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service of young persons on completion of their studies; section 1, under which young persons, male and female, who have completed their studies and who are surplus to the requirements of the armed forces, may be directed to work, such as development of rural and urban societies, agricultural and consumers’ cooperative associations and work in production units of factories); *Turkey* – RCE, 2005, pp. 191, 192, observation on Convention No. 105; see also a 2004 direct request on Convention No. 29 (the Council of Ministers resolution No. 87/11945 of 12 July 1987, according to which conscripts in excess of the needs of the military can be obliged to work in public undertakings in lieu of military service, without their consent and under military discipline; section 10 of the Military Service Act, No. 1111, as amended by Act No. 3358, as well as section 5 of the Council of Ministers resolution No. 87/11945 of 12 July 1987, adopted pursuant to section 10 of Act No. 1111, which lay down procedures relating to the surplus reserves, including the procedures concerning the persons liable to military service who are assigned duties in public bodies and institutions; the Government has indicated that Act No. 3358, which amended section 10 of the Military Service Act, No. 1111, has not been applied in practice after 1991).

<sup>242</sup> For example, a country which has ratified the Convention: *Algeria* – RCE, 2005, pp. 132, 133 (sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 respecting civic service, as amended in 1986, which require persons who have completed a course of higher education or training to perform a period of civic service of between two and four years in order to obtain employment or exercise an occupation, refusal to perform civic service and the resignation of the person concerned without acceptable grounds result in their prohibition from exercising an activity on their own account, such as setting up as a trader, craft worker or promoter of a private economic investment, any violation being punishable under section 243 of the Penal Code).

formally repealed.<sup>243</sup> The Committee has therefore requested the governments concerned to take the necessary measures to bring legislation into compliance with the forced labour Conventions.

95. In its previous survey on the subject, the Committee has referred to the situation in some countries where compulsory service may be imposed on persons who have completed certain kinds of studies.<sup>244</sup> Such *obligations of service in relation to training received* sometimes apply to a narrow range of professions, in particular young doctors, dentists and pharmacists, who may be required to exercise their profession for a certain period in a post assigned to them by the authorities, but may also be imposed on a large proportion of graduates from higher educational establishments. The Committee has pointed out in this connection that, where such service obligations are enforced by the menace of any penalty, they may have a bearing on the observance of the forced labour Conventions.<sup>245</sup> The Committee has noted that some of the provisions of this kind, to which reference has been made in the previous General Survey on the subject, have been repealed.<sup>246</sup> In some other cases the Committee has invited the governments concerned to bring legislation into compliance with the Convention.<sup>247</sup>

<sup>243</sup> For example, countries which have ratified the Convention: *Cameroon* – RCE, 2005, pp. 1443, 144 (Act No. 73-4 of 9 July 1973 instituting national service for participation in development, which allows the imposition of work in the general interest on citizens aged between 16 and 55 years for 24 months, subject to penalties of imprisonment for refusal; the Government has indicated that a preliminary draft Act instituting national civic service to replace national civic service for participation in development had been prepared); *Dominica* – RCE, 2006, p. 140 (the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)); the Committee has observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service, which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State"; the Government has indicated that section 35(2) of the Act has not been applied in practice).

<sup>244</sup> See *Abolition of forced labour*, General Survey of 1979, paras 55–62.

<sup>245</sup> *ibid.*, para. 55. It should be recalled that in the Special Youth Schemes Recommendation, 1970 (No. 136), the Conference indicated that exceptionally, and provided there is full compliance with the Conventions on forced labour, legislative provisions may be made for compulsory participation in "schemes for young people who have previously accepted an obligation to serve for a definite period as a condition of being enabled to acquire education or technical qualifications of special value to the community for development" (para. 7(2)(b)); in such cases participants should, to the greatest possible extent, be given a free choice among different available forms of activity and different regions within the country and due account should be taken in their assignment of their qualifications and aptitudes (para. 7(3)); the services of participants should not be used for the advantage of private persons or undertakings (para. 3(3)); the duration of service should not normally exceed two years (para. 37(a)).

<sup>246</sup> Countries which have ratified the Convention: *Central African Republic* – RCE, 1985, p. 81 (Ordinance No. 83/010 of 4 February 1983 has repealed the provisions of Ordinance No. 74/017 of 26 June 1974, which imposed an obligation (enforceable with penal sanctions) on all persons who have received training at the expense of the State to serve the State for 15 years); *Democratic Republic of the Congo (ex-Zaire)* – RCE, 1988, p. 99 (Legislative Ordinance No. 87-009 of 21 March 1987 has repealed Legislative Ordinances No. 68-071 of 1 March 1968, which provided for the call-up of doctors for a period of three years, refusal to comply being punishable with imprisonment or a temporary or permanent ban on exercising the medical profession, and No. 72-058 of 22 September 1972, which provided for the call-up of secondary education graduates for a period of two years and higher education graduates for a period equal to the normal duration of their studies, refusal to comply being punishable with imprisonment).

<sup>247</sup> For example, a country which has ratified the Convention: *Sri Lanka* – RCE, 2006, p. 173 (the Compulsory Public Service Act, No. 70 of 1961, sections 3(1), 4(1)(c) and 4(5), imposing on graduates compulsory public service of up to five years, subject to penal sanctions; the Government has indicated that the Act has not been implemented in practice and that there had been no reported instances of prosecutions against any graduates

## (d) Restrictions on freedom of workers to terminate employment

96. As the Committee has already pointed out, the effect of statutory provisions preventing termination of employment of indefinite duration by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Convention.<sup>248</sup> In some countries, however, exceptions to the freedom of workers to leave their employment are not limited to cases of emergency within the meaning of Article 2, paragraph 2(d), of the Convention, but are applicable in broader range of circumstances, or even permanently, to various categories of workers. The Committee has thus addressed restrictions on the freedom to leave one's employment by giving notice of reasonable length that were imposed in different countries, including career military personnel in time of peace.<sup>249</sup> Thus, in a few countries, any person employed by the Government, or by any public administration, establishment or body or any authority of public or mixed sector, who unilaterally terminates employment (even with notice) without consent of the employer or authorization of the competent authority, is liable to penal sanctions of imprisonment.<sup>250</sup> In certain other countries, military officers and other career members of the armed forces cannot resign their commission before their resignation is formally accepted by the competent body, which takes a decision after having examined the reasons for resignation.<sup>251</sup>

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under this law; it has also stated that this matter has been addressed under the plan of action recommended by the workshop relating to the promotion of ratification of Convention No. 105, and the tripartite committee appointed to follow up its recommendations is looking into the matter).

<sup>248</sup> See para. 40 above.

<sup>249</sup> As noted above, the provisions of the Convention relating to compulsory military service cannot be invoked to deprive career military servicemen of the right to leave the service in peacetime within a reasonable period, e.g. by means of notice of reasonable length (see para. 46 above).

<sup>250</sup> For example, countries which have ratified the Convention: *Bangladesh* – RCE, 2005, p. 137 (under the Essential Services (Maintenance) Act, No. LIII of 1952, termination of employment by any person employed by the central Government without the consent of the employer is punishable with imprisonment for up to one year, notwithstanding any express or implied term in the contract of employment providing that the employee may freely, and with notice, terminate his or her employment (sections 3, 5(1)(b) and Explanation 2, and section 7(1)); under section 3 of the Act, these provisions apply to every employment under the central Government and to any employment or class of employment declared by the Government to be an essential service; similar provisions are contained in the Essential Services (Second) Ordinance, No. XLI of 1958 (sections 3, 4(a) and (b) and 5)); *Pakistan* – RCE, 2006, pp. 163, 164 (Essential Services (Maintenance) Act, 1952, sections 2, 3(1)(b) and explanation 2, section 7(1); West Pakistan Essential Services Act, 1958 (as in force in Baluchistan and the North-West Frontier Province); Punjab and Sindh Essential Services (Maintenance) Acts, 1958, under which a person in government employment who terminates employment without the consent of the employer is subject to imprisonment for up to one year, notwithstanding any expressed or implied term in the contract providing for termination with notice); *Syrian Arab Republic* – RCE, 2006, p. 174 (Legislative Decree No. 46 of 23 July 1974, amending section 364 of the Penal Code, under which a term of imprisonment from three to five years may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority; the Government has indicated that the amendment of the Penal Code is currently ongoing and that the Committee's comments are being taken into account in order to bring it into conformity with the Convention).

<sup>251</sup> For example, countries which have ratified the Convention: *Bahrain* – section 4 of Legislative Decree No. 16 of 1977 governing the service of military officers in the Defence Force of Bahrain, under which officers undertake to serve in for an uninterrupted period of 15 years, during which they do not have the right to resign; under section 123 of the Decree, any officer who submits a resignation is not entitled to leave the service before it is accepted; under sections 92 and 47(a) of Legislative Decree No. 23 of 1979 governing the service of rank-and-file members of the armed forces, such members of the armed forces who submit their resignation are not entitled to leave their service until the resignation is accepted, under penalty of disciplinary sanctions imposed by the commanding officer or military tribunals (section 49(a) and (b)) (see a direct request addressed to the

97. While examining the developments in the relevant national provisions which have taken place since the last General Survey on the subject, the Committee has noted with satisfaction in a number of cases, that provisions imposing restrictions on public servants, career members of the armed forces and other workers regarding their right to terminate employment have been repealed.<sup>252</sup> The Committee has also noted with satisfaction that, in some countries where members of agricultural cooperatives or collective farms could not leave the cooperative or the collective farm without the agreement of its general assembly, the legislation has been amended and the freedom of these workers to terminate their legal work relationship and to leave the collective farm has been provided for in the labour code or in the model collective farm rules.<sup>253</sup>

## 5. Privatization of prisons and prison labour

98. Article 2, paragraph 2(c), of the Convention excludes from the definition of forced labour contained in Article 2, paragraph 1, “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or

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Government in 2005); *Egypt* – section 141 of Act No. 232, of 1959, under which the military officer’s service does not terminate until the resignation is accepted; the Committee has observed that, under the above provision, the service is not automatically terminated upon delivery of a resignation, since the application to resign may be refused; it has also noted that the Act does not establish the criterion used for deciding whether a resignation presented under its provisions will or will not be accepted (see a direct request addressed to the Government in 2005); *Nigeria* – section 11 of the Terms and Conditions of Service, Nigerian Army Officers (1984), according to which an officer holding a regular commission may be permitted to resign, but a ruling on each application will be made by the Army Council; section 17(10) of the Police Act, Cap. 359, under which no police officer other than a superior officer shall be at liberty to resign or withdraw himself from his duties without the approval of the Police Council (see a direct request addressed to the Government in 2005); *Uganda* – RCE, 2006, p. 178 (the National Resistance Army (Conditions of Service) (Officers) Regulations No. 6 of 1993, section 28(1), under which the Board may permit officers to resign their commission at any stage during their service, but the officer applying for the resignation must give his/her reasons for it; the Board may grant permission to resign only after it has considered these reasons and finds them fit).

<sup>252</sup> Countries which have ratified the Convention: *Bulgaria* – RCE, 1997, p. 77 (Law on the Defence and Armed Forces, adopted 13 December 1995, section 128(1) concerning the conditions for termination of the service of career members of the armed forces provides for their right to leave the service at their own request by giving six months’ notice); *Cuba* – RCE, 1989, p. 78 (provisions of section 145 of the Penal Code of 1979, under which penalties of imprisonment could be imposed on a public servant who abandoned his duties or activities before legal notification of the acceptance of his resignation, have not been included into the Penal Code promulgated by Act No. 62 of 29 December 1987); *Netherlands* – RCE, 1999, p. 138 (Act concerning Flexibility and Security (Stb. 300), of 14 May 1998, has repealed a provision of section 6 of the Extraordinary (Employment Relations) Decree, 1945, under which workers were legally required to obtain the approval of the District Employment Office for the termination of their employment); *Zambia* – RCE, 1994, p. 148 (Preservation of Public Security (Amendment) Regulations, 1990, has repealed Regulation No. 40 of the Preservation of Public Security Regulations, under which public officers could be prohibited from leaving their employment); RCE, 1999, p. 154 (Preservation of Public Security (Amendment) (No. 2) Regulations, 1993, has repealed regulation 41 of the Preservation of Public Security Regulations, under which employees in certain services could be prohibited from leaving their employment).

<sup>253</sup> Countries which have ratified the Convention: *Belarus* – RCE, 1990, p. 86 (Collective Farms Model Rules, adopted on 23 March 1988, provide for the freedom of members of collective farms to resign by giving three months’ written notice); *Bulgaria* – RCE, 1990, p. 85 (section 342 of the Labour Code of 1987, under which members of cooperatives may terminate their legal work relationship after giving 30 days’ notice or, in certain cases, without notice); *Russian Federation* – RCE, 1990, p. 122 [observation addressed to the USSR] (Collective Farms Model Rules, adopted on 23 March 1988, provide for the freedom of members of collective farms to resign by giving three months’ written notice); *Ukraine* – RCE, 1990, p. 121 (Collective Farms Model Rules, adopted on 23 March 1988, provide for the freedom of members of collective farms to resign by giving three months’ written notice).

associations”. The discussion hereafter needs to be considered having regard to the earlier paragraphs on this topic.<sup>254</sup>

99. Reasons for the exemption of prison labour were that imprisonment was historically associated with compulsory labour of various types required to be performed by prisoners initially on a punitive and retributive basis, then later as a form of rehabilitation as described in the ILO Memorandum on Prison Labour.<sup>255</sup> While adopting the provision according to which prison labour is excluded from the scope of the Convention only if a person concerned “is not hired to or placed at the disposal of private individuals, companies or associations”, the Conference expressly rejected an amendment which would have permitted the hiring of prison labour to private undertakings engaged in the execution of public works,<sup>256</sup> thus making clear that it is not sufficient to limit the use of prison labour to works of public interest, since private undertakings should be completely excluded from using prison labour, irrespective of the kind of work performed.

100. Since the last General Survey on the subject, there has been a trend towards two related phenomena in some member States, which has had a marked effect on the application of the Convention. First, prisoners in publicly administered prisons are more often working for private enterprises, both inside and outside prison premises. Second, in some cases prison administration has been contracted to private firms, and prisoners are working for purposes of production in these prisons. This has an obvious effect on the application of the Convention, particularly of its Article 2, paragraph 2(c). The Committee has observed that a trend in some countries towards increased use of privatized prison labour is often explained by a number of perceived needs for governments, such as: to reduce the costs of a growing prison population by using private enterprise, to generate income to cover the increasing costs of the prison population, to provide skills for the purposes of rehabilitation, or to provide sources of income for prisoners from which family expenses of prisoners or restitution for victims can be drawn.<sup>257</sup>

101. Productive work of prisoners for private entities takes place under various schemes which may range from agriculture and stock-breeding through textile manufacture to high-tech sectors such as the production of computer parts and qualified services such as the operation of airline booking systems.<sup>258</sup> The rise in the number of privately run prisons, and the increased involvement of the private sector in using prison labour, can also be seen in relation to general economic tendencies, from contracting out, to

<sup>254</sup> See paras 48–61 above.

<sup>255</sup> See footnote 92 above.

<sup>256</sup> See footnote 106 above.

<sup>257</sup> RCE – General Report, 2001, para. 144.

<sup>258</sup> The 2001 Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (*Stopping forced labour*) noted that “a number of countries are increasingly resorting to privatized prison labour under various arrangements. These developments, which started in developed countries but have spread to others, have spurred serious concern over “both basic rights and unfair competition”. The extent of the impact of these arrangements on the free labour market largely remains to be measured and analysed, even though the practices are far from new. They are increasing, with private prison services now being marketed internationally” – para. 189. See also ILO: Report of the Committee on the Application of Standards, ILC, 86th Session, Geneva, June 1998, *Provisional Record* No. 18, para. 90. According to the 2005 Global Report (*A global alliance against forced labour*), out of the approximately 8 million recognized prisoners worldwide, some 150,000 are in private prisons, though no figures are available as to those who might be working for private employers – para. 116.

privatization, to public/private partnerships.<sup>259</sup> This trend can be observed both in the countries bound by the Convention<sup>260</sup> and in the non-ratifying States.<sup>261</sup>

<sup>259</sup> See Colin Fenwick: *When privatization means exploitation: Prison labour in privatized facilities*, in: *Fundamental Rights at Work: Overview and Prospects*, Labour Education 2001/1, No. 122, ILO, Geneva, pp. 42, 43; see also Colin Fenwick: *Private benefit from forced prison labour: Case studies on the application of ILO Convention 29 (June 2001)* [report commissioned by the ICFTU with assistance from the ILO Bureau for Workers' Activities (ILO/ACTRAV)], Part 1.1. According to the report, in the beginning of 2001 there were 182 privately run prison facilities around the world, able to hold a total of 141,613 prisoners.

<sup>260</sup> For example, countries which have ratified the Convention: *Australia* – Since 1990, there has been a significant expansion in the involvement of the private sector both in operating correctional facilities, and in using prison labour in correctional industries of the country. During 2004–05, private prisons operated in five jurisdictions (New South Wales, Queensland, South Australia, Victoria and Western Australia); as at 30 June 2005 corrective services operated 120 custodial facilities nationally, which included seven privately operated prisons and one privately operated community custodial facility; on average, 4,303 prisoners (17.9 per cent of the total Australian prisoner population, excluding periodic detainees) were held in privately operated facilities during the year. Source: Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services 2006* (figures for 2004–05); see also Colin Fenwick: *Private benefit from forced prison labour: Case studies on the application of ILO Convention No. 29 (June 2001)*, Part 2.1; *Prison Privatization Report International*, No. 68, May/June 2005; *United Kingdom* – In 2005–06, privately contracted prisons represented more than 10 per cent of available places within the prison estate as a whole, with 11 prisons being operated by four separate providers, plus three competitively tendered “operate only” service level agreements with the public sector prison service, these being HMP Blakenhurst, HMP Buckley Hall and HMP Manchester. HMP Peterborough, which opened in March 2005, is the first contracted prison to hold both men and women on a combined site. (Source: National Offender Management Service, Office for Contracted Prisons, *Statement of Performance and Financial Information – April 2005 to March 2006*); see also Colin Fenwick: *Private benefit from forced prison labour: Case studies on the application of ILO Convention No. 29 (June 2001)*, Part 6.1; *Prison Privatization Report International*, No. 38, February/March 2001. Work in UK prisons is compulsory; prisoners work both within their prison, be it publicly or privately managed, and outside prison walls.

<sup>261</sup> For example, countries which have not ratified the Convention: *Canada* – the Government indicated in its 1997 report supplied under article 19 of the ILO Constitution that there were no privately run prisons in Canada, but that prisoners did perform labour for private companies; at the federal level, private companies wishing to gain access to prison labour must do so through CORCAN, a special agency responsible for cooperation with the public and private sectors in the field of labour. In a January 2006 CORCAN publication *Productivity through partnership* (available at [http://www.csc-scc.gc.ca/text/prgrm/corcan/pblct/produ\\_e.shtml](http://www.csc-scc.gc.ca/text/prgrm/corcan/pblct/produ_e.shtml)), addressed to prospective private sector partners, CORCAN describes three “partnership models” by which it provides companies with access to the labour of federal prisoners, indicating, in particular, that “CORCAN manages offenders and provides the facility”. According to *Prison Privatization Report International*, Utah-based Management and Training Corporation’s (MTC) Canadian subsidiary, Management and Training Corporation Canada (MTCC), was chosen to operate the Central North Correctional Centre in May 2001 as part of a five-year pilot project; after the expiration of the contract with MTCC (on 10 November 2006) the Government of Ontario was going to transfer the operation of the Central North Correctional Centre in Penetanguishene to the public sector (*Prison Privatisation Report International*, No. 71/72, December 05–April 06); the Government has confirmed this information in its 2006 report supplied under article 19 of the ILO Constitution; *United States* – according to the Government’s 2006 report supplied under article 19 of the ILO Constitution, more than 30 states now have laws that permit contracting for the private operation of state prisons; both federal and state prisoners housed in contract facilities can be required to perform some kind of work. As the Government indicated in its 1997 report supplied under article 19 of the ILO Constitution, approximately 77,000 individuals were incarcerated in prisons managed by profit-making corporations, which represented around 4 per cent of the total inmate population in the country; state and local prisons had increased the practice of contracting out prisoners to work for private companies, which was legalized since 1990, according to the Department of Justice. Private operation of prison facilities has grown steadily since the mid-1980s and, in 2001, the United States had the largest number of privately run prison facilities in the world and the largest number of prisoners held in privately operated correctional facilities; at 31 January 2001, there were 153 privately run facilities in 33 different US states (see Colin Fenwick: *Private benefit from forced prison labour: Case studies on the application of ILO Convention No. 29 (June 2001)*, Part 7.1.2). According to the Bureau of Justice Statistics, in the 12 months ending 30 June 2005, the number of prisoners held in privately operated facilities increased from 98,570 to 101,228, an increase of 2.7 per cent from a year earlier. Overall, private facilities held 6.7 per cent of all state and federal inmates, up from 6.6 per cent at mid-year 2004; the federal system (26,544), Texas (15,414), Oklahoma (5,812) and Florida (5,423) reported the largest number of inmates in private facilities at mid-year 2005. Four States, all in the west, had at least a quarter of their prisoners in private facilities (Bureau of Justice Statistics

102. The Committee has been fully aware of the importance of this issue from the point of view of the application of the Convention. The Committee therefore asked the governments of States bound by this instrument to include in their reports supplied under article 22 of the ILO Constitution information as to the present position in their law and practice as regards the following points: whether there are prisons administered by private concerns, profit-making or otherwise; and whether any private prison contractors deploy prisoners to work either inside or outside prison premises, either for the account of the contractor or for that of another enterprise. The Committee also asked a certain number of questions concerning the conditions under which such arrangements operated, where they existed.<sup>262</sup> The responses to these questions have been carefully examined by the Committee, together with other information on the subject already available from a number of countries bound by the Convention, which has been reflected in the comments made by the Committee under article 22 of the Constitution. The Committee has also taken note of the views and comments expressed by a number of delegates in the course of the discussions that took place at the International Labour Conference in the Committee on the Application of Standards, when it considered the observance of the Convention in certain countries, as well as the Conference Committee's general discussions of 1998, 1999 and 2001. In addition, the Committee has taken account of the information received from non ratifying countries under article 19 of the ILO Constitution in 1997 and 2006, which contributed to a general picture of law and practice in member States in these regards.

103. There are many circumstances in which prison labour may be connected with private entities. They include:

- (a) Prisoners working with a private entity as part of an education or training scheme to obtain qualifications.
- (b) Prisoners may work in workshops within the prison to produce goods which are sold to private entities in the open market or may provide services. This sale may be achieved direct by the prisoners or through the agency of another private entity which may be the same entity which runs the prison. This may or may not be part of a pre-release scheme.
- (c) Prisoners may work outside prison for a private entity as part of a pre-release scheme.

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Bulletin, *Prison and Jail Inmates at Midyear 2005*, May 2006, NCJ 213133, US Department of Justice, Office of Justice Programs; see also Prison Privatisation Report International, No. 70, September–November 2005).

<sup>262</sup> The Committee of Experts sought the following information: (i) whether there are prisons administered by private concerns, profit-making or otherwise; (ii) whether any private prison contractors deploy prisoners to work either inside or outside prison premises, either for the account of the contractor or for that of another enterprise; (iii) whether private parties are admitted by the prison authorities into prison premises of any kind for the purpose of engaging prisoners in employment; (iv) whether employment of prisoners outside prison premises, either for a public authority or for a private enterprise, is allowed; (v) the conditions in which employment under any of the above conditions takes place, in respect of remuneration (indicating the level and comparing it with any minimum wage normally applicable to such work), benefits accruing (such as pension rights and workers' compensation), observance of occupational safety and health legislation and other conditions of employment (e.g. through labour inspection), and how those conditions are determined; (vi) what the source of any remuneration is (whether from public or private funds) and for what purposes it must or may be applied (e.g. for the personal use of the prisoner or if it is subject to compulsory deductions); (vii) for whose benefit is the product of prisoners' work and any surplus profit deriving from it, after deduction of overheads, and how is it disbursed; and (viii) how the consent of the prisoners concerned is guaranteed, so that it is free from the menace of any penalty, including any loss of privileges or other disadvantages following from a refusal to work (RCE, 1999, general observation on Convention No. 29, pp. 106, 107).

- (d) Prisoners may provide labour within prisons which contribute to the running of prisons run by private entities.

There can also be combinations and variations of these arrangements made between public authorities and private entities which include prison labour. They may involve triangular relationships between public authorities, private entities and prisoners as have previously been referred to by the Committee,<sup>263</sup> joint ventures, public–private partnership or a series of other arrangements.

104. In considering the privatization of prisons and prison labour, emphasis has frequently been made on the exemption of prison labour as set out under the terms of Article 2, paragraph 2(c) of the Convention, followed by separate consideration of the application of the definition of forced labour in Article 2, paragraph 1. Such an approach seems to be an appropriate way to examine the situation, given the various circumstances in which privatization of prisons and prison labour may occur.

105. While examining the requirements of Article 2, paragraph 2(c), of the Convention,<sup>264</sup> the Committee recalled that work or service exacted from any person as a consequence of a conviction in a court of law is exempted from the scope of the Convention only if two conditions are met, namely “that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations”. Both these conditions are necessary for compliance with the Convention. If either of the two conditions is not observed, the situation is not excluded from the scope of the Convention, and compulsory labour exacted from convicted persons under these circumstances is prohibited in virtue of Article 1, paragraph 1, of the Convention.<sup>265</sup>

106. As the Committee noted in earlier comments made under the Convention,<sup>266</sup> the provisions of the Convention which prohibit convict labour from being hired to or placed at the disposal of private individuals, companies or associations are not limited to work outside penitentiary establishments but apply equally to workshops which may be operated by private undertakings inside prisons,<sup>267</sup> as well as to work organized by privately run prisons.<sup>268</sup>

107. It is to be noted that the provisions of Article 2, paragraph 2(c), are not conditioned on any particular kind of legal relationship. Thus, they are not limited to cases where a legal relationship would come into existence between the prisoner and the private

<sup>263</sup> RCE – General Report, 2001, para. 116; RCE – General Report, 1998, para. 118.

<sup>264</sup> See paras 53–55 above.

<sup>265</sup> See para. 55 above. For example, in comments made for many years on law and practice in *Germany*, the Committee has observed that, contrary to the Convention, prisoners have to perform compulsory work in a privately run workshop within the prison; the Committee pointed out that the fact that prisoners remain at all times under the authority and control of the prison administration does not detract from the fact that they are “hired to” a private enterprise – a practice designated in Article 2(2)(c) of the Convention as being incompatible with this instrument (see e.g. RCE, 2006, p. 145).

<sup>266</sup> See *Abolition of forced labour*, General Survey of 1979, para. 98; RCE – General Report, 1998, para. 117; RCE – General Report, 2001, para. 86.

<sup>267</sup> See, for example, *Austria* – RCE, 1999, p. 110; RCE, 2002, pp. 102–104; RCE, 2005, pp. 134, 135; *Germany* – RCE, 2006, pp. 144, 145. See also footnote 125.

<sup>268</sup> See *Australia* – RCE, 1999, p. 109 and *United Kingdom* – RCE, 1994, p. 145, and RCE, 1998, p. 131.

undertaking, but equally covers situations where no such legal relationship exists and the prisoner has a direct relationship only with the prison.<sup>269</sup>

108. In particular, in relation to privatization of prisons or prison labour, the Committee has previously noted that the relationship between the public authority, the private company and the prisoner is a triangular one: specifically, a direct relationship, usually contractual, between the public authority and the private company – the subject of which is the prisoner(s); and a second direct relationship between the public authority and the prisoner. There is usually no direct agreement between the prisoner and the private company. In such a situation the prisoner may be considered to be “hired out” to the private company in relation to the provision of work or services. In this case, it is comparable to the arrangements which may exist with temporary employment agencies or labour contracting, in which there may be no direct relationship between the worker and hiring enterprise. Instead, the agreements exist between the employment agency and the hiring enterprise, and between the employment agency and the worker. There are, however, two differences which have a direct bearing on the observance of the Convention. The temporary or contract worker (not being an independent contractor), normally has an employment contract and therefore has the corresponding protection of labour law, which at present is not the case for compulsory prison labour. Furthermore, prison labour is captive labour. In contrast to temporary workers, prison workers have no access, in law and in practice, to employment outside the prison environment. Indeed, in most cases their work is covered by no labour law whatsoever. Thus, if the prisoner is obliged to work for the benefit of a private company, the triangular relationship in which the prisoner’s labour is the subject of a contract between the public authority and a private company corresponds to what is referred to in Article 2, paragraph 2(c), as being incompatible with the Convention.<sup>270</sup>

109. Though the practice of the private sector involvement in prison labour systems varies widely from country to country, the Committee has considered it possible to make a paradigmatic comparison between the prison labour systems involving private companies described in the ILO Memorandum on Prison Labour,<sup>271</sup> and characteristic cases of “privatization of prison labour” which are currently the subject of comments under the Convention. Thus, in some countries the practice corresponds to the description of the “special contract system” referred to in paragraph 57 above under subparagraph (c),<sup>272</sup> while in the others which have privately run prisons, the practices

<sup>269</sup> RCE – General Report, 1998, para. 118. See also *Germany* – RCE, 1999, pp. 122, 123.

<sup>270</sup> See RCE – General Report, 1998, para. 118.

<sup>271</sup> See para. 57 above. The Committee has considered that such historical perspective is useful because, although some of the forms of prison labour may have changed over the years, the basic problems raised by the involvement of private contractors in prison labour have had to be dealt with since the adoption of the Convention (RCE – General Report, 2001, para. 146).

<sup>272</sup> For example, countries which have ratified the Convention: *Austria* – RCE, 2005, p. 134. The Committee has noted that under the legislation in force, prisoners may be hired to enterprises of the private sector, which may use their labour in privately run workshops and workplaces both inside and outside prisons, under contracts concluded between prisons and private enterprises; the Committee observed that contracts for the hiring of prison labour to private enterprises in Austria correspond in all respects to what is proscribed by Article 2(2)(c), namely, that a person be “hired to” a private company; it is in the very nature of such hiring agreements to include mutual obligations between the prisons administration and the private enterprise; the description of the “special contract system” referred to in the ILO Memorandum on Prison Labour, corresponds to the practice that is now followed in *Austria* (RCE – General Report, 2001, para. 100); *Germany* – RCE, 2002, p. 128. The Committee has noted that under the legislation in force, prisoners may be obliged to work in workshops run by private enterprises within state prisons; the Committee observed that the practice followed in this regard in *Germany* corresponds

generally correspond, save in one respect, to the “lease system” referred to in paragraph 57 above under subparagraph (a).<sup>273</sup> In particular, in a lease system, the obligations of the private company are the boarding, lodging, clothing and guarding of the prisoner, in return for which the private company acquires the right to employ the prisoner; in addition, provision is made for periodic inspection by state officials. The one difference is that at the time of the ILO Memorandum, the private company had to pay an agreed per capita rate to the State while now it is often the State that subsidizes the private company, which may be a multinational enterprise, at an agreed per capita rate.

110. However, Article 2, paragraph (2)(c), of the Convention refers both to cases where prisoners are “hired to”, and to those where they are “placed at the disposal” of private contractors. The Committee has previously noted that the obligation of a prisoner to work in a prison run by a private company is not affected by the question of whether the private company pays the State or whether the State subsidizes the private company. That is because in the situation where the private company pays the State, the prisoner is the subject of the arrangement and is “hired out” to the private company to perform work, in return for the payment made to the State. Alternatively, in the situation where the State subsidizes the private company, the prisoner is “placed at the disposal of” the private company for the performance of the work. Thus, the Committee has come to a conclusion that, for the purposes of the Convention, neither situation falls within the exemptions, as in the first case the prisoner is “hired to” the private contractor and in the second he or she is “placed at the disposal of” the latter.<sup>274</sup>

111. The question of the direction in which payments flow between the State and private contractors might also lead to the issue of profit or benefit, taking into account that in some cases concerning prisons managed by private companies under contract with the government, the companies are not supposed to derive benefit or profit from the labour of the prisoners. The Committee has observed that, in present-day practice, entities running private prisons are commercial companies, which are frequently listed on the stock exchange, and the purported absence of profit results from an agreement between the government and each private prison operator, requiring the operator to ensure that all income from prison industries be isolated within the overall income of the operator, and that any profit from the industries be reinvested in the industry or spent in such other manner as approved by the government. The Committee has pointed out in this respect that the way in which the surplus income derived by the prison operator can be distributed has no bearing on the need to comply with the condition laid down in Article 2, paragraph (2)(c), of the Convention, namely, that the person is not “hired to or placed at the disposal of private individuals, companies or associations”.<sup>275</sup>

112. Another condition which should be complied with to exclude prison labour from the scope of the Convention, under Article 2, paragraph 2(c), is the requirement of “supervision and control of a public authority”. As indicated above,<sup>276</sup> the reason for

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exactly to the description given in the ILO Memorandum on Prison Labour of the “special contract system”, a system in which the labour of prisoners is hired to private contractors (see also RCE – General Report, 2001, para. 100).

<sup>273</sup> For example, countries which have ratified the Convention: *Australia, United Kingdom* (RCE – General Report, 2001, para. 100); see also footnote 260 above.

<sup>274</sup> See para. 58 above.

<sup>275</sup> See RCE – General Report, 2001, paras 124–126; see also *Australia* – RCE, 1999, pp. 108–109.

<sup>276</sup> See para. 53 above.

this requirement is to prevent the conditions under which prisoners' work being determined otherwise than by the public authorities, in a situation in which the workers concerned do not necessarily enjoy all the rights of free workers, in order to ensure that conditions of work remain within acceptable limits. It seems evident that, in privately run prisons, the private enterprise is not only a user of prison labour, but will inevitably also exercise, in law or in practice, an important part of the authority which under the Convention is required to be exercised by the public authorities.<sup>277</sup> The Committee has had the occasion to observe in this connection that the practice of the supervision and control of public authority would have to be examined carefully, as the Convention does not allow a full delegation of supervision or control to a private business.<sup>278</sup> As indicated above,<sup>279</sup> the Committee has also considered that, if the supervision and control are restricted to a general authority to inspect the premises periodically, this by itself would not appear to meet the requirements of the Convention for supervision and control.<sup>280</sup> The supervision and control must be effective, systematic and regular and should be considered a matter for the services of government labour inspectors.

113. In summary on this point, it is difficult to consider that the situation of prisoners performing work in privatized prisons or working for private companies, as discussed above, falls within the exclusion in Article 2, paragraph 2(c), of the Convention. However, there is still an important matter to be considered, namely, the overall definition of forced labour as set out in Article 2, paragraph 1, in particular, whether the prisoner has *voluntarily* offered to perform the work.

114. As previously indicated in paragraphs 59 and 60 above, the Committee has considered that, it is only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, as required by Article 2, paragraph 1, of the Convention, that such work would not fall within the scope of the Convention. The question however arises as to whether prisoners, considering their captive circumstances, can be in a situation of providing labour for which they have offered themselves *voluntarily* and without the menace of any penalty. The penalty may include such matters as the loss of a right or a privilege (advantage), as in the case where an unfavourable assessment of behaviour is taken into account for non-reduction of sentence.

115. The Committee therefore considers that in such a captive environment, it is necessary to obtain prisoners' formal consent to work in cases where such work is performed for private enterprises in state-run prisons or in privatized prisons. However, such formal consent, since it is given in a context of lack of freedom with limited options, should be in writing. The Committee has therefore concluded that there need to be indicators which authenticate or satisfy the giving of the free and informed consent, which should be examined carefully.

116. The Committee recalls that the most reliable indicator of the voluntariness of labour is the work performed under conditions which approximate a free labour relationship. The factors to be taken into consideration in such a case include: wage levels (leaving room for deductions and attachments), social security and occupational

<sup>277</sup> See RCE – General Report, 1998, para. 121; see also *France* – RCE, 1996, p. 80, and RCE, 1995, p. 90.

<sup>278</sup> See *Australia* – RCE, 1999, p. 109.

<sup>279</sup> See para. 53 above.

<sup>280</sup> See RCE – General Report, 1998, para. 124.

safety and health.<sup>281</sup> While it is possible to accept certain differences in wage levels and social security benefits, all prisoners must enjoy the same occupational safety and health protection as free workers.

117. In considering how closely the conditions should resemble a free labour relationship, it needs to be remembered that in the free labour market, wages may, in the words of Articles 8 and 10 of the Protection of Wages Convention, 1949 (No. 95), be subject to deductions and “be attached or assigned” under conditions and within limits prescribed by national laws or regulations.<sup>282</sup> Deductions may be made from prisoners’ remuneration for the board and lodging provided or their remuneration lowered to take account of these expenses, in conditions that are strictly controlled by the public authority.

118. In relation to whether the work is performed under conditions which approximate a free labour relationship, the Committee takes note of the view expressed by some governments that a further factor, which is relevant to the wage levels, is that the labour provided by prisoners differs markedly from labour provided in the free market. There is frequently no continuity by the prisoner of the work; it may be interrupted by other prison programmes; the length of prison sentences vary considerably; and there may be increased costs in the private companies having to continuously train new prisoners when they commence the work.

119. The Committee, in stating that the approximation of a free labour relationship “was the most reliable indicator”, has not expressed other ways in which voluntariness and formal consent may be authenticated. There may be also other factors that can be regarded as objective and measurable advantages which the prisoner gains from the actual performance of the work. These advantages might include the learning of new skills which could be deployed by prisoners when released; the offer of continuing the work of the same type upon their release; or the opportunity to work cooperatively in a controlled environment enabling them to develop team skills. These or similar factors should not be considered in isolation, but be taken as a whole, in determining whether consent was freely given and informed. Further, this authentication of voluntariness should be examined through supervision by the public authority. It could also include scrutiny of voluntariness by the courts. The supervision needs to be effective, regular and systematic. In particular, the performance of this supervision should not be left solely to the private enterprise, but should be the responsibility of the public authority.

120. In summary, the issue of voluntariness and formal consent in a prison environment requires consideration of whether the work is performed under conditions which approximate a free labour relationship, which is the most reliable way of satisfying this requirement. Other objective and measurable advantages which the prisoner gains from the actual performance of the work may also be taken into account. All of these factors taken together need to be considered and assessed by the public authority.

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<sup>281</sup> See RCE – General Report, 2001, paras 128–143; RCE, 2002, general observation on Convention No. 29, para. 10.

<sup>282</sup> In conformity with Article 10, paragraph 2, of Convention No. 95, wages are in many countries “protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family”. For prisoners employed by private enterprises, or who are assigned to work for them, this implies that their wages also may “be attached or assigned”, so as to satisfy compensation claims of victims as well as alimony or other obligations of the prisoners, both of which would be illusory if exploitative wage rates prevailed.

121. A further matter raised by one government is that not all prisons within the State are privatized and that “it would be inequitable to treat prisoners in privately operated prisons more advantageously than those in state-run prisons”.<sup>283</sup> It has also been pointed out by certain governments that the same rules or guidelines operate within the prison, whether the prison is run by private operators or by the State.<sup>284</sup> The Committee considers that the differential protection and conditions which may arise in a privatized prison in comparison with those in a state-run prison give rise to broader issues concerning treatment of prisoners. It notes that the Convention deals with the use to which prison labour is put, and not with the general treatment of prisoners as such, which is left to the State.

122. In conclusion, the Committee is of the opinion that it is fully possible for governments to apply Convention No. 29 when designing or implementing a system of privatized labour, but they must do so on the understanding that such involvement carries with it additional requirements, the need for a thorough analysis and more information on how the Convention is being implemented in such cases.<sup>285</sup> The choice as to whether or not a privatized prison system is used is a matter for the State. If a State chooses to have privately operated prisons, it may do so as long as it ensures that prison labour meets the conditions required by the Convention. There is the need to protect a captive workforce which is increasingly working in direct competition with a free labour market, and of the need to avoid unfair competition with free workers. Issues of voluntariness will continue to be matters which require careful consideration by States in attempting to reconcile the different imperatives in their own particular context. It will also be a concern for this Committee in examining how the Convention is being applied in such situations. As indicated above, a certain number of countries have made progress towards full compliance with the Convention by taking measures, both in law and in practice, so that conditions of the private employment of prisoners progressively approach those of free workers.<sup>286</sup> Others have been requested by the Committee to take measures to that effect.<sup>287</sup> The Committee hopes to see continuous advances in this sense and believes that the foregoing indications will provide a useful guide as to how the Convention should be applied, for the benefit of those member States which have ratified the Convention, and those which are contemplating doing so.

## 6. Sentence of community work

123. In recent years, the Committee has observed that many countries, mostly in Europe and Africa, have adopted legislation intended to provide their penal systems with a new

<sup>283</sup> See *Australia* – RCE, 2004, p. 123.

<sup>284</sup> See *Australia* – RCE, 2004, p. 123; *United Kingdom* – RCE, 2004, p. 175.

<sup>285</sup> One government (country which has not ratified the Convention: *Canada*) in its report supplied under article 19 of the ILO Constitution has expressed concern with regard to explanations given by the Committee to Article 2(2)(c) in connection with the role of the private sector and expressed the view that, as a result, “almost any form of prison labour that involves private enterprises would constitute a contravention of the Convention” (see para. 26 above). As the Committee has pointed out on numerous occasions, in spite of the express prohibition for prisoners to be hired to or placed at the disposal of private parties under the terms of this Article, the situations will not give rise to problems in the application of the Convention, if the work is carried out under conditions approximating those of free employment relationships, i.e. with the freely given consent of the prisoner and subject to other safeguards and guarantees referred to above (see paras 54–61 and 98–122 above).

<sup>286</sup> See para. 61 above and footnotes 123 and 124.

<sup>287</sup> See para. 61 above and footnote 125.

sanction: that of community work. The Committee has on a number of occasions requested additional information from governments on the manner in which such legislation is applied, since community work sentences may have a bearing on the application of the Convention.

124. Community work is regarded first and foremost as an alternative to imprisonment. In cases where a person is found guilty of an offence for which the penalty is a term of imprisonment (generally of short duration), the court may instead propose or require the offender to perform some form of work. The person sentenced remains at liberty, but in return is required to perform a certain number of hours or days of work.<sup>288</sup> The work performed under such a sentence is generally work that is useful and in the general interest, that is of benefit to the community as a whole. For this reason, such work is normally undertaken for the State, administrative authorities, regional communities, public establishments and services, or associations. In addition, community work is by its very nature work carried out for free, with no remuneration for the person performing it.

125. The relevance of community work to the application of the Convention must be considered in the light of the exception provided for under Article 2, paragraph 2(c), of the Convention. Under the terms of that provision, the term “forced labour” is not deemed to include “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations”. Accordingly, so as not to be regarded as a form of forced labour, labour exacted as community work must comply with the two conditions set out in this provision of the Convention. The first condition does not generally pose any difficulty, since under the national laws which the Committee has been able to examine community work is a penal sanction which can be imposed only by a court. The second condition set out in Article 2, paragraph 2(c), is also met where the work in question is performed for the State or its various divisions (administrations, regions, public services and establishments, etc.). Where these two conditions are met, a sentence of community work comes under the terms of the exception provided for by the Convention and does not call for any comment by the Committee.

126. This is not the case where the legislation under which community work is imposed allows the work to be performed for a body other than a public institution. In the great majority of the legislation examined, community work may be performed for private institutions such as charitable bodies. In such cases, the Committee seeks assurance with regard to two aspects: first, that the person sentenced formally consents to doing the community work; and secondly, that the circumstances in which the work is performed are adequately structured and monitored to ensure that the work done really is in the general interest, and that the entity for which the work is performed is non-profit-making.

127. The legislation normally requires persons sentenced to do community work to give their consent.<sup>289</sup> Community work allows courts to punish certain offenders by imposing

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<sup>288</sup> For example, the period may vary from 40 to 200 hours in *Luxembourg*, from ten to 90 days in *Nicaragua*, from 40 to 400 days in *New Zealand*, and is of a maximum duration of 300 hours in *Tunisia*.

<sup>289</sup> Where a person sentenced to community work can only perform that service for public institutions, there is no reason under the terms of the Convention to inquire whether or not he or she has consented to it, since the work is exacted in accordance with the conditions set out in Art. 2, para. 2(c), of the Convention (see para. 54).

a sanction which does not involve imprisonment, but consists of performance of work intended to some extent to make amends for the harm done to society by the offence. Given the purpose of the sanction, it has generally been considered desirable for offenders to formally consent to doing work of this kind. For example, the legislation that has been examined requires the persons sentenced to be present when the sentence is handed down, their consent to be obtained, and establishes that they have the right to request an alternative sanction or to refuse it. Only in rare cases has the Committee been prompted to ask governments to indicate whether or not persons thus sentenced have consented to the sanction or to indicate exactly how that consent was obtained.<sup>290</sup>

128. As indicated above, legislation more often than not allows community work to be performed for private bodies – charitable associations or institutions – as well as for the State and public institutions.<sup>291</sup> In such cases, the Committee seeks assurance that work done for such private institutions is genuinely in the general interest. This involves determining whether the work is of real benefit to the community and whether or not the body for which the work is done is a non-profit-making organization. Legislation may stipulate explicitly that the association for which the work is done should not be profit-making,<sup>292</sup> or that the work should not serve the purpose of economic gain.<sup>293</sup> A number of elements exist to prevent the basic purpose of the work from being subverted. These include: the practical arrangements for the work; judicial supervision of the conditions in which the sentence is carried out;<sup>294</sup> and the criteria adopted by the courts to allow associations to provide work for persons sentenced to community work.<sup>295</sup> In the interests of a more complete examination of the situation in a country, the Committee may also ask governments to provide a list of authorized associations or institutions and to give examples of the type of work involved in community work.<sup>296</sup>

<sup>290</sup> In the direct request addressed to the *Czech Republic* in 2005, the Committee asked the Government to indicate “whether the voluntary consent of the convicted persons is obtained before the sentence is imposed by the court”.

<sup>291</sup> None of the legislation examined by the Committee provides for community work to be performed for private enterprises.

<sup>292</sup> For example, in the direct request addressed to *Burkina Faso* in 2005, the Committee noted that “Offenders who so agree will be required to perform non-remunerated community work for a public legal entity or a non-profit-making association recognized as being of public utility”.

<sup>293</sup> In the direct request addressed to *Croatia* in 2005, the Committee noted that according to legislation, community work “shall not serve any gainful purpose”.

<sup>294</sup> For example, in the direct request addressed to *Mauritius* in 2005, the Committee noted that it is for the court to specify the “conditions” of a community service order, which include, among other things, the place where the convicted person shall perform work and the name and location of any charitable or voluntary institution or organization for which the convicted person must work. Furthermore, the Probation and After Care Service of the Government has responsibility for the overall supervision of persons subjected to a community service order.

<sup>295</sup> In the direct request addressed to *Senegal* in 2005, the Committee noted that “the judge on the application of sentences rules on applications for the authorization of associations. Public communities, public establishments and associations that wish to register work for the benefit of society also do so to the judge for the application of penalties with an indication of the nature and means of carrying out the works, and the number of jobs likely to be made available. The judge for the application of penalties bases her or his decision on the social utility of the works proposed and the prospects for social or vocational integration”.

<sup>296</sup> For example, in the direct request addressed to *Belgium* in 2005, the Committee, noting that “the legislation contains several provisions for supervising and controlling arrangements for the execution of the penalty of labour”, requested the Government to provide “information on the types of work that may be required under this penalty including a list of the associations and foundations authorized to take on offenders performing such sentences”.

## 7. Compulsory work as a condition for receiving unemployment benefits

129. A growing trend that has invited scrutiny by the Committee under the provisions of Article 1(1) and Article 2(1) of the Convention has entailed the adoption by some governments of policies that impose compulsory work requirements as a condition for receiving unemployment insurance benefits. The Committee addressed this issue in its General Report of 1998,<sup>297</sup> where it recalled that the Convention defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty”, and that such a penalty might take the form of a loss of rights or privileges.<sup>298</sup> In the above General Report, the Committee drew a distinction as to whether benefits were received as an entitlement based on previous work or contributions, or constituted an allowance granted as a purely social measure.<sup>299</sup> The Committee has considered that in cases in which benefits do not constitute an entitlement based on previous work or contributions but consist of a social measure granted to unemployed persons on purely social grounds, a requirement to perform some work in exchange for the allowance would not *in itself* constitute forced or compulsory labour within the meaning of the Convention.<sup>300</sup> However, the Committee has considered that, under schemes where benefits are contingent upon the recipient having worked or contributed to an unemployment insurance scheme for a minimum period, and the length of time during which benefits are paid is linked to the length of time the person concerned worked, the subsequent imposition of an additional requirement of having to perform work to receive these benefits would constitute compulsory labour under the menace of losing benefits to which the person was entitled.<sup>301</sup> Nevertheless, the Committee notes that availability for work is generally a precondition for receiving unemployment benefits. Even so, if the work required to be performed is not “suitable employment”, it would constitute a form of forced labour.<sup>302</sup>

130. The Committee has examined this issue in its comments addressed to several governments under Convention No. 29.<sup>303</sup> In one case,<sup>304</sup> the Committee considered that a situation which involved allegations of eligibility for benefits being linked to

<sup>297</sup> RCE – General Report, 1998, para. 106.

<sup>298</sup> See para. 37 above.

<sup>299</sup> RCE – General Report, 1998, para. 106.

<sup>300</sup> *ibid.*

<sup>301</sup> *ibid.*

<sup>302</sup> Concerning the notions of “availability for work” and “suitable employment”, see Article 20 of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

<sup>303</sup> Countries which have ratified the Convention: *Ireland, Denmark and Chile*. In the case of *Chile*, the Committee noted that sections 43 and 44 of Legislative Decree No. 150 of 1981 provide for the loss of entitlement to unemployment benefits in case of refusal of unemployed persons to perform certain types of work assigned by the municipal authorities, including community relief work, even where entitlement to such benefits is based on a system of paid contributions for 52 weeks or 12 months over the two years prior to the date of the termination of employment. The Committee also noted the Government’s statements that those sections of the Decree have never been given effect by the municipal authorities. In its direct request under Convention No. 29 submitted to the Government in 2005, the Committee, noting that the Superintendent of Social Security had issued an opinion in favour of amending Decree No. 150 of 1981, expressed the hope that the Government would “take the necessary measures to amend Decree No. 150 so as to ensure that the positive law corresponds to the practice which, according to the Government, already exists”.

<sup>304</sup> See 2000 direct request addressed to the Government of *Ireland*.

compulsory acceptance of low-paying, unsuitable jobs, where the compulsion stemmed from a scarcity of suitable jobs arising from “general economic constraints”, did not fall within the scope of the Convention. The Committee, however, distinguished this case from those “where acquired rights under a contributory unemployment insurance scheme were subjected to new conditions bearing on the range of work to be accepted by benefit recipients”.<sup>305</sup>

131. In another case,<sup>306</sup> the Committee, in requesting additional information concerning the country’s unemployment insurance system, referred to its comments addressed to the government under the Social Security (Minimum Standards) Convention, 1952 (No. 102). In those comments, it had referred to the XVII-1 Conclusions (2004) of the European Committee of Social Rights (ECSR) regarding the rules on the readiness and availability of jobseekers to take up work, as laid down in that country’s unemployment insurance legislation,<sup>307</sup> which were elaborated in the framework of the application by the government of the relevant provisions of the European Social Charter.<sup>308</sup> In this case, the Committee cited the rationale articulated by the ECSR that, “one of the aims of an unemployment benefit system is to offer unemployed persons adequate protection during at least an initial period of unemployment from the obligation to take up any job irrespective of occupational field, precisely with a view to giving them the opportunity of finding a job which is suitable taking into account their individual preferences, skills and qualifications”.<sup>309</sup>

## 8. Obligation to do overtime work under threat of a penalty

132. Replying to a question raised by two governments in 1997 as to whether the obligation to do overtime work was an infringement of Convention No. 29, the Committee considered that the imposition of overtime did not affect the application of the Convention so long as it was within the limits permitted by national legislation or collective agreements.<sup>310</sup> Above those limits, the Committee has considered it appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection provided by the Convention.

133. The Committee has been able to examine different arrangements governing the imposition of work outside normal daily working hours.<sup>311</sup> In some cases, fear of

<sup>305</sup> *ibid.*

<sup>306</sup> See a 2005 direct request addressed to the Government of *Denmark*.

<sup>307</sup> *Denmark*: Unemployment Insurance Act, as amended by Act No. 1035 of 17 December 2002.

<sup>308</sup> In particular, Art. 12, para. 3, which stipulates that the contracting parties, “with a view to ensuring the effective exercise of the right to social security, ... undertake to endeavour to raise progressively the system of social security to a higher level”. European Social Charter, October 18, 1961, 529 UNTS 89; ETS No. 35.

<sup>309</sup> Conclusions XVII-1 (Denmark) of ECSR, 2004, p. 17.

<sup>310</sup> See RCE – General Report, 1998, para. 107.

<sup>311</sup> In fact, the tendency to extend daily working hours and require overtime is giving rise to frequent complaints before different bodies by workers’ organizations. During the discussions on the General Survey of 2005 on the Hours of Work (Industry) Convention, 1919 (No. 1) and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Worker member of the United Kingdom raised the issue of the unreasonable delivery lead times imposed on producers in developing countries by multinational enterprises, especially in the textile, garment and leather industry, and in the agricultural sector. He considered that there was a direct link between unreasonable lead times and excessive overtime (more than 100 hours in one week for workers in EPZs).

dismissal drives workers to work overtime hours well beyond what is allowed under national legislation.<sup>312</sup> In other cases, where remuneration is based on productivity targets, workers may be obliged to work beyond normal working hours, as only in so doing can they earn the minimum wage.<sup>313</sup>

134. With regard to these issues raised before the Committee by workers' organizations,<sup>314</sup> the Committee has observed that although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. The Committee has considered that, in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty and calls for the protection of the Convention, according to which the term "forced or compulsory labour" means 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 or herself voluntarily. In such cases, the Committee has requested that the necessary measures be adopted to ensure compliance with the Convention in order to protect workers in the sectors concerned, including *maquilas*, plantations and the public service,<sup>315</sup> and has requested the Government to supply information on the number of instances before the courts in which workers have alleged the imposition of labour outside the ordinary working day.<sup>316</sup>

## 9. Effective enforcement of the prohibition of forced or compulsory labour

135. By ratifying the Convention, a State undertakes "to suppress the use of forced or compulsory labour in all its forms", which implies both an obligation to refrain from a

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ILC, 93rd Session, Geneva, 2005, *Record of Proceedings*, Vol. II, Report of the Committee on the Application of Standards, Part One, para. 85.

<sup>312</sup> As regards the conditions and limits for overtime, the Committee, in its General Survey of 2005 on the hours of work Conventions Nos. 1 and 30, stated that "Taking into account the spirit of the Conventions and in the light of the preparatory work, it is appropriate to conclude that such limits must be 'reasonable' and they must be prescribed in line with the general goal of the instruments ...".

<sup>313</sup> In relation to this question, the Committee also refers to para. 92 of the General Survey of 1958 on Conventions Nos. 26 and 99 concerning minimum wage-fixing machinery, where it stated that "where a minimum wage system is based primarily on piece-rates, great care needs to be exercised to ensure that, under normal conditions, a worker can earn enough to be able to maintain an adequate standard of living, and that his output, and consequently his earnings, are not unduly limited by conditions independent of his own efforts".

<sup>314</sup> The Inter-Union Commission of El Salvador in 2002 made observations on the application of the Convention with regard to "the situation of the many workers in *maquilas* who are required, under threat of dismissal, to work overtime in excess of the limits laid down in the national legislation and without pay". *El Salvador*, RCE, 2006, p. 143. The Trade Union Confederation of Guatemala (UNSI TRAGUA) referred in comments made in 2003 to the application of the Convention to state employees belonging to category 029. The classification of state employees is determined by the budgetary category to which they belong. Category 029 was established to allow the recruitment of skilled professional and technical personnel for specific tasks and periods, without such workers obtaining the status of public employees. UNSI TRAGUA alleged that workers contracted under this system are not paid for the hours worked in excess of the normal working day, that refusal to work these hours affects the evaluation of their performance and could result in the termination of the contract, with no liability for the State (*Guatemala* – RCE, 2005, p. 154).

<sup>315</sup> See *Guatemala* – RCE, 2005, p. 154.

<sup>316</sup> See *El Salvador* – RCE, 2006, p. 143.

certain type of action and an obligation to take action. The primary obligation of the State is to refrain from using forced labour as defined by the Convention, whether for its own benefit or for the benefit of its various divisions (regions, public services, etc.). In practice, States have taken action, firstly, to repeal legislation that might allow the State to use labour in conditions equivalent to forced labour. Secondly, the State is required not to allow any form of forced labour to be imposed by third parties within its territory and must accordingly establish legal safeguards to prevent any de facto coercion to perform work. Article 25 of the Convention stipulates that “The illegal exaction of forced or compulsory labour shall be punishable as a penal offence”<sup>317</sup> and that it shall be “an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”. On the basis of this provision, the Committee examines whether the national legal framework establishes penal sanctions for practices pertaining to forced labour, and whether those provisions can be applied easily in practice by the courts to punish those responsible for such acts. The Committee also seeks to ensure that the penalties are really adequate, that is, that they are sufficiently dissuasive to put an end to such practices.

136. As explained in paragraph 7 above, the Convention was a response firstly to situations in which the State itself made use of forced labour, in particular in the context of colonial administrations. However, while certain forms of forced labour are still exacted by States,<sup>318</sup> it is now primarily private persons who exploit labour. In this context, the significance of the provisions of Article 25 becomes clear: the Committee’s work consists of considering to what extent the State makes every effort to ensure that its legislation is comprehensive and appropriate for punishing those who engage in such exploitation, and to ensure that such practices are brought to an end. The effective application of Article 25 of the Convention, that is, the effective enforcement of the prohibition of the use of forced labour, gives rise to a number of difficulties.

137. First, legislation has to establish “penalties” in cases where forced labour is exacted. Cases in which there are no legislative provisions at all establishing penalties for the exaction of forced labour are relatively rare. As already indicated in paragraph 67, most countries have incorporated in their legislation provisions defining and prohibiting the use of forced labour, and the violation of those provisions generally carries penalties. However, the Committee has noted that the penalties established by the legislation do not always appear to be appropriate or adequate. The question of penalties is closely linked to that of the definition of forced labour and the nature of the legislation which makes it an offence. In view of the different forms that forced labour can take, a wide range of different provisions, pertaining to labour law, criminal law or specific enactments, may be used by courts to punish forced labour practices. The Committee thus has to examine a wide range of legislation, without always being able to identify the provisions in national law under which existing forced labour practices, or those which could arise, are a punishable offence. The Committee may therefore have to ask governments to specify what those provisions are.<sup>319</sup> It is important that any sanctions

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<sup>317</sup> Until the adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182), Convention No. 29, which was adopted in 1930, was the only one to provide for penal sanctions.

<sup>318</sup> For example, forced labour which is imposed legally but in violation of the Convention, such as prison labour performed for the benefit of private employers.

<sup>319</sup> Although desirable, general provisions making the use of forced labour a punishable offence with appropriate penalties are not always necessary to give effect to the provisions of Article 25 of the Convention. The Committee seeks assurance from governments, often by requesting supplementary information, that there are

are of a penal nature, as required by the Convention, and can be considered to be really adequate. On more than one occasion, the Committee has noted that the only penalty for violating the prohibition of forced labour is a fine. This is mostly the case where the use of forced labour is prohibited by a provision in the labour code. In such cases, the Committee draws the attention of the government to the need for sanctions of a penal nature in cases of the exaction of forced labour. On occasion, legislation provides for a fine and/or a short term of imprisonment. Such penalties cannot be considered effective, given the seriousness of the offence and the dissuasive effect that the penalties should have.<sup>320</sup>

138. This follows from the fact that, according to Article 25 of the Convention, the penalties imposed by law must be “really adequate”. For this to be the case, the practical elements and the applicable penalties must be appropriate to national circumstances. It may in practice not be enough to adopt provisions making the use of forced labour an offence and establishing penalties for it in general terms. Under certain circumstances, the excessively general nature of such provisions can mean that it is difficult for victims, and the authorities responsible for protecting their rights, to ensure that they are enforced. It is then essential to take due account of the nature of the problems faced in practice and to ensure that legislation explicitly targets them. Where it observes that, despite a general prohibition of forced labour, certain forms persist, the Committee encourages governments to supplement their legislation with provisions defining exactly those elements of the practice requiring abolition, making them an offence and establishing appropriate and adequate penalties.<sup>321</sup>

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provisions allowing punishment of persons guilty of forced labour practices found to have occurred in their country. A wide range of provisions can thus be used in practice by the courts, especially where those provisions are interpreted together (with others such as those concerning coercion, the use of threats or violence, detention, exploitation of vulnerability, freedom of employment, and so on).

<sup>320</sup> For example, *Morocco* – RCE, 2006, p. 153 (under the terms of sections 10 and 12 of the Labour Code, an employer who contravenes the provisions prohibiting the conscription of workers for forced labour or for any work without their consent is liable to a fine of between 25,000 and 30,000 dirhams and, in cases of a repeated offence, to double that fine and a period of imprisonment of between six days and three months, or to one or other of those penalties. The Committee expressed “reservations as to the dissuasive nature of these penalties. Indeed, only cases of repeated violations of the prohibition of forced labour could be penalized by a prison sentence, although the judge could however opt for a mere fine if he or she considered it appropriate. Furthermore, the maximum prison sentence which could be imposed is short (from six days to three months)”).

<sup>321</sup> For example, *Indonesia* – RCE, 2005, p. 161 (concerning the issue of trafficking in persons, the Committee has noted with interest that the Government, which is aware of the importance of this problem, is continuing to adopt awareness-raising, prevention and repression measures, particularly through the reinforcement of the capacities of the police and labour inspectors, as well as regional cooperation. Nevertheless, given the absence of information on the judicial proceedings initiated against those responsible for trafficking, the Committee has invited the Government to take all the necessary measures rapidly to ensure that the legislation includes a full text defining trafficking in persons, providing for effective and dissuasive penal sanctions and containing provisions on the protection of victims and their compensation. The adoption of a text explicitly defining and penalizing trafficking would make it possible to resolve the shortcomings of the legislation in this field and would constitute an important stage in combating the trafficking in persons); *Mauritania* – RCE, 2007, pp. 198–200 (the Committee noted with interest that the Labour Code prohibited and imposed penal sanctions for the use of forced labour (sections 5 and 435 respectively). Nevertheless, despite the adoption of these provisions, the Committee has noted that victims of the vestiges of slavery appear to face major difficulties in enforcing their rights before the courts. No judicial proceedings have been initiated on the basis of this general provision of the Labour Code and no individual has been sentenced. The Commission of Inquiry which visited Mauritania in May 2006 in order to assess whether national legislation was adequate and effectively applied to end the vestiges of slavery recommended that the Government “adopt a text clearly penalizing slave-like practices and defining in precise terms their constituent elements so as to enable the judiciary to apply it easily”).

139. Penalties “strictly applied” are the final element provided for in Article 25 of the Convention with a view to achieving the effective enforcement of the prohibition of forced labour. Where a form of forced labour is found to exist, those responsible must be effectively punished in accordance with the penal sanctions established by the law. The State has to ensure that the victims of such practices are able to complain to the competent authorities, have access to justice and obtain compensation for the harm they have suffered. The Committee has noted on a number of occasions that, despite the existence of appropriate legislation, governments are not always in a position to provide information on its application in practice or, in particular, to supply copies of any rulings handed down on the basis of the legislation.<sup>322</sup> Effective application of the legislation depends largely on the sound functioning of the authorities responsible for enforcement, such as the police, the labour inspectorate and the judiciary.<sup>323</sup> Making the authorities more aware of the persistence of forced labour practices and of the fact that such practices are prohibited and liable to penal sanctions is also an important aspect of ensuring that they are brought to an end. The Committee, in its general observation in 2001 on trafficking in persons, therefore asked governments to indicate the measures taken to ensure that judicial proceedings were initiated and brought to a conclusion, and in particular the measures adopted to protect victims and encourage them to complain to the authorities and to promote police action, particularly investigations.<sup>324</sup>

140. In stipulating that States must ensure that the penalties imposed by law are really adequate and are strictly enforced, Article 25 provides a repressive component which ultimately plays a preventive role, since effective punishment of the guilty encourages victims to lodge complaints and has a dissuasive effect.

<sup>322</sup> For example, *India* – RCE, 2005, p. 157 (the Committee noted the difficulties encountered in implementing the Bonded Labour System (Abolition) Act, 1976, and observed that “in the light of Art. 25 of the Convention, the number of prosecutions launched under the Act did not appear to be adequate when compared to the number of identified and released bonded labourers reported by the Government” and requested the Government to “continue to provide, in its future reports, full information on the number of prosecutions, as well as on the number of convictions and on the penalties imposed, including sample copies of relevant court decisions”); *Peru* – RCE, 2006, p. 169 (as regards forced labour performed by members of indigenous communities, the Committee has noted the Government’s indications that it has not received denunciations concerning the exaction of forced labour. It has pointed out that, in view of the fact that the existence of such situations has been confirmed, the absence of penalties is indicative of the incapacity of the judicial system to prosecute such practices and penalize those who are guilty. The Committee asked the Government to indicate the number of cases of forced labour which have been denounced, the progress made in the investigation of these cases, and particularly the percentage of denunciations which have given rise to prosecutions and the number of convictions obtained).

<sup>323</sup> For example, *Brazil* – RCE, 2005, p. 139 and RCE, 2004, p. 124 (the Government’s commitment to eradicating degrading labour practices and debt bondage has been reflected in the adoption of numerous measures, including the establishment of the Special Mobile Inspection Group; the adoption of the National Plan for the Elimination of Slave Labour; the adoption of a cooperation project between the ILO and the Government of Brazil entitled “combating forced labour in Brazil” (2002–07); and the annual publication of a list of individuals and entities found guilty of using slave labour and barred from entering into financial arrangements with certain public financial institutions and from obtaining government subsidies and tax exemptions, etc. The Committee has also noted with interest that, on 30 April 2003, the Labour Court of the Eighth Region, Parauapebas/PA (ruling No. 218/2002), upheld the demand of the public prosecutor to require the owner of an agricultural undertaking, who had forced workers to do degrading and forced labour, to provide compensation for the collective harm done to them).

<sup>324</sup> See paras 75 and 82–84 above.

## Chapter III

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### Abolition of Forced Labour Convention, 1957 (No. 105)

#### 1. Scope of Convention No. 105 in relation to Convention No. 29

141. As indicated above,<sup>325</sup> Convention No. 105 does not constitute a revision of Convention No. 29, but was designed to supplement it. The Preamble to Convention No. 105 contains a reference to the provisions of the earlier instrument and indicates that the Conference decided to adopt further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of human rights. In the absence of a definition of “forced or compulsory labour” in Convention No. 105, the definition contained in Convention No. 29 has been considered generally valid, and can thus serve to determine what constitutes “forced or compulsory labour” within the meaning of Convention No. 105, which consequently affords protection against any “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>326</sup>

142. While Convention No. 29 calls for the general abolition of forced or compulsory labour in all its forms (subject to the exceptions set out in Article 2, paragraph 2),<sup>327</sup> Convention No. 105 requires the abolition of any form of forced or compulsory labour only in the five specific cases listed in Article 1 of that Convention: (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.

143. It should be pointed out that neither Convention No. 105, nor Convention No. 29, contains provisions limiting the scope of its application by excluding certain categories of workers. Intended to guarantee respect for certain fundamental human rights, both Conventions are of general application and are designed to protect the entire population of the countries which have ratified them.

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<sup>325</sup> See para. 11 above.

<sup>326</sup> Convention No. 29, Art. 2, para. 1. See also paras 35–41 above.

<sup>327</sup> See paras 42–66 above.

144. As previously noted,<sup>328</sup> Convention No. 105 was designed to supplement Convention No. 29, but the later instrument does not, as a matter of law, incorporate any of the provisions of the earlier one.<sup>329</sup> This is also true with regard to exceptions laid down in Article 2, paragraph 2, of Convention No. 29 “for the purposes of this Convention”, which do not automatically apply to Convention No. 105. Thus, as regards, more particularly, the exemption concerning prison labour or other forms of compulsory labour exacted as a consequence of a conviction in a court of law,<sup>330</sup> it is necessary in addition to consider national law and practice to ensure that systems of penal labour are not diverted into methods of mobilizing and using labour for purposes of economic development. Also, if a person has to perform compulsory prison labour because she or he holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by this Convention, which, in addition, prohibits the use “of any form” of forced or compulsory labour as a sanction, as a means of coercion, education or discipline, or as a punishment in respect of the persons within the meaning of Article 1(a), (c) and (d). Otherwise, in the great majority of cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of Convention No. 105, such as in the cases of the exaction of forced or compulsory labour from common offenders convicted, for example, of robbery, kidnapping, bombing or other acts of violence or acts or omissions that have endangered the life or health of others, or numerous other offences; although labour is exacted from them under the menace of a penalty and on an involuntary basis, it is not imposed in these instances for any of the reasons enumerated in the Convention.<sup>331</sup>

145. It should be recalled in this connection that the Convention was adopted following a survey by the UN–ILO Ad Hoc Committee on Forced Labour,<sup>332</sup> which had found that one of the most common forms of forced labour in the world was forced labour as a means of political coercion. Many of the specific cases from which the Ad Hoc Committee drew this conclusion related to labour resulting from penal legislation, involving conviction by a court of law, and in general the conclusions of the Committee referred, by way of example, to cases where a person may be sentenced to forced labour for the offence of having expressed ideological opposition to the established political order.<sup>333</sup> It was also pointed out in the preparatory work leading to the adoption of the Convention that, where persons might be sentenced to penal labour on account of their political or other beliefs, “prison labour could in fact become tantamount to a system of forced labour as a means of political coercion”. The Governing Body of the ILO accordingly decided to include an item on forced labour in the agenda of the Conference and expressed the view that any subsequent instrument adopted by the Conference

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<sup>328</sup> See para. 11 above.

<sup>329</sup> The Committee on Forced Labour stated in its report presenting the draft Abolition of Forced Labour Convention to the Conference in 1957 that the Forced Labour Convention of 1930 and the new instrument were quite independent. (See *Record of Proceedings*, ILC, 40th Session, Geneva, 1957, p. 708, para. 6).

<sup>330</sup> See paras 48–61 above.

<sup>331</sup> See *Forced labour*, General Survey of 1968, paras 44, 84, 85; *Abolition of forced labour*, General Survey of 1979, paras 104, 105.

<sup>332</sup> See para. 8 above.

<sup>333</sup> Report of the Ad Hoc Committee on Forced Labour, Supplement No. 13 in the Official Records of the Sixteenth session of the Economic and Social Council and No. 36 in the Studies and reports (New Series) of the International Labour Office, Geneva, 1953, para. 549.

should deal with the practices which are specifically excluded from the scope of the 1930 Convention.<sup>334</sup>

146. The Committee has also observed in this regard that, while convict labour exacted from common offenders is intended to reform or rehabilitate them, the same need does not arise in the case of persons convicted for their opinions or for having taken part in a strike. Furthermore, in the case of persons convicted for expressing certain political views, an intention to reform or educate them through labour would in itself be covered by the express terms of the Convention, which applies *inter alia* to any form of compulsory labour as a means of political education.<sup>335</sup> The Committee has therefore considered that compulsory labour in any form, including compulsory prison labour, is covered by Convention No. 105, when it is exacted in one of the five cases specified by that Convention.

147. As the Committee has noted in its earlier surveys on the subject,<sup>336</sup> the scope of the Convention is not restricted to sentences of “hard labour” or other particularly arduous forms of labour, as distinct from ordinary prison labour.<sup>337</sup> Reference might be made in this connection to the definition of “forced or compulsory labour” in Article 2, paragraph 1, of Convention No. 29 and to the exception as regards labour as a consequence of a conviction in a court of law in Article 2, paragraph 2(c), which make no distinction either between different forms of work or service in general, or between “hard labour” and compulsory labour exacted from persons as a result of any other type of sentence.<sup>338</sup> Convention No. 105 prohibits the use of “any form” of forced or compulsory labour as a sanction, as a means of coercion, education or discipline, or as a punishment in respect of the persons within the ambit of Article 1(a), (c) and (d). It is therefore the objective characteristics of the obligations resulting from a particular type of sentence, rather than the terminology used in individual legal systems, which have to be taken into consideration. Consequently, where national legislation contains provisions imposing punishment on persons in circumstances falling within the scope of Convention No. 105, the Committee has to ascertain whether the type of punishment concerned involves an obligation to perform labour.

148. As regards other exceptions laid down in Article 2, paragraph 2, of Convention No. 29, the question is whether the forms of compulsory service concerned would fall within the positively defined cases mentioned in Convention No. 105. Concerning, more

<sup>334</sup> *Forced labour*, Report VI(I), ILC, 39th Session, Geneva, 1956, p. 17.

<sup>335</sup> See *Forced labour*, General Survey of 1968, para. 87; *Abolition of forced labour*, General Survey of 1979, para. 108. During the discussion which took place in the course of the preparatory work on the Convention, the point was made that, in many countries, it was regarded as normal that persons convicted of certain categories of crime were required to work during the period of their sentence, that such work served an educational purpose and helped keep up the morale of prisoners, and that it might be felt that it was reasonable to permit this type of forced labour and undesirable to attempt to forbid it in any way. However, it was made clear in the preparatory report submitted to the Conference that this same form of forced labour could lead to abuses, particularly if persons may be sentenced to penal labour on account of their political or other beliefs, and that the proposed instrument should guard against this (*Forced labour*, Report VI (I), ILC, 39th Session, Geneva, 1956, p. 17).

<sup>336</sup> See *Forced labour*, General Survey of 1968, para. 86; *Abolition of forced labour*, General Survey of 1979, para. 105.

<sup>337</sup> The Committee indicated, in particular, that the issue appears to have arisen partly from a terminological difficulty: “hard labour” (a particular type of punishment imposed under criminal law in certain countries) and “forced labour” (the term used in the Convention) being in certain languages rendered by the same or similar expression. *ibid.*

<sup>338</sup> See para. 49 above. See also *Forced labour*, General Survey of 1968, para. 44.

particularly, Article 1(b) of Convention No. 105, it would appear that most of the categories of compulsory service exempted from Convention No. 29 – compulsory military service, normal civic obligations, labour exacted in emergencies, minor communal services – would not constitute cases of “mobilizing and using labour for purposes of economic development”, if they remain within the limits laid down in Convention No. 29.<sup>339</sup> The provisions of national law and practice should be examined accordingly.

149. In considering the scope of Convention No. 105, it should be borne in mind that this instrument does not deal with freedom of thought or expression or other civil liberties as such, nor does it regulate questions of labour discipline or strikes in general. Its purpose is to ensure that no form of forced or compulsory labour is used in the circumstances specified in the Convention. Where the penalties applicable to offences in relation to the expression of political views, labour discipline or participation in strikes do not involve any obligation to perform labour, the substantive provisions governing these offences are outside the scope of the Convention. A situation of this kind may arise, for instance, in relation to Article 1(a) of the Convention, where persons convicted of political offences are exempted from the obligation to perform prison labour.<sup>340</sup> The Committee observed in this connection that a special status accorded to political prisoners in certain countries is comparable to that accorded to persons in detention while awaiting trial, under which they are free from prison labour imposed on common offenders, although they may work on their own request.<sup>341</sup>

150. The Committee has noted in its earlier survey on the subject that a number of countries which have ratified the Convention have introduced such exemptions in their legislation in order to ensure observance of the Convention.<sup>342</sup> Besides, in one case, the Committee has noted the non-applicability of sentences of correctional labour (imposed for various breaches of labour discipline) without a prisoner’s consent.<sup>343</sup> In some other cases, the Committee has also noted the repeal of provisions imposing sentences of imprisonment in circumstances falling within the scope of the Convention.<sup>344</sup>

151. It follows from the above explanations that compliance of penal laws with the Convention can be ensured at different levels:

- at the level of civil and social rights and liberties when, in particular, political activities and the expression of political views, the manifestation of ideological opposition, breaches of labour discipline and the participation in strikes are beyond the purview of criminal punishment;<sup>345</sup>

<sup>339</sup> See paras 42–47 and 62–66 above.

<sup>340</sup> See *Forced labour*, General Survey of 1968, para. 88; *Abolition of forced labour*, General Survey of 1979, para. 109.

<sup>341</sup> *Abolition of forced labour*, General Survey of 1979, para. 109.

<sup>342</sup> *ibid.*

<sup>343</sup> A country which has ratified the Convention: *Cuba* – see footnote 413.

<sup>344</sup> For example, countries which have ratified the Convention: *Gabon* – RCE, 1980, p. 152 (under the Labour Code (Act No. 5-78 of 1978) a strike declared in violation of the provisions of the Code does not entail a sentence of imprisonment); *Turkey* – RCE, 2005, p. 190; see footnote 367.

<sup>345</sup> The Committee always considered that it is not necessary to use prison sentences, especially those involving compulsory labour, to maintain public order, racial harmony and national security. Convention No. 105 was

- at the level of the penalties that may be imposed, when these are limited to fines or other sanctions that do not involve an obligation to work;
- and, finally, at the level of the prison system, when the law confers a special status on prisoners convicted of certain political offences, under which they are free from prison labour imposed on common offenders (although they may work at their own request).

## 2. Abolition of forced or compulsory labour in circumstances referred to in Article 1 of the Convention. Progress and present-day problems of implementation in national law and practice

### (a) Abolition of forced or compulsory labour 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 (Article 1(a))

152. As it has already been indicated,<sup>346</sup> the Convention prohibits the use of forced or compulsory labour “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”.<sup>347</sup> The range of activities which must be protected, under this provision, from punishment involving forced or compulsory labour thus comprises the freedom to express political or ideological views (which may be exercised orally and through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and the adoption of policies and laws reflecting them, and which also may be affected by measures of political coercion.

153. National constitutions and other legislative texts in practically all the countries of the world recognize the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest and the right to a fair trial in accordance with due process of law, etc. Legal guarantees of such rights and freedoms can constitute an important safeguard against the imposition of forced or compulsory labour as a punishment for holding or expressing political or ideological views or as a means of political coercion or education. However, certain limitations may be imposed by law on the rights and freedoms concerned which must be accepted as normal safeguards against their abuse, examples being laws against incitement to violence, civil strife or racial hatred. It may be recalled in this connection that, according to the Universal Declaration of Human Rights, limitations may be imposed by law on the rights and freedoms listed in it “for the purpose of securing due recognition and respect

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adopted specifically to discourage governments from using methods that are unnecessarily repressive of fundamental human rights. (RCE – General Report, 1998, para. 110.)

<sup>346</sup> See paras 11 and 142 above.

<sup>347</sup> Art. 1(a) of the Convention.

for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.<sup>348</sup> The Committee has considered it appropriate to take account of the above criteria in evaluating national law and practice in the fields relevant to Article 1(a) of the Convention.<sup>349</sup> In the course of the examination of the compatibility of national law and practice with these provisions of the Convention, where it was necessary to determine whether limitations were acceptable on the basis of these criteria, the Committee has been concerned to see that the offences laid down in the laws against defamation, sedition, subversion, etc., are not defined in such wide or general terms that they may lead to the imposition of penalties involving compulsory labour as a means of political coercion or as a punishment for the expression of political or ideological views. The Committee has considered it difficult in many cases to arrive at a definite conclusion solely on the basis of the legislative texts and has accordingly found it necessary to seek information on the practical application of relevant provisions, including information on the court decisions defining or illustrating their scope.

154. The Committee has observed in this connection that the Convention does not prohibit either punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence, or judicial imposition of certain restrictions on persons convicted of crimes of this kind. But the Committee has considered that sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision.<sup>350</sup>

155. Freedom of expression and related fundamental rights may also be restricted or suspended during certain exceptional periods, as a result of a declaration of an emergency, state of siege, martial law, etc. Apart from direct imposition of labour which may result from application of the laws or regulations adopted during particularly troubled periods or in situations of force majeure, it frequently happens that the authorities are also empowered to impose considerable restrictions on the right of individuals to express political views or their opposition to the established order, such restrictions being enforceable with penal sanctions involving compulsory labour. The need for exceptional recourse to such measures is recognized in the International Covenant on Civil and Political Rights “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”; in such cases derogations from the provisions of the Covenant may be made “to the extent strictly required by the exigencies of the situation”.<sup>351</sup> The Committee has adopted a similar approach in regard to emergency measures, such as the suppression of fundamental rights and freedoms, which may have a bearing on the application of Article 1(a) of the Convention, if such measures are enforced by sanctions involving compulsory labour. As in the case of the exaction of compulsory work or service in an emergency within the

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<sup>348</sup> Universal Declaration of Human Rights, Art. 29; see also Arts. 5, 21 and 22 of the International Covenant on Civil and Political Rights.

<sup>349</sup> See *Forced labour*, General Survey of 1968, para. 90; *Abolition of forced labour*, General Survey of 1979, para. 133.

<sup>350</sup> *Abolition of forced labour*, General Survey of 1979, para. 133.

<sup>351</sup> Art. 4 of the International Covenant on Civil and Political Rights.

meaning of Article 2, paragraph 2(d) of Convention No. 29,<sup>352</sup> recourse to such exceptional powers should take place only in strict cases of emergency, and the nature and duration of the measures taken should be limited to what is strictly necessary to meet circumstances that would endanger the life, personal safety or health of the whole or part of the population.<sup>353</sup> The Committee is therefore concerned to ascertain, while examining individual cases of countries bound by the Convention, that recourse to such restrictive measures has been occasioned by circumstances of extreme gravity constituting an emergency in the strict sense of the term, and that the measures taken which are relevant to Article 1(a) are limited in time and scope to what is strictly required to meet the specific emergency situation.

156. In a number of countries, the Committee has noted with satisfaction the repeal of provisions under which penal sanctions involving compulsory labour could be imposed for various kinds of statements or criticism of a political nature, publications and propaganda contrary to the established political order or aimed at infringing national sovereignty or diminishing national sentiment, or tendentious information aiming at impairing the prestige of the State or various authorities,<sup>354</sup> various acts connected with communist activities (such as propagating communist ideology, or belonging to any communist organization, or attending any communist meeting, etc.),<sup>355</sup> dissemination of false news and rumours<sup>356</sup> and certain other offences connected with the expression of

<sup>352</sup> See paras 62–64 above regarding the criteria for an emergency and the requirement of proportionality of the measures taken in relation to Art. 2, para. 2(d), of Convention No. 29, which concerns work or service exacted in cases of emergency.

<sup>353</sup> See *Forced labour*, General Survey of 1968, paras 92 and 103; *Abolition of forced labour*, General Survey of 1979, para. 134.

<sup>354</sup> Countries which have ratified the Convention: *Angola* – RCE, 1992, p. 318 (Act No. 22/91 of 15 June 1991 respecting the press has repealed section 8, 24(1) and (2) of Act No. 7/78 of 10 June 1978 concerning the publicizing of false assertions damaging to the reputation of the State and the disturbance of the public order by any means whatsoever; the Committee also noted with interest the adoption of Act No. 16/91 of 11 May 1991 respecting freedom of assembly and opinion and Act No. 14/91 of 11 May 1991 respecting associations; *El Salvador* – RCE, 2001, p. 434 (the Penal Code (Legislative Decree No. 1030 of 26 April 1997) has repealed sections 291, 376, 377, 387 and 407 of the former Penal Code respecting the dissemination of anarchist doctrines or those which are contrary to democracy, subversive propaganda and similar acts, which were punishable with imprisonment (involving compulsory labour)); *Mozambique* – RCE, 1996, p. 251 (Act No. 19/91 has repealed Act No. 2/79 respecting the security of the State, under which prison sentences involving compulsory labour could be imposed for all acts that endanger, harm or disrupt the State and its agencies, the political, economic and social stability of the nation (section 1), as well as for the use of verbal or written propaganda against the Frelimo Party, the State or the objectives defined in the Constitution (sections 35 et seq.)); *Nicaragua* – RCE, 1993, p. 299 (Act No. 66 of 19 October 1989 has repealed Decree No. 1074 respecting the maintenance of public order and security, which provided for penalties of imprisonment and public works to be imposed on persons who disseminated, by speech or by writing, certain political opinions; *Philippines* – RCE, 1996, p. 255 (Executive Order No. 29 of 16 July 1986 has repealed Presidential Decree No. 33, which had penalized printing, possession and circulation of certain leaflets, handbills and propaganda materials and the inscribing or designing of graffiti); *Spain* – RCE, 2000, p. 306 (the Penal Code of 1995 abolished prison sentences provided for in sections 123, 146, 147, 148, 161, 164 and 242 of the former Penal Code for insult to various state authorities, and exempted those who can prove the truth of their allegations from criminal liability).

<sup>355</sup> Countries which have ratified the Convention: *Dominican Republic* – RCE, 1980, p. 151 (Act No. 1 of 8 September 1978 has repealed Act No. 6 of 8 October 1963, which prohibited all communist activities, subject to sanctions of imprisonment (involving compulsory labour)); *Thailand* – RCE, 2003, p. 446 (Act BE 2543 (2000), which came into force on 4 June 2001, has repealed the Anti-Communist Activities Act BE 2495 (1952), as amended by the Anti-Communist Activities Act (No. 2) BE 2512 (1969)).

<sup>356</sup> A country which has ratified the Convention: *Philippines* – RCE, 1989, p. 343 (Executive Order No. 65 issued by the President on 21 November 1986 has repealed Presidential Decree No. 90 (on unlawful rumour-mongering and spreading of false information) and its implementing Letter of Instructions No. 50).

opinions.<sup>357</sup> It has also noted with satisfaction the repeal of provisions enforceable with sanctions of imprisonment (involving an obligation to work) prohibiting the publication of any newspaper, if such prohibition is considered to be in the public interest.<sup>358</sup>

157. In its previous General Survey of 1979, the Committee referred to certain cases where restrictions were imposed on freedom of expression by provisions punishing e.g. propaganda against the socialist State or aimed at changing the socialist order, or propaganda aimed at subverting or weakening state authority, such restrictions being enforceable by sanctions involving compulsory labour.<sup>359</sup> Since that time, the provisions in question have been repealed and replaced by the new Constitutional and penal provisions, which ensured compliance with the Convention on this point and facilitated its ratification.<sup>360</sup>

158. However, in certain other cases, freedom of expression remains subject to restrictions enforced by sanctions involving compulsory labour, as a consequence of the adoption of legislative and other provisions which suspended constitutional guarantees and prohibited numerous political activities, including participation in political parties or in public gatherings, or punished the display of emblems and the distribution of publications signifying association with a political objective or political organization.<sup>361</sup> The Committee has noted with satisfaction the repeal of such provisions in a number of countries where the state of emergency has been lifted or similar circumstances ceased to exist.<sup>362</sup>

<sup>357</sup> A country which has ratified the Convention: *France* – RCE, 1985, p. 261 (Act No. 83-605 of 8 July 1983 to amend the National Service Code, art. XVII, has repealed Part III of Ch. II of Title II of the National Service Code, 1971, section 50 of which prohibited all propaganda of whatever form designed to encourage another person to take advantage of the conscientious objector statute with the sole aim of evading his military obligations, under penalty of imprisonment (involving an obligation to work)).

<sup>358</sup> A country which has ratified the Convention: *Uganda* – RCE, 1997, p. 298 (section 48 of the Press and Journalist Statute, 1995, has repealed the Press Censorship and Correction Act, as well as the Newspaper, and Publications Act, section 21A of which had provided for the prohibition, enforceable with imprisonment (involving an obligation to perform labour) of the publication of any newspaper if the competent minister considered it to be in the public interest).

<sup>359</sup> *Abolition of forced labour*, General Survey of 1979, para. 137, in which the Committee referred to a number of countries which had not ratified the Convention.

<sup>360</sup> Countries which have ratified the Convention: *Czech Republic, Romania, Russian Federation, Slovakia*.

<sup>361</sup> For example, countries which have ratified the Convention: *Kenya* – RCE, 2006, p. 148 (the Government has indicated that, as regards certain provisions of the Penal Code, the Public Order Act (Cap. 56) and the Prohibited Publications Order, 1968, which contained provisions falling within the scope of the Convention, serious discussions were under way between the Office of the President, the Attorney General's Chambers, the Law Reform Commission and the Ministry of Labour concerning the proposals to bring these provisions into complete conformity with the Convention); *United Republic of Tanzania* – RCE 2004, p. 169 (the Government has indicated that certain legislative texts (e.g. certain provisions of the Penal Code, the Newspaper Act, the Local Government (District Authorities) Act), which contained provisions falling within the scope of the Convention, were identified by the Law Reform Commission as being among 40 legislative texts which were found unconstitutional on the grounds that they were contrary to human rights and incompatible with the forced labour Conventions; following the establishment of multipartism, there had been a process of political reform, with the result that contrary views of individuals are not punished; as regards the old texts like the Societies Ordinance, the Government has indicated that it ceased to apply to political parties, which are now dealt with under the Political Parties Act, 1992).

<sup>362</sup> Countries which have ratified the Convention: *Argentina* – RCE, 1984, p. 207 (Act No. 22825 of 3 June 1983 and Decree No. 1984 of 8 August 1983 have repealed Acts Nos. 21261 of 24 March 1976 and 21400 of 3 September 1976 and Decrees Nos. 6 and 9 of 24 March 1976, which suspended constitutional guarantees, particularly the right to strike and the right to participate in political activities); *El Salvador* – RCE, 1984, p. 218 (Decree No. 142 of 27 February 1979 has repealed the Act respecting the defence and guarantee of public order,

159. In some countries, it is an offence to publish any information calculated to weaken the government or which injures the State or its establishments, to disseminate views or information of a nature to prejudice the public interest or the development of the nation,<sup>363</sup> to disseminate tendentious information calculated to disturb the constitutional or legal order or the political or economic system.<sup>364</sup> Such provisions are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views, and in so far as they are enforceable with sanctions involving compulsory labour, they fall within the scope of the Convention. This may also be true of certain other widely worded provisions intended to protect the authority of the State or its institutions, for example, where it is an offence to publish or disseminate information provoking or encouraging tendencies calculated to impair the integrity of the State<sup>365</sup> or to suppress, revoke or undermine certain basic constitutional principles.<sup>366</sup> In one case

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which introduced restrictions on freedom of expression and the right to strike on pain of imprisonment (involving compulsory labour)); *Mauritius* – RCE, 1980, p. 157 (the Government lifted, on 10 March 1978, the state of emergency proclaimed in 1971, thus abrogating various regulations providing for sanctions of penal servitude to enforce the control of publications, the prohibition of public gatherings, etc.); *Nigeria* – RCE, 1982, pp. 175, 176 (Constitution (Certain Consequential Repeals) Act No. 105 of 1979 has repealed the Public Order Act, No. 33 of 1966 (prohibiting all bodies, societies or associations from pursuing political cause or objective) and the Newspaper (Prohibition of Circulation) Act, No. 17 of 1967, both of which were enforceable with prison sentences (involving an obligation to work); *Pakistan* – RCE, 1980, p. 159 (Ordinance No. XXXII of 1977 has repealed the Defence of Pakistan Ordinance, 1971, and the corresponding Rules, which empowered the authorities to exact compulsory service and to impose restrictions on various fundamental rights falling within the scope of the Convention).

<sup>363</sup> For example, countries which have ratified the Convention: *Afghanistan* – prison sentences involving an obligation to perform labour may be imposed under sections 184(3), 197(1)(a) and 240 of the Penal Code, punishing, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods; *Central African Republic* – Act No. 60/169 of 12 December 1960, sections 1–3 (dissemination of prohibited publications liable to prejudice the development of the Central African nation), enforceable with sentences of imprisonment involving compulsory labour; *Chad* – Act No. 35 of 8 January 1960, section 1, which prohibits subversive publications, on pain of penalties involving compulsory labour; *Liberia* – section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Government has indicated that the latter provision has been repealed, although no repealing text has been supplied; *Philippines* – Penal Code, sections 142 and 154(1), under which a penalty of imprisonment (involving compulsory labour) may be imposed upon persons who, by means of speeches, proclamations, writings or emblems, incite others to acts constituting sedition, utter seditious words or speeches, or write, publish, or circulate scurrilous libels against the Government, or, by means of printing, lithography or any other means of publication, maliciously publish as news any false news which may endanger the public order or cause damage to the interests or credit of the State; *Syrian Arab Republic* – Penal Code, section 287 (spreading exaggerated news tending to harm the prestige of the State); the Government has indicated that draft legislation to exempt persons protected by the Convention from the obligation to perform prison labour was under elaboration.

<sup>364</sup> For example, a country which has ratified the Convention: *Egypt* – section 98(a)bis and 98(d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibits advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State, as well as encouraging aversion or contempt for these principles, subject to penalties of imprisonment involving compulsory labour, and section 98(b) and 98(b)bis of the Penal Code, punishing with similar sanctions advocacy of certain doctrines.

<sup>365</sup> A country which has ratified the Convention: *Turkey* – see footnote 385 below.

<sup>366</sup> A country which has ratified the Convention: *Morocco* – Dahir No. 1-58-378 of 3 Joumada I 1378 (15 November 1958) establishing the Press and Publishing Code, as amended by Dahir No. 1-02-207 of 25 Rejeb 1423 (3 October 2002) promulgating Act No. 77-00, article 29, under which any person who knowingly puts on sale, distributes or reproduces newspapers, journals or periodicals which are detrimental to the Islamic religion, the monarchy, territorial integrity, respect for the King or public order, shall be liable to imprisonment (involving compulsory labour); the Government expressed its intention to revise the Press Code with a view to abolishing sentences of imprisonment; *Sudan* – sections 50, 66 and 69 of the Penal Code, under which committing an act with the intention of destabilizing the constitutional system, publication of false news with the intention of

the Committee has noted the removal of penalties of imprisonment for certain offences of this kind and their replacement with fines.<sup>367</sup>

160. There are a number of other legislative provisions which, even if worded in reasonably precise terms, by their nature still leave a considerable element of appreciation to the courts called upon to enforce them, and in respect of which information concerning practical application may therefore be necessary to determine their scope in relation to the application of the Convention. This might be the case of provisions e.g. relating to insults to various holders of public office<sup>368</sup> or punishing the dissemination of false news.<sup>369</sup>

161. It may be recalled that the Universal Declaration of Human Rights refers to freedom of expression “through any media”.<sup>370</sup> The imposition of compulsory labour within the meaning of the Convention may therefore result indirectly from such restrictions on freedom of expression as systems of licensing of publications or prior authorization granted by the authorities at their discretion with regard to various forms of expression or publication, if these restrictions are enforceable with sanctions involving an obligation to work.<sup>371</sup> A system of prior authorization may relate to all periodical publications or to certain kinds of publications, to the publication of newspapers, or to engaging in journalism.<sup>372</sup> Such provisions may serve as a basis for depriving persons of

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harming the prestige of the State and committing an act intended to disturb the peace, is punishable with imprisonment (which involves compulsory labour).

<sup>367</sup> A country which has ratified the Convention: *Turkey* – RCE, 2005, p. 190 (in virtue of Act No. 4744 of 6 February 2002, a penalty of imprisonment in section 8 of “Act against terrorism”, No. 3713 of 12 April 1991, as amended on 13 November 1996, (written or oral propaganda, assemblies, manifestations and demonstrations against the indivisibility of the State) was replaced with fines; the Committee has also welcomed a decision to stop prosecutions under the old section 8 of the Act and to release the accused persons, in virtue of a transitional section 10 inserted by Act No. 4928 of 15 July 2003).

<sup>368</sup> Countries which have ratified the Convention: *Benin* – Act No. 60-12 of 30 June 1962 on the freedom of the press, section 23; *Turkey* – Penal Code, section 241 (public censuring, by ministers of religion, of government administration, state laws or government activities); sections 266–268 (insulting public office holders); however, the Committee has noted with interest that section 159 of the Penal Code (insulting or vilifying, inter alia, “Turkism”, various state authorities, the state laws or the decisions of the National Grand Assembly) has been amended by Act No. 4771, of 3 August 2002, by adding a new provision according to which the written, oral or visual expression of ideas merely with a view to criticizing the state authorities, without the intention to insult them, shall not involve any punishment.

<sup>369</sup> For example, countries which have ratified the Convention: *Benin* – Act No. 60-12 of 30 June 1962 on the freedom of the press, section 25; *Philippines* (see footnote 363); *Sudan* (see footnote 366).

<sup>370</sup> *Universal Declaration of Human Rights*, Art. 19. See also *International Covenant on Civil and Political Rights*, Art. 19(2). National constitutions often contain provisions guaranteeing freedom of expression and specifically excluding any system of press licensing or censorship (for example, countries which have ratified the Convention: *Italy* – Constitution of 27 December 1947, art. 21(2); *Mexico* – Constitution of 1 May 1917, art. 7).

<sup>371</sup> Such kind of restrictions should be distinguished from purely formal requirements relating to registration or notification of certain particulars, which do not restrict freedom of expression and accordingly involve no problems of application of the Convention.

<sup>372</sup> For example, countries which have ratified the Convention: *Bangladesh* – sections 16–20 of the Special Powers Act, No. XIV of 1974, under which penalties of imprisonment may be imposed on persons who publish prejudicial reports, or who contravene orders for prior scrutiny and approval of certain publications; *Ghana* – section 183(2) of the Penal Code and section 3 of the Newspaper Licensing Decree, 1973, under which imprisonment (involving an obligation to work) may be imposed for violations of legislation on publication and distribution of periodicals and licensing requirements for publishing; the Government has expressed the wish to bring the legislation into conformity with the Convention; *Morocco* – Dahir No. 1-58-378 of 3 Joumada I 1378 (15 November 1958) establishing the Press and Publishing Code, as amended by Dahir No. 1-02-207 of 25 Rejeb 1423 (3 October 2002) promulgating Act No. 77-00, article 28, under which any person who produces, publishes or prints a newspaper, journal or periodical beyond the expiry date of the

the right to publish their views by a discretionary administrative decision, which is in no way dependent on the commission of any criminal offence by the person concerned and is not subject to the judicial review. In so far as the relevant provisions are enforced by penalties involving compulsory labour, they may lead to the imposition of such labour as a means of political coercion or as a punishment for expressing political or ideological views. A similar possibility may arise where the authorities enjoy wide powers to ban any publication in the public interest,<sup>373</sup> or to prohibit the importation of certain kinds of publications.<sup>374</sup> In some cases the Committee has noted with satisfaction the repeal of such provisions.<sup>375</sup> Such powers may be also intended to deal with types of publications which do not fall within the scope of the Convention (e.g. obscene publications), but since they may however provide a basis for prohibiting publications of a political or ideological nature, it seems necessary to consider the terms in which the powers in question are granted and the manner in which they are applied in practice, taking into account that in many cases penalties involving compulsory labour are laid down for such offences as possessing, distributing or reproducing prohibited publications or extracts from them. However, it should not be forgotten that, as indicated above,<sup>376</sup> the Convention does not constitute an international instrument to ensure freedom of expression as such, and that, if failure to comply with a particular restriction or constraint is not punishable by penalties involving compulsory labour, this does not come within the scope of the Convention.

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relevant authorization shall be liable to imprisonment (involving compulsory labour); the Government expressed its intention to revise the Press Code with a view to abolishing sentences of imprisonment; *Nigeria* – Nigerian Press Council (Amendment) Act, 2002, which imposes certain restrictions on journalists’ activities enforceable with penalties of imprisonment (section 19(1) and (5), read in conjunction with section 17(1), (2) and (3), which involves an obligation to work); *Pakistan* – Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, which has repealed the West Pakistan Press and Publications Ordinance, 1963, gives the authorities wide discretionary powers to prohibit the publication of views, subject to penalties of imprisonment which may involve compulsory labour (section 10(2)(c), read in conjunction with sections 5 and 28); *Syrian Arab Republic* – Press Act (Legislative Decree No. 53 of 1949 and Legislative Decree No. 16 of 1962), sections 15, 16 and 55 (publishing a newspaper without an authorization by the Council of Ministers); the Government has indicated that draft legislation to exempt persons protected by the Convention from the obligation to perform prison labour was under elaboration.

<sup>373</sup> For example, a country which has ratified the Convention: *United Republic of Tanzania* (Newspaper Act, 1976, section 25, under which the President may, if he considers necessary in the public interest or in the interest of peace and order, prohibit the further publication of any newspaper; printing, publishing, selling or distribution of such newspaper being punishable by imprisonment, which involves an obligation to perform labour).

<sup>374</sup> For example, countries which have ratified the Convention: *Benin* – Act No. 60-12 of 30 June 1962 on the freedom of the press, section 12 (allowing a ban on publications of foreign origin in French or the vernacular printed in or outside the country); *Central African Republic* – Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news of foreign origin not approved by the censorship authority), enforceable with sentences of imprisonment involving compulsory labour; *Morocco* – Dahir No. 1-58-378 of 3 Joumada I 1378 (15 November 1958) establishing the Press and Publishing Code, as amended by Dahir No. 1-02-207 of 25 Rejeb 1423 (3 October 2002) promulgating Act No. 77-00, art. 30, which stipulates that any person who engages in the distribution, sale, public exhibition or possession with a view to distribution, sale, or exhibition for propaganda purposes of bulletins, tracts or publications of foreign origin or receiving foreign support which are detrimental to the sacred values of the country or to the best interests of the nation shall be liable to imprisonment (involving compulsory labour); the Government expressed its intention to revise the Press Code with a view to abolishing sentences of imprisonment.

<sup>375</sup> For example, a country which has ratified the Convention: *Uruguay* – RCE, 1990, p. 314 (Legislative Decree No. 15672 has repealed Act No. 9480 of 1935, under which imprisonment involving compulsory labour could be imposed for the public display or the distribution of foreign publications prohibited by the competent administrative authorities).

<sup>376</sup> See para. 149 above.

162. Examination of the existing provisions in certain countries shows that restrictions on the freedom of expression, while most frequently affecting various kinds of publications, may also take other forms, such as prohibition to attend and address meetings and gatherings, during which views and opinions opposed to the established system may be expressed. If enforced by penalties involving an obligation to work, such provisions likewise would appear to permit the imposition of compulsory labour in circumstances falling within the scope of the Convention.<sup>377</sup> Here again, while evaluating the implementation of the Convention, the Committee had to examine both the terms and the practical application of the provisions in question. In some cases, the Committee has noted with satisfaction the repeal of certain provisions of this kind.<sup>378</sup>

163. Certain political views may be also prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations. When a party is prohibited by the legislation, it may result in the adoption of various measures of supervision (covering both public and private meetings and close supervision of persons believed to hold the political opinions in question), which leads to the prohibition in one way or another of the holding or expressing particular political views, on pain of compulsory labour. A similar situation may arise where administrative authorities enjoy wide discretionary powers to suspend associations or to prevent their creation<sup>379</sup> or to prohibit participation in certain associations,<sup>380</sup> for general reasons

<sup>377</sup> Countries which have ratified the Convention: *Egypt* – the Public Meetings Act, 1923, and the Meetings Act, 1914, granting general powers to prohibit or dissolve meetings, even in private places; *Kenya* – Public Order Act (Cap. 56), section 5, under which the police authorities are entitled to control and direct the conduct of public gatherings, and have extensive powers to refuse licences for public gatherings; the penalty for contravention of these provisions may be imprisonment (which involves an obligation to perform labour); *Kuwait* – Legislative Decree No. 65 of 1979 with respect to public meetings and gatherings, which establishes a system of prior authorization (which may be refused without giving reasons, under section 6 of the above Decree) and, in the event of violations, provides for a penalty of imprisonment involving compulsory labour; *Nigeria* – Public Order Act (Cap. 382), 1990, sections 1 to 4, under which public assemblies, meetings and processions on public roads or places of public resort must be previously authorized and may be subject to certain restrictions enforceable with sanctions of imprisonment (involving an obligation to work); *Rwanda* – Act No. 33/91 of 5 August 1991 respecting demonstrations on public thoroughfares and public meetings, section 9(1) and (2), under which any person who organizes an unauthorized demonstration or meeting shall be liable to a sentence of imprisonment (involving compulsory labour); the Government expressed its intention to amend these provisions; *Syrian Arab Republic* – Penal Code, section 336 (prohibition of public meetings to protest against decisions of public authorities); the Government has indicated that draft legislation to exempt persons protected by the Convention from the obligation to perform prison labour was under elaboration; *United Republic of Tanzania* – para. 56 of the First Schedule to section 118(4) of the Local Government (District Authorities) Act, 1982, concerning prohibition, regulation and control of meetings and other assemblies; the Government indicated that the Local Government (District Authorities) Act was identified by the Law Reform Commission as being among 40 legislative texts which were found unconstitutional on the grounds that they were contrary to human rights and incompatible with the forced labour Conventions.

<sup>378</sup> For example, a country which has ratified the Convention: *Fiji* – RCE, 1999, p. 410 (Act No. 20 of 1995 has repealed the Sunday Observance Decree, 1989, under which it was prohibited to convene, organize or take part in an assembly, including one for the expression of views, or procession in any public place on a Sunday, subject to penalties of imprisonment (involving an obligation to work)).

<sup>379</sup> For example, countries which have ratified the Convention: *Pakistan* – Security of Pakistan Act, 1952 (sections 10–13), and the Political Parties Act, 1962 (sections 2 and 7), which give the authorities wide discretionary powers to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour; the Government has indicated that the application of these provisions was extremely restrictive and that proposed amendments to these texts were under consideration; *Uganda* – the Public Order and Security Act, No. 20 of 1967, sections 1, 2, 3 and 5, which empower the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour; sections 54(2)(c), 55, 56 and 56A of the Penal Code, which empower the Minister to declare any combination of two or more persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment

such as the national interest or public order, welfare or tranquillity. It should again be stressed in this connection that the prohibition of one or more political parties does not come within the purview of the Convention if it is not enforced by sanctions involving compulsory labour (including compulsory prison labour).

164. In many countries, political parties and associations may be freely established and may develop their activities without interference from the authorities. The Committee has noted with satisfaction the repeal of provisions punishing with imprisonment (involving compulsory labour) the establishment or management, in the territory of the State, of associations, organisations or institutions of an international character, or divisions of these associations, without the authorization of the Government,<sup>381</sup> as well as provisions (enforceable with similar sanctions) prohibiting certain groups or associations and any activities connected with them,<sup>382</sup> or prohibiting political activities outside the constitutionally recognized party.<sup>383</sup> However, in a number of countries, legislation still makes it possible to dissolve and to prohibit the reconstitution of a political party or an association, on pain of penal sanctions involving an obligation to work,<sup>384</sup> and in certain cases to prohibit also all propaganda favourable to the ideology

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(involving an obligation to perform labour); the Government has indicated that the legislation in question is going to be revised.

<sup>380</sup> For example, countries which have ratified the Convention: *Syrian Arab Republic* – Penal Code, section 288(1) (prohibition of participation in an association of an international character without permission of the Government); the Government has indicated that draft legislation to exempt persons protected by the Convention from the obligation to perform prison labour was under elaboration; *Turkey* – Penal Code, section 143 (prohibition of participation in foreign associations and institutions without permission of the Government, on pain of imprisonment involving compulsory labour).

<sup>381</sup> A country which has ratified the Convention: *Italy* – RCE, 1991, p. 328 (by virtue of decision No. 193 of 28 June 1985 of the Constitutional Court, section 273 of the Penal Code, according to which “any person who, without the authorization of the Government, founds, establishes, organises or manages, on the territory of the State, associations, organisations or institutions of an international character, or divisions of these associations, shall be liable to imprisonment for up to six months” was invalidated).

<sup>382</sup> A country which has ratified the Convention: *Argentina* – RCE, 1986, pp. 233, 234 (Act No. 23.077 of 22 August 1984 has repealed Acts Nos. 21.322 and 21.325 of 2 June 1976, under which certain political organizations and groups were dissolved and any activities related or connected with them were punishable with imprisonment (involving compulsory labour); Act No. 23.077 has also repealed section 5 of Act No. 20.840, as amended by Act No. 21.459 of 18 November 1976, on penalties for subversive activities in any form).

<sup>383</sup> Countries which have ratified the Convention: *Mozambique* – RCE, 1996, p. 251 (Act No. 19/91 has repealed Act No. 2/79 respecting the security of the State, under which prison sentences involving compulsory labour could be imposed for all acts that endanger, harm or disrupt the organization of the Frelimo Party, and the programmes of the Frelimo Party (section 1), as well as for the establishing, directing, organizing, supporting or participating in associations whose activities are declared to be offences against the security of the State (sections 9 et seq.)); *Zambia* – RCE, 1992, p. 364 (Act No. 20 of 1990 has repealed article 4 of the 1973 Constitution, which prohibited political activities outside the constitutionally recognized party; the Committee also noted with interest that a Constitution adopted in August 1991 guarantees freedom of expression, assembly and association, and in particular the right to form or belong to any political party).

<sup>384</sup> For example, countries which have ratified the Convention: *Afghanistan* – section 221(1), (4) and (5) of the Penal Code, concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches; *Algeria* – Associations Act, No. 90-31 of 4 December 1990, section 5, under which an association’s legal status is automatically invalidated if its objectives are contrary to the established institutional system, breach the peace or offend against morals or the laws and regulations in force; section 45, punishing anyone who directs, administers or participates actively in an association that has not been approved or which has been suspended or dissolved, or facilitates meetings of the members of such an association; *Bangladesh* – sections 16–20 of the Special Powers Act, No. XIV of 1974, under which penalties of imprisonment may be imposed in connection with the suspension or dissolution of certain associations; *Egypt* – sections 4 and 26 of Act No. 40 of 1977 on

of the party concerned or advocating certain political views.<sup>385</sup> Such legislation is sometimes worded in a very general way and its scope can only be determined by ascertaining the manner in which it was applied in practice. In other cases, where legislation provides that any society (including a political party) must be registered, subject to penalties involving compulsory labour, such provisions may lead to restrictions on the possibility for individuals to constitute organized groups.<sup>386</sup>

165. It seems evident from the preceding paragraphs, and may be illustrated by many other examples of the legislation consulted in the context of the present survey, that there exists a close relationship between provisions regulating publications and those dealing with meetings and associations.<sup>387</sup> Thus, where particular views or ideologies are prohibited, any meetings or associations which advocate such views or ideologies practically always fall under corresponding prohibitions, either as a result of express provisions contained in the same legislative texts, or because the laws on meetings and associations make illegal any meeting or association pursuing activities which are contrary to the law. Conversely, where particular organizations are prohibited, the legislation normally lays down penalties for the pursuit of their activities, e.g. through meetings and publications. The Committee has accordingly considered it appropriate to examine the possible bearing which national provisions relating to meetings and associations may have upon the application of the Convention.<sup>388</sup> In some cases the Committee has noted with satisfaction the repeal of provisions (enforceable with sanctions involving compulsory labour) restricting the freedom of association and publications.<sup>389</sup> As indicated above, while evaluating the implementation of the

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political parties, which prohibit the creation of political parties whose objectives are in conflict with Islamic legislation or with the achievements of socialism, or which are branches of foreign parties, subject to penalties involving compulsory labour; *Liberia* – section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Government has indicated that the above provision has been repealed, though no repealing text has been supplied.

<sup>385</sup> For example, a country which has ratified the Convention: *Turkey* – Political Parties Act (No. 2820, of 22 April 1983), sections 80, 81 and 82, read in conjunction with section 117 (seeking to alter the principle of the unity of the State, claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, seeking to form minorities by protecting and promoting languages and cultures other than the Turkish language and culture, using any language other than Turkish in the drafting and publication of parties' statutes and programmes, advocating regionalism); Associations Act (No. 2908, of 6 October 1983), sections 5 and 76 (attacking the principle of the unity of the State; carrying out activities based on principles of regionalism, social class, religion or sect; claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, etc.), enforceable with penalties of imprisonment involving compulsory labour.

<sup>386</sup> For example, a country which has ratified the Convention: *Kenya* – Societies Act, 1968: under section 11(1) and (2), the Registrar may refuse to register a society, inter alia, where it is certified that such society is connected with any organization of a political nature established outside Kenya, or where it appears to him that the interests of peace, welfare or good order would be likely to suffer prejudice by reason of the registration of the society, or where the Minister has declared it to be a society dangerous to the good government of the Republic; the registration of a registered society may be cancelled, inter alia, on similar grounds under section 12(1) and (3) of the Act. According to section 4(1) of the Act, every society which is not a registered society or an exempt society is an unlawful society; as the Government has indicated, persons are liable to punishment under sections 5 and 6 of the Act for managing an unlawful society or being a member of such a society; if convicted, they may be sentenced to imprisonment, which involves compulsory labour.

<sup>387</sup> For example, a country which has ratified the Convention: *Uganda* – see footnote 379 above.

<sup>388</sup> See paras 162–164 above.

<sup>389</sup> For example, a country which has ratified the Convention: *Burundi* – RCE, 1993, p. 288 (Legislative Decree No. 1/01 of 4 February 1992 issuing regulations respecting the press and Legislative Decree No. 1/010 of 15 April 1992 on political parties have repealed Act No. 1/136 of 25 June 1976, Legislative Decree No. 1/4 of 28

Convention, the Committee had to examine the information on the application of the corresponding provisions in practice. The Committee considers that whenever a sanction involving compulsory labour is imposed in this area, the Convention should apply.

166. Apart from provisions of general application concerning publications, meetings and associations, which have been considered above, restrictions on the expression of views may affect particular categories of persons. Thus, in many countries civil servants engaged in the administration of the State are prohibited from engaging in political activities, with a view to preserving their impartiality and the confidence of the population in the public administration. Violation of this rule is usually punishable with disciplinary sanctions not involving compulsory labour.<sup>390</sup> However, where more severe sanctions involving an obligation to work are applicable, respective provisions might be incompatible, not only with Article 1(a) but also with Article 1(c), which prohibits the use of any form of forced or compulsory labour as a means of labour discipline.<sup>391</sup>

(b) Abolition of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development (Article 1(b))

167. As has already been noted,<sup>392</sup> the Convention prohibits the use of forced or compulsory labour “as a method of mobilizing and using labour for purposes of economic development”.<sup>393</sup> It follows from the terms “mobilizing” and “economic development” used in the Convention that Article 1(b) applies only in circumstances where recourse to forced or compulsory labour has a certain quantitative significance and is used for economic ends.<sup>394</sup> The prohibition laid down in Article 1(b) applies even where recourse to forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development is of temporary or exceptional nature, since the Conference declined a proposal to limit the application of this provision to the use of forced labour as a “normal” method of mobilizing and using labour for such purposes.<sup>395</sup>

168. This provision of the Convention covers the various forms of forced or compulsory labour for economic ends, whose abolition was already provided for in Convention No. 29, which, at the time of its adoption, had as a principal goal the fighting against the forms of forced labour for economic purposes;<sup>396</sup> it also covers all other forms of forced labour revealed by the inquiry of the UN–ILO Ad Hoc Committee on Forced Labour in 1953, on which Convention No. 105 was based.<sup>397</sup> Since that time radical changes have

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February 1977 and Legislative Order No. 001/34 of 23 November 1966; the Committee also noted with interest the adoption of the Constitution of March 1992 which recognizes the freedom of the press and association.

<sup>390</sup> For example, a country which has ratified the Convention: *Canada* – Public Service Employment Act, 1967, section 32.

<sup>391</sup> See paras 175–178 below.

<sup>392</sup> See paras 11 and 142 above.

<sup>393</sup> Art. 1(b) of the Convention.

<sup>394</sup> See *Forced labour*, General Survey of 1968, para. 43; *Abolition of forced labour*, General Survey of 1979, para. 40.

<sup>395</sup> *Record of Proceedings*, ILC, 39th Session, Geneva, 1956, para. 11; *Record of Proceedings*, ILC, 40th Session, Geneva 1957, para. 11.

<sup>396</sup> See para. 7 above.

<sup>397</sup> See para. 8 above.

taken place. While it is still possible to find some pieces of legislation providing for compulsory mobilization of labour which are remnants of the past, when certain governments, referring to the needs of economic development, had resorted to various measures of compulsory character (such as compulsory assignment or requisition of labour), the governments concerned usually state that such measures are no longer applied in practice and that they intend to change or repeal the legislation in question with a view to bringing it into conformity with the ILO Conventions on forced labour.<sup>398</sup> During the past few decades, since the adoption of the last General Survey on the subject, progress has been achieved in a number of countries in the elimination of provisions imposing compulsory labour for economic purposes.<sup>399</sup>

169. However, the Committee pointed out in its 1997 Special Survey on forced labour,<sup>400</sup> with regard to countries that have not ratified Convention No. 105 and which had recourse to forced and compulsory labour for development purposes,<sup>401</sup> that the experience of almost all countries in the world shows that forced and compulsory labour is not in practice a productive way of developing the national economy. The Committee therefore emphasizes that no exceptions to universally recognized human rights should be sought in the name of development. Noting also that the governments concerned acknowledged that this practice was incompatible with ILO standards, and that they were moving toward a situation in which recourse to this form of work would not be used, the Committee urged these countries to have resort to international assistance, if necessary, to find alternatives to forced labour for development purposes.<sup>402</sup> In the case of one country which has not ratified Convention No. 105, the Committee has been examining a situation in which forced labour has been exacted from the population by the authorities for economic purposes, in violation of Convention No. 29.<sup>403</sup>

<sup>398</sup> For example, a country which has ratified the Convention: *Cuba* – Act No. 1254 respecting social service and its regulations issued by Decree No. 3771 of 1974 provided that Cuban citizens who graduate in higher education or as middle-level technicians or through regular courses for primary school teachers, are obliged to perform social service (for the duration of three years), in accordance with the planning and priorities for development work laid down by the Government. Unjustified refusal to perform social service entails temporary or permanent disqualifications from exercising his or her profession, which is recorded in the workbook of the person concerned. The Government has indicated that the provisions relative to temporary or permanent disqualification from exercise of profession are not applied in practice, and has stated that the labour legislation is being analysed to adjust it to the new conditions present in the country.

<sup>399</sup> See paras 86–95 above.

<sup>400</sup> See para. 6 above.

<sup>401</sup> Countries which have not ratified the Convention: *Nepal* – the Government has indicated that there existed a system in practice by which “landless peasants” were mobilized for development. The Government stated that measures had been taken to eliminate this system by providing training for productive employment, and that it hoped to be able to ratify the Convention in the near future, when this phenomenon has been eliminated; *Viet Nam* – the Government indicated in 1997 that the low level of social, economic and educational development in the country left it with a need to mobilize the population to resolve the resulting problems. There are thus some forms of obligatory public work and service obligations in force. In its 2006 report supplied under article 19 of the ILO Constitution the Government has referred to the Ordinance on Public Works No. 5/1999/PL-UBTVQH10, dated 3 September 1999, of the Standing Committee of the National Assembly, which provides for the obligation of the citizens to perform public works on an annual basis (sections 1 and 7) subject to penalties for the non-compliance (section 40). The Government has proposed to the Standing Committee of the National Assembly to abrogate the Ordinance; it has also stated that it is implementing an action plan with a view to ratifying both Conventions on forced labour.

<sup>402</sup> RCE – General Report, 1998, paras 108, 109.

<sup>403</sup> See paras 92–93 above.

170. In seeking to secure the abolition of any form of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development, the Conference had in mind, in addition to cases of direct compulsion in the call-up of labour, systems of mobilization of labour through certain indirect forms of coercion.<sup>404</sup> Regard should be also had in this connection to the inquiries made by the abovementioned UN–ILO Ad Hoc Committee on Forced Labour, which established that in fact vast systems of forced labour for economic purposes could result from the combination of various methods of compulsion to work: measures of general nature involving compulsion in the recruitment, assignment and transfer of labour, taken in conjunction with other restrictions on freedom of employment, such as preventing workers from terminating their employment contracts or compulsorily extending contracts,<sup>405</sup> penal sanctions for breaches of contract or as a means of maintaining labour discipline,<sup>406</sup> restrictions on freedom of movement or on the possession and use of land, abusive application of vagrancy legislation, etc.<sup>407</sup>

(c) **Abolition of forced or compulsory labour as a means of labour discipline (Article 1(c))**

171. The Convention prohibits the use of forced or compulsory labour “as a means of labour discipline”.<sup>408</sup> Forced or compulsory labour as a means of labour discipline prohibited by the Convention may be of two kinds. It may consist of measures to ensure the due performance by a worker of his service under compulsion of law (in the form of physical constraint or the menace of a penalty),<sup>409</sup> or of a sanction for breaches of labour discipline with penalties involving an obligation to work.<sup>410</sup> The Convention therefore covers forced or compulsory labour of persons sentenced to imprisonment, as well as any other form of forced or compulsory labour which could be used as a means of labour discipline. Forced or compulsory labour may be used in this sense either under general provisions covering all workers, or under provisions applicable to specific sectors, such as the public service or merchant shipping.

(i) *Sanctions of general scope*

172. It appears from the information available that the present-day national legislation only in extremely rare cases provides for recourse to forced or compulsory labour as a general method of maintaining labour discipline. In the large majority of countries, there exist no legal provisions permitting recourse to forced or compulsory labour as a means

<sup>404</sup> Principles designed to avoid the use of indirect coercion had already been defined in the Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35). See para. 13 above.

<sup>405</sup> See paras 96–97 above.

<sup>406</sup> See paras 171–178 below.

<sup>407</sup> *Report of the Ad Hoc Committee on Forced Labour*, Geneva, 1953, paras 553–558.

<sup>408</sup> Art. 1(c) of the Convention.

<sup>409</sup> As, for example, in the case of a deserted seafarer who has been forcibly returned on board ship for the performance of his duties under compulsion of law.

<sup>410</sup> The UN–ILO Ad Hoc Committee on Forced Labour stated in its report of 1953 that the problem of penal sanctions for breaches of contracts of employment should be examined, since such sanctions (involving forced labour) were imposed by courts of law and sometimes by administrative authorities on workers who had stayed away from work without a valid reason, who had arrived too often late for work, who had been guilty of negligence, who had not reached the prescribed labour norms, or had not observed rules, or had not accepted a transfer to other undertakings.

of labour discipline. Normally, breaches of labour discipline give rise only to disciplinary sanctions or other kind of sanctions (e.g. sanctions of monetary character) which do not involve any obligation to perform labour. It may be recalled in this connection that, in so far as labour discipline is concerned, the Convention relates only to forced or compulsory labour (which also includes compulsory prison labour), and consequently it is always possible, without contravening the Convention, to have recourse to other disciplinary penalties.

173. Since the last General Survey on the subject, the Committee has noted with satisfaction the abolition of penal sanctions involving compulsory labour that could be imposed on workers who committed any acts which seriously hinder the production process and constitute “crime against production”.<sup>411</sup> The Committee also noted the abolition of penalties of imprisonment (which may involve compulsory labour) that could be imposed on workers in breach of terms of any settlement, award or decision or failure to implement any such terms.<sup>412</sup> In one case, the Committee noted the non-applicability of sentences of correctional labour (imposed for various breaches of labour discipline) without a prisoner’s consent.<sup>413</sup> In its previous General Survey of 1979, the Committee referred to certain cases where the texts which provided for a general obligation to work also punished such offences as the refusal to work or unjustified absence from work.<sup>414</sup> Since that time, the provisions in question have been repealed and replaced by the new Constitutional and penal provisions, which ensured compliance with the Convention on this point and facilitated its ratification.<sup>415</sup>

174. In certain other countries, however, sanctions involving compulsory labour (including compulsory prison labour) still can be imposed on workers for various breaches of labour discipline, such as e.g. the failure to implement, or breach of, any settlement, award, decision,<sup>416</sup> or the failure to comply with a court order to fulfil a

<sup>411</sup> A country which has ratified the Convention: *Angola* – RCE, 2003, p. 431 (section 324(b) of the General Labour Act (No. 2/2000 of 11 February 2000) repealed subsections (g) and (m) of section 1 of Act No. 11/75, of 15 December 1975, regarding discipline in the production process, under which “passive resistance to labour” or “any other acts which seriously hinder the production process” constituted “crimes against production” and were punishable with sentences of imprisonment of up to one year or more than six months respectively, involving an obligation to work (section 8(2)).

<sup>412</sup> A country which has ratified the Convention: *Pakistan* – RCE, 2006, p. 165 (sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) have been repealed by the Industrial Relations Ordinance (IRO) of 2002 (section 80). The Committee has noted from the indications in the Government’s report, as well as the text of sections 65, 66, and 67 of the IRO, that the penalties of imprisonment have been eliminated.)

<sup>413</sup> A country which has ratified the Convention: *Cuba* – section 220 of the Labour Code: a sentence of imprisonment of from six months to two years may be imposed on a person who, by breach of the duties placed on him by his office, employment, occupation or profession in a state economic unit (particularly of his duties relating to the observance of the standards or standard-setting instructions and other rules and instructions concerning technological discipline) causes harm or substantial prejudice to the production output or to the rendering of services by the unit or to its equipment, machines, machinery, tools or other technical devices. The Committee has noted the information provided by the Government in its report (including the documents annexed to the report), to the effect that any sentences of correctional labour imposed for violations of this provision are subject to the person sentenced being willing to perform such labour.

<sup>414</sup> *Abolition of forced labour*, General Survey of 1979, paras 45 and 113, in which the Committee referred to a number of countries, including those which had not ratified the Convention at that time.

<sup>415</sup> Countries which have ratified the Convention: *Bulgaria, Romania*.

<sup>416</sup> A country which has ratified the Convention: *Bangladesh* – RCE, 2005, p. 137 (Industrial Relations Ordinance, No. XXIII of 1969, sections 54 and 55; the Committee noted the Government’s indication that a report of the National Labour Law Commission established with a view to examining the existing laws and to submitting recommendations regarding their amendments, was still under consideration by the Government).

contract of employment,<sup>417</sup> or the failure to avoid waste of goods or materials, to conform to technical standards or to comply with general production plans.<sup>418</sup> All these provisions appear to permit the imposition of forced or compulsory labour in circumstances covered by the Convention. The Committee has therefore invited the governments concerned to take the necessary measures with a view to bringing the provisions in question into compliance with the Convention.

(ii) *Sanctions applicable in the public service*

175. Persons employed in the public service are often subjected to special penal provisions aiming at protecting the public interest. Thus, in the case of public officials, it may be considered necessary to protect the population against abuse of authority. Other examples of provisions designed to prevent the improper use of official position are those punishing corruption and the unauthorized revelation of official secrets. Similarly, in the case of essential services, such as fire and health services, as well as services for the supply of water, gas and electricity, it may also be considered appropriate to punish certain breaches of discipline which impair or are liable to endanger their proper functioning. In this connection, the Committee has distinguished between penalties imposed to enforce labour discipline as such (and therefore falling within the scope of the Convention) and penalties imposed for the protection of a general public interest, although simultaneously they may punish an act constituting a breach of labour discipline. The Committee therefore considered that the Convention does not prohibit the imposition of sanctions (even if involving compulsory labour) on persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of essential services,<sup>419</sup> or which are committed either in the exercise of functions that are essential to safety or in circumstances where life or health are in danger. However, in such cases there must exist an effective danger, not mere inconvenience.<sup>420</sup> Consequently, penal provisions of this kind are not incompatible with the Convention.

176. In a number of countries, penal provisions applicable to persons employed in public service are worded in general terms, broad enough to be likely to fall within the scope of the Convention. This is the case of provisions e.g. laying down sanctions involving compulsory labour for neglect of duty by public employees.<sup>421</sup> In some other cases, where national legislation provides for sanctions of imprisonment (involving

<sup>417</sup> A country which has ratified the Convention: *Nigeria* – Labour Decree No. 21 of 1974, section 81(1)(b) and (c).

<sup>418</sup> A country which has ratified the Convention: *Syrian Arab Republic* – Economic Penal Code (Legislative Decree No. 37 of 16 May 1966, as amended by Legislative Decree No. 40 of 1977), sections 10, 11, 13 and 19.

<sup>419</sup> That is services, the interruption of which may endanger the life, personal safety or health of the whole or part of the population; this criterion corresponds to what has been stated above on emergency situations in footnote 352. See also *Forced labour*, General Survey of 1968, paras 92 and 103; *Abolition of forced labour*, General Survey of 1979, para. 134.

<sup>420</sup> See *Forced labour*, General Survey of 1968, para. 93; *Abolition of forced labour*, General Survey of 1979, para. 110.

<sup>421</sup> For example, countries which have ratified the Convention: *Libyan Arab Jamahiriya* – Penal Code, sections 237 and 238; the Government has expressed its intention to amend these provisions; *Syrian Arab Republic* – Economic Penal Code (Legislative Decree No. 37 of 16 May 1966, as amended by Legislative Decree No. 40 of 1977), section 7 (applicable to employees of the State); *United Republic of Tanzania* – section 11 of the First Schedule to the Economic and Organized Crime Control Act, 1984 (“Economic offences”) read in conjunction with section 59(2) of the Act; the Government has indicated that this text is listed among the laws to be addressed by the task force of the current Tanzanian Labour Policy and Legislation Reform, which will make appropriate recommendations to the Government.

compulsory prison labour) for the non-performance or improper performance by officials of their duties as the result of a negligent attitude, causing substantial harm to legitimate rights and interests of persons or organizations, or to state interests, the Committee requested information on the application of the corresponding provisions in practice, including copies of any court decisions defining or illustrating their scope, in order to ascertain whether these provisions fall within the scope of the Convention.<sup>422</sup> If, in practice, such provisions appear to permit the imposition of sanctions involving compulsory labour as a means of labour discipline, their compatibility with the Convention could be ensured only by limiting their scope to the operation of essential services, as indicated above,<sup>423</sup> or to the exercise of functions which are essential to safety or to circumstances where the life or health of persons are endangered.

177. Sometimes, provisions imposing sanctions (involving an obligation to perform labour) for breach of contract liable to interrupt the operation of essential services are worded in such a way as to prohibit termination of employment by workers, even with previous notice.<sup>424</sup> Such restrictions are incompatible both with Convention No. 105 and Convention No. 29.<sup>425</sup> Similarly, provisions imposing the same kind of sanctions on public officials who abandon their service without authorization<sup>426</sup> or on postal service employees who leave their jobs without having given one month's notice,<sup>427</sup> cannot be held compatible with the two Conventions on forced labour.

178. The Committee has noted with satisfaction the repeal of provisions punishing public officials and railway employees with penalties involving compulsory labour for neglect in the performance of their duties or refusal to work,<sup>428</sup> as well as provisions punishing with the same kind of sanctions public service employees who wilfully neglect any duty imposed on them by common law, statute or ordinance.<sup>429</sup>

(iii) *Disciplinary measures applicable to seafarers*

179. In its earlier surveys on the subject, the Committee noted that, in a considerable number of countries, legislation governing conditions of work of merchant seafarers and fishers contained provisions permitting the imposition of penal sanctions involving

<sup>422</sup> Countries which have ratified the Convention: *Azerbaijan* – Criminal Code, section 314.1; *Estonia* – Penal Code, section 290; *Kazakhstan* – Criminal Code, section 316; *Latvia* – Penal Code, section 319; *Lithuania* – Penal Code, section 229; *Republic of Moldova* – Criminal Code, section 329; *Uzbekistan* – Criminal Code, section 207.

<sup>423</sup> See para. 175 above.

<sup>424</sup> For example, a country which has ratified the Convention: *Uganda* – Trade Disputes (Arbitration and Settlement) Act, 1964, section 16(1)(a); the Government has indicated that the text in question is in the process of being revised in order to ensure the application of the Convention.

<sup>425</sup> See paras 96–97 above.

<sup>426</sup> A country which has ratified the Convention: *Bahrain* – section 294(1) of the Penal Code, under which a civil servant who relinquishes his office or refuses to discharge any of his official duties may be punished with imprisonment (which may involve compulsory prison labour, under section 55 of the Penal Code).

<sup>427</sup> A country which has ratified the Convention: *Bangladesh* – Post Office Act, No. VI of 1898, section 50.

<sup>428</sup> A country which has ratified the Convention: *Netherlands* – RCE, 1980, p. 158 (section 358bis, ter and quarter of the Penal Code was repealed by Decree of 14 December 1979).

<sup>429</sup> A country which has ratified the Convention: *Zambia* – RCE, 1991, p. 344 (the Penal Code (Amendment) Act, No. 7 of 20 July 1990, repealed section 124 of the Penal Code, under which employees in the public service who wilfully neglect any duty imposed on them by common law, statute or ordinance, were liable to imprisonment (involving an obligation to work)).

compulsory labour in respect of various breaches of labour discipline.<sup>430</sup> Here again, the Committee distinguished between the provisions relating to acts tending to endanger the ship or the life or health of persons, which are not covered by the Convention,<sup>431</sup> and those relating to breaches of labour discipline as such, for example desertion, absence without leave or disobedience, often supplemented by provisions under which seafarers may be forcibly returned on board ship, which fall within the scope of the Convention. In the latter case, the Committee had requested the government concerned to review their legislation concerning conditions of employment of seafarers, if possible in consultation with the shipowners and seafarers of their countries, with a view to bringing it into conformity with the Convention. Such action has been undertaken in a considerable number of the countries concerned, frequently within the framework of a more general review of their merchant shipping laws.

180. At present, it may be noted that in a large number of countries the legislation concerning seafarers appears to provide for no sanctions involving compulsory labour in circumstances covered by the Convention. The Committee has noted with satisfaction that, in a number of cases, provisions imposing penalties of imprisonment (involving an obligation to perform labour) on seafarers for various breaches of labour discipline, such as desertion (particularly, abroad), absence without leave or disobedience, have been either repealed<sup>432</sup> or restricted to situations where the safety of the ship or the life or health of persons are endangered.<sup>433</sup> The Committee has also noted with satisfaction the

<sup>430</sup> See *Forced labour*, General Survey of 1968, para. 121; *Abolition of forced labour*, General Survey of 1979, para. 117.

<sup>431</sup> Similarly to penalties imposed for the protection of a general public interest, as explained above – see para. 175.

<sup>432</sup> Countries which have ratified the Convention: *Australia* – RCE, 1988, p. 240 (the Statute Law (Miscellaneous Provisions) Act (No. 1) 1986 repealed section 100 of the Navigation Act, 1912, under which any seaman who conspired with another seaman to impede the navigation of the ship or the progress of a voyage of the ship was liable to imprisonment involving an obligation to work); *Belgium* – RCE, 2007, p. 190 (Act of 15 May 2006 issuing various provisions relating to transport amended or repealed sections 10, 22, 25(1) and (2), 26(1), 27 and 28 of the Disciplinary and Penal Code for the Merchant Navy and the Commercial Fishing Fleet, under which penalties of imprisonment involving compulsory labour could be imposed upon seafarers for breaches of labour discipline which did not endanger the safety of the vessel or the life or health of persons); *Djibouti* – RCE, 1984, p. 212 (Act No. 212/AN/82 repealed the Act of 17 December 1926 instituting the Disciplinary and Penal Code of the Merchant Marine); *Iceland* – RCE, 1992, p. 334 (Act No. 53 of 1990 repealed section 81 of the Seamen's Act, No. 35 of 1985, under which a seafarer guilty of insubordination or refusing to obey orders, was liable to imprisonment); *Ireland* – RCE, 2000, pp. 292, 293 (the Merchant Shipping (Miscellaneous Provisions) Act, 1998 (No. 20) has repealed section 225 of the Merchant Shipping Act, 1894, and amended section 221 of the same Act, which provided that certain disciplinary offences by seafarers were punishable with imprisonment (involving an obligation to work)); *Malta* – RCE, 1987, p. 329 (Merchant Shipping (Amendment) Act, 1986, repealed sanctions of imprisonment in sections 171 and 173(1)(b)(c)(e) of the 1973 Merchant Shipping Act); *Netherlands (Netherlands Antilles)* – RCE, 1989, p. 489 (Ordinance No. 152 of 7 November 1986 has repealed sections 413 and 414 of the Criminal Code, under which crew members of ships were punishable with imprisonment (involving compulsory labour) for refusing to serve); *New Zealand* – RCE, 1999, p. 417 (the Third Schedule to the Maritime Transport Act, 1994, has repealed the Shipping and Seamen Act, 1952, under which disciplinary offences were punishable with imprisonment involving an obligation to perform labour); *Poland* – RCE, 1992, p. 350 (Act of 23 May 1991 respecting the work on board seagoing merchant vessels has repealed the Act of 28 April 1952, which provided for imprisonment as a disciplinary punishment and compulsion as a means of appropriate performance of duties); *Saint Lucia* – RCE, 1989, p. 343 (by virtue of the Merchant Shipping Act, 1981, the 1970 United Kingdom Merchant Shipping Act has become applicable and replaced the 1894 Act); *United Kingdom (St. Helena)* – RCE, 1988, p. 395 (by virtue of the English Law (Application) Ordinance, 1987, the 1970 United Kingdom Merchant Shipping Act has become applicable and replaced the 1894 Act, under which various breaches of discipline were punishable with penalties involving compulsory labour).

<sup>433</sup> A country which has ratified the Convention: *Denmark (Faeroe Islands)* – RCE, 1990, pp. 468, 469 (Act No. 4 of 15 January 1988 on seafarers repealed the 1967 Seamen's Act and limited the application of penalties of imprisonment to offences endangering human life or the safety of the ship).

repeal of provisions permitting the forcible return of seafarers on board ship to perform their duties.<sup>434</sup>

181. However, in some other countries, penalties involving compulsory labour falling within the scope of the Convention have not yet been eliminated from legislation applicable to seafarers,<sup>435</sup> though in many cases steps have been taken by the governments concerned to this end,<sup>436</sup> sometimes in consultation with the social partners. A number of other countries still have provisions under which seafarers can be forcibly returned on board ship.<sup>437</sup> As the Committee has noted in its previous survey on the

<sup>434</sup> Countries which have ratified the Convention: *Australia* – RCE, 1982, p. 164 (Navigation (Amendment) Act of 1979 repealed section 105 (1) and (2) of the Navigation Act, 1912 and sections 221–224 of the Merchant Shipping Act); *Canada* – RCE, 1996, p. 239 (Miscellaneous Statute Law Amendment Act, 1992, deleted sections 243 to 246 of the Canada Shipping Act, which provided for the forcible return on board ship of deserters and seafarers absent without leave); *Denmark* (Faeroe Islands) – RCE, 1990, p. 468, 469 (Act No. 4 of 15 January 1988 on seafarers repealed the 1967 Seamen’s Act, which provided for the forcible return of seafarers on board ship); *Finland* – RCE, 1980, p. 152 (Seamen’s Act No. 423/78, of 7 June 1978, which repealed section 52 of Act 341/55, of 30 June 1955); *Ireland* – RCE, 2000, p. 292, 293 (the Merchant Shipping (Miscellaneous Provisions) Act, 1998 (No. 20) has repealed sections 222, 224 and 238 of the Merchant Shipping Act, 1894, under which seafarers absent without leave could be forcibly conveyed on board ship); *Malta* – RCE, 1987, p. 329 (Merchant Shipping (Amendment) Act, 1986, repealed sections 172 and 183 of the 1973 Merchant Shipping Act); *New Zealand* – RCE, 1999, p. 417 (the Third Schedule to the Maritime Transport Act, 1994, has repealed the Shipping and Seamen Act, 1952, under which seafarers absent without leave were subject to forcible return on board ship); *Saint Lucia* – RCE, 1989, p. 343 (by virtue of the Merchant Shipping Act, 1981, the 1970 United Kingdom Merchant Shipping Act has become applicable and replaced the 1894 Act); *Thailand* – RCE, 2006, p. 176 (the Act for the prevention of desertion or undue absence from merchant ships, BE 2466 (1923), which provided for the forcible conveyance of seafarers on board ship to perform their duties, has been repealed since 20 October 2003 (Royal Gazette, 4 November 2003); *United Kingdom* – RCE, 1996, p. 263 (the Merchant Shipping Act, 1988 has repealed section 89 of the Merchant Shipping Act, 1970, which provided for the forcible return of deserting seamen on board ship under reciprocal arrangements with other countries); *United Kingdom* (Bermuda, St. Helena) – RCE, 1988, p. 395 (Bermuda Merchant Shipping (Amendment) Act has repealed section 3 of the 1930 Act, which contained provisions under which seafarers absent without leave could be forcibly returned on board ship; by virtue of the English Law (Application) Ordinance, 1987, the 1970 United Kingdom Merchant Shipping Act has become applicable to St. Helena and replaced the 1894 Act, which contained similar provisions).

<sup>435</sup> Countries which have ratified the Convention: *Bangladesh* – Merchant Shipping Ordinance, No. XXVI of 1983, sections 196, 197 and 200(iii), (iv), (v) and (vi); the Government stated in its 2001 report that it was not in favour of amending the above sections of the Ordinance due to socio-economic conditions of the country and because it considered that the decrease in punishment would increase the desertion of seafarers and reduce the employment opportunities for Bangladeshi seafarers on foreign ships); *Benin* – Merchant Shipping Code of 1968, sections 215, 235 and 238; *Egypt* – Maintenance of Security, Order and Discipline (Merchant Navy) Act, 1960, sections 13(5) and 14; *Fiji* – Marine Act No. 35, 1986 section 126; *Ghana* – Merchant Shipping Act, 1963, sections 122(2) and 147(1)(b), (c) and (e); *Greece* – Code of Public Maritime Law of 1973, sections 205, 207(1), 213(1) and (2), 222; *Jamaica* – Shipping Act, 1998, sections 178(1)(b), (c) and (e) and 179(a) and (b); *Kenya* – Merchant Shipping Act, 1967, sections 145(1)(b), (c) and (e), 147 and 151; *Kuwait* – Legislative Decree No. 31 of 1980 with respect to security, order and discipline on board ship, sections 11, 12 and 13; *Liberia* – Maritime Law, section 348; *Mauritius* – Merchant Shipping Act of 1986, sections 183(1) and 184(1); *Nigeria* – Merchant Shipping Act, section 117(b), (c) and (e); *Pakistan* – Merchant Shipping Ordinance, 2001 (No. LII of 2001), sections 204, 206, 207 and 208; *Papua New Guinea* – Seamen (Foreign) Act, 1952, section 2 (1), (3), (4) and (5); *United Republic of Tanzania* – Merchant Shipping Act, 1967, sections 145(1)(b), (c) and (e) and 147; *Trinidad and Tobago* – Shipping Act, 1987, sections 157 and 158; *Turkey* – Commercial Code (Act No. 6762 of 29 June 1956), section 1469; *United Kingdom* – section 59(1) of the Merchant Shipping Act, 1995.

<sup>436</sup> The majority of the countries cited in the previous footnote have supplied information to that effect.

<sup>437</sup> Countries which have ratified the Convention: *Bangladesh* – Merchant Shipping Ordinance, No. XXVI of 1983, sections 198 and 199; *Kenya* – Merchant Shipping Act, 1967, sections 145(1)(b), (c) and (e), 147 and 151; *Liberia* – Maritime Law, section 347(1) and (2); *Mauritius* – Merchant Shipping Act of 1986, section 183(1), (3) and (4); *Pakistan* – Merchant Shipping Ordinance, 2001 (No. LII of 2001), sections 204, 206, 207 and 208; *Papua New Guinea* – Seamen (Foreign) Act, 1952, section 1, and Merchant Shipping Act (chapter 242) (consolidated to No. 67 of 1996), section 161; *United Republic of Tanzania* – Merchant Shipping Act, 1967,

subject,<sup>438</sup> the provisions of the 1894 Merchant Seamen's Act,<sup>439</sup> which had been repealed in the United Kingdom by the Merchant Seamen's Act of 1970, still remained in force in several other countries, and similar provisions continued to exist in certain other laws which were modelled on this legislation. Since that time, almost all the countries cited in this connection adopted new laws, and in many cases the provisions in question have been repealed or amended.<sup>440</sup> However, in certain cases the new laws have not yet been brought into conformity with the Convention in this respect,<sup>441</sup> or the legislation has not yet been amended,<sup>442</sup> so that the governments concerned still have to take measures in this direction.

(d) Abolition of forced or compulsory labour as a punishment for having participated in strikes (Article 1(d))

182. The Convention lays down a generally worded prohibition to have recourse to any form of forced or compulsory labour "as a punishment for having participated in strikes".<sup>443</sup> However, it seems evident that the Convention does not prohibit the punishment of breaches of public order (acts of violence, assault or destruction of property) committed in connection with the strike; any sanctions (even involving compulsory labour) for the offences of this kind obviously fall outside the scope of the Convention.<sup>444</sup> In examining the compatibility of national legislation concerning strikes with the Convention – in so far as such legislation is enforceable with sanctions which may involve compulsory labour – the Committee has followed the principles developed in the field of freedom of association<sup>445</sup> in ascertaining the specific limits to the right to strike, and in particular the restrictions concerning essential services and public servants exercising authority in the name of the State, as well as those concerning emergency situations, political strikes and the conditions under which a strike may be called, so as to clarify the scope of the protection afforded by Article 1(d) of the Convention. However, it should not be forgotten that, as indicated above,<sup>446</sup> the Convention is not an instrument to regulate questions of labour discipline or strikes in general and apply

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section 151; *Trinidad and Tobago* – Shipping Act, 1987, section 162; *Turkey* – Commercial Code (Act No. 6762 of 29 June 1956), section 1467.

<sup>438</sup> See *Abolition of forced labour*, General Survey of 1979, para. 119.

<sup>439</sup> In particular, sections 221 to 224 and 225, para. 1(b) and (c), under which seafarers may be forcibly returned to their ship and sanctions involving compulsory labour may be imposed for desertion, absence without leave or disobedience.

<sup>440</sup> For example, countries which have ratified the Convention: *Australia, Ireland, Malta, New Zealand* and a number of non-metropolitan territories of the *United Kingdom*. See footnotes 432 and 434.

<sup>441</sup> Countries which have ratified the Convention: *Bangladesh, Fiji, Jamaica, Mauritius, Pakistan, Trinidad and Tobago*. See footnotes 435 and 437.

<sup>442</sup> A country which has ratified the Convention: *United Republic of Tanzania*. See footnotes 435 and 437.

<sup>443</sup> Art. 1(d) of the Convention.

<sup>444</sup> See *Forced labour*, General Survey of 1968, para. 96; *Abolition of forced labour*, General Survey of 1979, para. 122.

<sup>445</sup> The Committee has considered, where appropriate, the conclusions reached in the examination of reports on the application of the Conventions dealing with the freedom of association and the right to organize, as well as the comments made by other ILO supervisory bodies competent in this field, primarily the Governing Body Committee on Freedom of Association.

<sup>446</sup> See para. 149 above.

solely to the exaction of forced or compulsory labour in any form, including cases when it is exacted as a sanction for participation in strikes. Where the penalties applicable to offences in relation to participation in strikes take the form of civil or disciplinary sanctions (such as damages or dismissal) and do not involve any obligation to perform labour, the substantive provisions governing these offences fall outside the scope of the Convention.

(i) *General prohibition of strikes*

183. A general prohibition of strikes, enforceable with sanctions involving forced or compulsory labour, occurs only in a very limited number of countries. It may arise from specific provisions in the law which may refer expressly to strikes<sup>447</sup> or may result from more general penal provisions covering, for example, any action which stops the pursuit of an industry or commerce or causes prejudice to the general production plan decreed by the authorities.<sup>448</sup> Since the last General Survey on the subject, the Committee has noted with satisfaction the repeal of provisions punishing with hard labour for life all wage earners who intentionally stopped work together, if the strike endangered the national economy.<sup>449</sup> A general prohibition of strikes may also result from provisions adopted under emergency or exceptional powers, where a government is invoking a crisis situation to justify its intervention. As the Committee pointed out in its 1994 General Survey on freedom of association and collective bargaining, “inasmuch as general prohibitions of this kind are a major restriction of one of the essential means available to workers and to their organizations for furthering and defending their interests, such measures cannot be justified except in a situation of acute national crisis and then, only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural disaster in which the normal conditions for the functioning of society are absent”.<sup>450</sup> The Committee has accordingly considered that a suspension of the right to strike enforced by sanctions involving compulsory labour is compatible with the Convention only in so far as it is necessary to cope with cases of force majeure in the strict sense of the term – namely, when the existence or well being of the whole or part of the population is endangered – provided that the duration of the

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<sup>447</sup> For example, a country which has ratified the Convention: *Chad* – Act No. 15 of 13 November 1959 which punishes acts of insubordination against the public authorities, as well as participation in strikes, by imprisonment involving compulsory labour; while the Constitution of 31 March 1996 includes provisions on the right to strike (article 29) and sections 456 to 461 of Act No. 38/PR/96 of 11 December 1996, issuing the Labour Code, regulate the exercise of the right to strike and provide that employees may not be penalized for participation in a strike (section 460(2)), the provisions of Act No. 15 of 1959 have not yet been repealed or amended, though the Government has indicated that they are no longer applied in practice.

<sup>448</sup> A country which has ratified the Convention: *Syrian Arab Republic* – Economic Penal Code (Legislative Decree No. 37 of 16 May 1966, as amended by Legislative Decree No. 40 of 1977) section 19, (which imposes forced labour on anyone causing prejudice to the general production plan decreed by the authorities, by acting in a manner contrary to the plan).

<sup>449</sup> A country which has ratified the Convention: *Egypt* – RCE, 1987, p. 319, 320 (Act No. 194 of 1983 repealed Legislative Decree No. 2 of 1977).

<sup>450</sup> *Freedom of association and collective bargaining*, General Survey of the Reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); ILC, 81st Session, 1994, para. 152 [hereafter: *Freedom of association and collective bargaining*, General Survey of 1994].

prohibition is limited to the period of immediate necessity.<sup>451</sup> However, it should be noted that some of the national legislative provisions referred to in the previous chapter,<sup>452</sup> which permit the call-up of labour in circumstances which do not necessarily constitute an emergency, may be used to requisition workers in the event of a strike. In so far as such provisions are enforceable with sanctions involving compulsory labour, they might be applied in a manner incompatible with Article 1(d) of the Convention. In a number of cases the Committee has noted with satisfaction the repeal of provisions prohibiting the right to strike under the menace of penalties involving compulsory labour, which had been introduced under the emergency legislation or powers,<sup>453</sup> and the restoration of the right to strike together with other constitutional guarantees and political liberties.

(ii) *Restrictions on the right to strike relating to the public service and to essential services*

184. The legislative restrictions imposed on the public service and essential services are often very similar or even identical, since work in essential services is often carried out by public officials or employees with a related status. However, the Committee has considered in the abovementioned General Survey on freedom of association and collective bargaining,<sup>454</sup> that the essential criterion is not so much the public or private nature of the functions concerned as the nature of the tasks carried out: while workers in the private or semi-private sectors may perform duties which undeniably come under the heading of essential services (for security reasons, for example), there are very broad categories of other workers who, despite the fact that they belong to the public service, cannot be assimilated to groups for which the prohibition or restriction of the right to strike would be justified. The Committee has pointed out in this connection that a too broad definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers.<sup>455</sup> It has also considered that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State.<sup>456</sup> The Committee has noted with satisfaction the repeal of penal provisions under which penalties of imprisonment (involving compulsory labour) could be imposed on public

<sup>451</sup> See *Forced labour*, General Survey of 1968, paras 95 and 125; *Abolition of forced labour*, General Survey of 1979, para. 126, and the corresponding footnote, which contains a reference to the considerations by the Governing Body Committee on Freedom of Association.

<sup>452</sup> See paras 63 and 64 above.

<sup>453</sup> Countries which have ratified the Convention: *Argentina* – RCE, 1984, p. 207 (Act No. 22825 of 3 June 1983 and Decree No. 1984 of 8 August 1983 have repealed Acts Nos. 21261 of 24 March 1976 and 21400 of 3 September 1976 and Decrees Nos. 6 and 9 of 24 March 1976, which suspended constitutional guarantees, particularly the right to strike and the right to participate in political activities); *Colombia* – RCE, 1984, p. 210 (Decree No. 1674 of 9 June 1982 lifted the state of siege and rendered ineffective the decrees issued under art. 121 of the National Constitution, in particular Legislative decree No. 2004 of 26 August 1977, which prohibited work stoppages and strikes); *El Salvador* – RCE, 1984, p. 218 (Decree No. 142 of 27 February 1979 has repealed the Act respecting the defence and guarantee of public order, which introduced restrictions on freedom of expression and the right to strike); *Pakistan* – RCE, 1980, p. 159 (Ordinance No. XXXII of 1977 has repealed the Defence of Pakistan Ordinance, 1971, and the corresponding Rules, which empowered the authorities to impose compulsory service, to prohibit strikes and to impose restrictions on various other fundamental rights).

<sup>454</sup> *Freedom of association and collective bargaining*, General Survey of 1994, para. 155.

<sup>455</sup> *ibid.*, para. 158.

<sup>456</sup> *ibid.*

employees who conspired to resign, abandon or neglect their duties or provoke a strike, and the adoption of the legislation granting the right to strike to public officials subject to a special conciliation procedure.<sup>457</sup> However, in certain countries there still exist provisions under which penalties involving compulsory labour can be imposed on any public employee who participated in a strike,<sup>458</sup> and sometimes a prohibition of the right to strike enforceable with penalties of imprisonment still affect not only officials in the State administration, but also workers in public services or enterprises whatever the nature of their work.<sup>459</sup>

185. Provisions prohibiting or limiting strikes in essential services still can be found in many countries of the world, and a concept of “essential services” varies from one national legislation to another. The law sometimes defines, whether in a restrictive or general manner, the services in which strikes are considered detrimental to public order, the general interest or economic development, and in some cases the legislation even provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service.<sup>460</sup> The Committee has considered in the abovementioned General Survey on freedom of association and collective bargaining that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.<sup>461</sup> In accordance with these principles, the Committee pointed out in its earlier surveys on forced labour<sup>462</sup> that penalties (involving compulsory labour) for participation in strikes in the civil service or other essential services may be applied only to essential services in the strict sense of the

<sup>457</sup> A country which has ratified the Convention: *Greece* – RCE, 1980, p. 153 (section 23(2) of the Constitution and Act No. 643 of 1977, which repealed section 247 (1) to (3) of the Penal Code).

<sup>458</sup> A country which has ratified the Convention: *United States* – North Carolina General Statutes, article 12, section 95-98.1, under which strikes by public employees are declared illegal and against the public policy of the State, this prohibition being enforceable with sanctions involving compulsory labour. Under section 95-99, any violation of the provisions of article 12 is declared to be a Class 1 misdemeanour. Under section 15A-1340.23, read together with section 15A-1340.11 of Ch. 15A (Criminal Procedure Act), a person convicted of a Class 1 misdemeanour may be sentenced to “community punishment” and, upon a second conviction, to “active punishment”, that is imprisonment. Art. 3 (Labor of Prisoners), section 148-26 of Ch. 148 (State Prison System) declares it to be the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. The Government indicated that the relevant provisions of North Carolina law appeared never to have been applied in practice.

<sup>459</sup> Countries which have ratified the Convention: *Egypt* – Penal Code, sections 124, 124A, 124C and 374, under which strikes by any public employee may be punished with imprisonment, which may involve compulsory labour; *Thailand* – State Enterprise Labour Relations Act BE 2543 (2000), which prohibits strikes in state enterprises (section 33), violation of this prohibition being punishable with imprisonment (involving compulsory labour) for a term of up to one year; this penalty is doubled in the case of a person who instigates this offence (section 77).

<sup>460</sup> *Freedom of association and collective bargaining*, General Survey of 1994, para. 159.

<sup>461</sup> *ibid.* The Governing Body Committee on Freedom of Association has considered in some cases that petroleum undertakings and port services, transport services, the metal and mining sectors, aircraft repairs, postal services, banking, radio and television, the supply and distribution of foodstuffs, and state services such as the Mint, the government printing service and the state alcohol, salt and tobacco monopolies do not constitute essential services in the strict sense of the term, in which strikes may be declared illegal. See *Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, Geneva, International Labour Office, fifth (revised) edition, 2006, para. 587.

<sup>462</sup> See *Forced labour*, General Survey of 1968, para. 95; *Abolition of forced labour*, General Survey of 1979, para. 123.

term, as indicated above, and if compensatory guarantees in the form of appropriate alternative procedures are provided.<sup>463</sup>

186. In a number of countries, however, the prohibitions laid down in this regard, enforceable with sanctions involving compulsory labour, appear to be too general in scope to be compatible with the Convention, for example, where – in addition to essential services in the strict sense of the term – they also cover industries or services whose interruption, in normal circumstances, does not necessarily endanger the life, personal safety or health of the whole or part of the population, but might more generally prejudice the general interest or the national economy;<sup>464</sup> some of these countries are

<sup>463</sup> The Governing Body Committee on Freedom of Association on numerous occasions pointed out that, where the right to strike is restricted or prohibited in the public service or in essential services, adequate protection should be given to the workers to compensate for the limitations thereby placed on their freedom of action with regard to disputes affecting such services, and that such restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings, in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented. See *Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, Geneva, International Labour Office, fifth (revised) edition, 2006, paras 595–603.

<sup>464</sup> Countries which have ratified the Convention: *Algeria* – Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike, section 41, under which requisition orders may be issued for workers on strike who hold posts in public institutions or administrations, or in enterprises that are essential for the safety of persons, plant and property and for the continuity of public services which are essential to the vital needs of the country, or who carry on activities essential to supplying the public; under sections 37, 38 and 43 of the Act, a list of essential services in which the right to strike is limited includes services such as banking and telecommunications, as well as court registry services, which, do not constitute essential services in the strict sense of the term; section 43 of the Act also prohibits strikes in certain sectors of public institutions and administrations, such as the judiciary and customs; *Bangladesh* – Industrial Relations Ordinance, No. XXIII of 1969, as amended by the Industrial Relations (Amendment) Act, 1980, prohibits strikes in public utility services and makes strikes illegal in various other circumstances, (sections 43 and 46(1)(b)), as well as any strike whose continuance is considered prejudicial to the national interest (section 32(2)); participation in any illegal strike may be punished with imprisonment (involving an obligation to work) (section 57); under the Communications and Transport Services Maintenance Ordinance, 1957 (XII of 1957), strikes may be prohibited in post, railway services, ports and passenger transport services in the capital, loading and unloading of goods in ports, etc.; *Belize* – section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving an obligation to work) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying not only electricity, water, health or medical services, but also railway or communications services, or any other service that may by proclamation be declared by the Governor to be a public service; section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared not only the National Fire Service, but also the Postal Service, Monetary and Financial Services (banks, treasury, monetary authority), Airports (civil aviation and airport security services) and the Port Authority (pilots and security services) to be essential services; and Statutory Instrument No. 51 of 1988 declared the Social Security Scheme administered by the Social Security Branch an essential service; *Cyprus* – section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Act (Ch. 175A), which authorizes the issuance of orders to make effective Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services; Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work regarded as essential for any such purpose, not to terminate their employment or absent themselves from work or be persistently late for work, on pain of imprisonment (involving compulsory labour); Regulation 79B authorizes the Government to issue further regulations to prohibit strikes, on pain of imprisonment by virtue of Regulation 94. The Government indicated that, with the signing of the Agreement on the Procedure for the Settlement of Labour Disputes in Essential Services on 16 March 2004, it was also agreed that Defence Regulations 79A and 79B should be repealed, and that the Office of the Attorney-General was requested to draft the relevant repealing order; *Ecuador* – Decree No. 105 of 7 June 1967, which provides for penalties of imprisonment (involving compulsory labour under sections 55 and 66 of the Penal Code) for taking a leading part or participating in a collective work stoppage, except in the cases allowed by the law, including the “paralyzing of the means of communication and similar anti-social acts”; the Government has expressed its intention to repeal or amend these provisions in the course of the forthcoming legislative reform; *Kenya* – section 28 of the Trade Disputes Act (Cap. 234) provides for a sanction of imprisonment (involving an obligation to perform labour) for participation in a strike, where a strike has been prohibited by the Minister under sections 30 and 31 in any essential service

considering amending or repealing these provisions.<sup>465</sup> In some cases the Committee has noted with satisfaction that similar provisions have been either repealed or amended.<sup>466</sup> Where legislation provides for penal sanctions for breaches of labour discipline by seafarers,<sup>467</sup> these sanctions are usually applicable to strikes as well. It should be

(which, according to the first schedule of the Act, includes not only essential services in the strict sense of the term, but also more general services such as undertakings engaged in the distribution of fuel, petrol and oil, transport services provided by the Kenya Railways, and port and dock services); the Government expressed its commitment to bring legislation into conformity with the Convention and indicated measures taken to this end; *Pakistan* – the Pakistan Essential Services (Maintenance) Act (ESA), 1952, and corresponding provincial Acts, prohibit employees from leaving their employment, even by giving notice, without the consent of the employer, as well as from striking, subject to penalties of imprisonment that may involve compulsory labour; the ESA includes services which cannot be considered essential in the strict sense of the term, including, among others, oil production, postal services, railways, airways, and ports; *Philippines* – sections 263(g), 264, 272(a) of the Labor Code, as amended by Act No. 6715, which provide that, in the event of a planned or current strike in an industry considered indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and settle it or certify it for compulsory arbitration, and the President may determine the industries indispensable to the national interest and assume jurisdiction over a labour dispute; the declaration of a strike after such assumption of jurisdiction or submission to compulsory arbitration is prohibited on pain of imprisonment, which involves an obligation to perform labour; the revised Penal Code also lays down sanctions of imprisonment for participants in illegal strikes (section 146); the Government has indicated that recommendations for proposed amendments to the Labor Code included one to “limit the jurisdiction of the Secretary of Labor on disputes involving the national interest to disputes involving essential services only as defined by the ILO”; *Thailand* – Labour Relations Act, BE 2518 (1975), section 140 read together with section 35(2), under which penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes, if the Minister orders the strikers to return to work as usual, being of the opinion that the strike may cause serious damage to the national economy or hardship to the public or may affect national security or be contrary to public order; *Trinidad and Tobago* – Trade Disputes and Protection of Property Ordinance, section 8(1), under which penalties involving compulsory labour may be imposed for breach of contract by persons employed in certain public services (including railway, tramway, ship or other transport services), where the probable consequences would be to deprive the inhabitants, wholly or to a great extent, of such services; *Industrial Relations Act, 1972*, section 69(1)(d) and (2), under which teachers in the public service are prohibited from taking part in a strike, subject to penalties of imprisonment involving the obligation to work; *Turkey* – Act No. 2822 respecting collective labour agreements, strikes and lockouts, of 5 May 1983, provides in sections 70–73, 75, 77 and 79 for penalties of imprisonment (involving compulsory labour) as a punishment for the participation in unlawful strikes, for disregard of prohibitions to call a strike, for unlawful strikes intended to influence decisions, and for disregard of an order for the suspension of a strike in circumstances not necessarily endangering the life, personal safety or health of the whole or part of the population; the Government has indicated the measures taken to review these provisions; *Uganda* – sections 16, 17 and 20A of the Trade Disputes (Arbitration and Settlement) Act, 1964, under which strikes may be prohibited in various services that, while including those generally recognized as essential ones, also extend to other services, and contravention of these prohibitions is punishable with imprisonment (involving an obligation to perform labour); the Government has indicated that a draft Bill to revise the above provisions had been prepared.

<sup>465</sup> For example, countries which have ratified the Convention: *Cyprus, Kenya, Philippines, Turkey, Uganda*. See footnote 464 above.

<sup>466</sup> Countries which have ratified the Convention: *Brazil* – RCE, 1991, p. 309 (Act No. 7783, of 28 June 1989, on the exercise of the right to strike, has repealed Legislative Decree No. 1632, of 4 August 1978, which prohibited strikes in services “of importance to national security”, and Act No. 4330, of 1 June 1964, under which strikes could be declared illegal and punishable by penalties involving compulsory labour in a broad range of circumstances); *Portugal* – RCE, 1985, p. 269 (the opinion issued by the Council of the Public Prosecutor, ratified by the Order of the Minister of Labour of 9 September 1982, concerning the non-applicability of section 3 of Legislative Decree No. 637/74 determining essential services for the calling-up of civilians in the event of a strike); *Uruguay* – RCE, 1987, p. 342 (Acts Nos. 15530 and 15137 concerning strikes have repealed Decree No. 622 of 1973, sections 36 et seq. of which provided for various restrictions on the right to strike, including those connected with the determination of essential services); *Zambia* – RCE, 1997, p. 300 (the Industrial and Labour Relations Act, No. 27 of 1993, does not provide for penalties of imprisonment (involving an obligation to work) as a punishment for having participated in strikes, except in essential services, which are defined as only those services whose interruption is likely to endanger the life, personal safety or health of the whole or part of the population (section 107(10)); certain restrictive provisions of this kind contained in the 1971 Industrial Relations Act had been repealed by the Industrial Relations Act No. 36 of 1990);

<sup>467</sup> See paras 179–181 above.

recalled in this connection that the imposition of sanctions involving compulsory labour on seafarers for participation in strikes should be limited to circumstances in which strike action would tend to endanger the ship or the life or health of persons. As it has already been noted, in various countries concerned the legislation on the subject is being reviewed in the light of the provisions of the Convention.<sup>468</sup>

(iii) *Procedural requirements restricting the exercise of the right to strike*

187. Restrictions on the exercise of the right to strike falling within the scope of the Convention may result from certain procedural requirements to be observed in declaring and conducting a lawful strike (such as e.g. an advance notice period, the quorum and the majority vote requirements, exhaustion of conciliation/mediation procedures, etc.), if such requirements are enforceable with sanctions involving compulsory labour. The Committee has considered in the abovementioned General Survey on freedom of association and collective bargaining that the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice, and therefore should be fixed at a reasonable level; the conciliation and mediation procedures should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness; and the period of advance notice should not be an additional obstacle to bargaining, with workers in practice simply waiting for its expiry in order to be able to exercise their right to strike.<sup>469</sup> Serious restrictions may also result in practice from the cumulative effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the discretion of the public authorities, disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned; such compulsory arbitration systems make it possible to prohibit virtually all strikes or to end them quickly.<sup>470</sup> As the Committee pointed out in its earlier surveys on forced labour,<sup>471</sup> when such restrictions and prohibitions are enforceable with sanctions involving compulsory labour, they should be limited to the sectors, types of employment or situations where, in conformity with the abovementioned principles, restrictions may be imposed on the right to strike itself (such as e.g. essential services in the strict sense of the term or situations of acute national crisis).<sup>472</sup> However, in a number of countries, provisions for compulsory arbitration (accompanied by the prohibition of strikes and enforceable with penal sanctions involving compulsory labour) are not limited in such a way, but are rather general in scope and permit to render practically all strikes illegal,

<sup>468</sup> See para. 180 above.

<sup>469</sup> *Freedom of association and collective bargaining*, General Survey of 1994, paras 170–172.

<sup>470</sup> *ibid.*, para. 153.

<sup>471</sup> See *Forced labour*, General Survey of 1968, paras 95 and 124; *Abolition of forced labour*, General Survey of 1979, para. 130.

<sup>472</sup> See paras 184–186 above. The Governing Body Committee on Freedom of Association has considered that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, or in cases of acute national crisis. See *Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, Geneva, International Labour Office, fifth (revised) edition, 2006, paras 564–569.

which is not in conformity with the Convention.<sup>473</sup> In some cases, the Committee has noted with satisfaction the repeal of such provisions,<sup>474</sup> as well as the repeal or amendment of provisions concerning other procedural requirements falling within the scope of the Convention;<sup>475</sup> in certain other cases the Committee requested that measures be taken to review the provisions in question.<sup>476</sup> In one case the Committee noted the repeal of sanctions of imprisonment (involving compulsory labour) for the declaration of a strike in violation of the relevant legislative provisions.<sup>477</sup>

<sup>473</sup> For example, countries which have ratified the Convention: *Bolivia* – General Labour Act of 1942, section 113, which allows the recourse to compulsory arbitration by decision of the executive authority in order to bring an end to a strike, including in services other than those that are essential in the strict sense of the term, which makes a strike illegal, subject to penalties of imprisonment under section 234 of the Penal Code (which involve compulsory labour); *Ghana* – Industrial Relations Act, 1965, sections 18, 21 and 22 – repealed by the Labour Act, 2004; *Mauritius* – under sections 82 and 83 of the Industrial Relations Act, 1973, submission of any industrial dispute to compulsory arbitration is left to the discretion of the Minister, whose decision makes any strike unlawful (section 92), prohibition being enforceable with imprisonment (section 102) involving compulsory labour; the Government has undertaken to review the Industrial Relations Act; *Sudan* – sections 112, 119 and 126(2) of the Labour Code of 1997 specify that labour disputes which cannot be settled amicably within three weeks will be automatically referred to an arbitration body whose decision will be final and without appeal; section 126(2) provides for a punishment of imprisonment (involving compulsory labour) for a period of up to six months in cases of violation or refusal to apply the provisions of the Code; *Thailand* – Labour Relations Act, BE 2518 (1975), which provides that penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes under the following provisions of the Act: section 139 read together with section 34(4), (5) and (6), if the party required to comply with an arbitrator’s award under section 25 has done so, if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the Minister under section 23(1), (2), (6) or (8) or by the committee under section 24, or if the matter is awaiting the award of labour disputes arbitrators appointed under section 25.

<sup>474</sup> A country which has ratified the Convention: *Angola* – RCE, 1992, p. 318 (Act No. 23/91 of 15 June 1991 on the right to strike has repealed Legislative Decree No. 3/75 of 8 January 1975, which laid down restrictions on the exercise of the right to strike connected with compulsory arbitration and certain other procedural requirements).

<sup>475</sup> Countries which have ratified the Convention: *Dominica* – RCE, 1984, p. 212 (Industrial Relations Act, 1975, section 77, has repealed the Trade Disputes (Arbitration and Inquiry) Ordinance, under which participation in strikes, in violation of procedural requirements concerning dispute settlement, and certain disciplinary offences were punishable with imprisonment (involving compulsory labour)); *Uruguay* – RCE, 1987, p. 342 (Acts Nos. 15530 and 15137 concerning strikes have repealed Decree No. 622 of 1973, sections 36 et seq. of which provided for various restrictions on the right to strike, including those connected with certain procedural requirements).

<sup>476</sup> Countries which have ratified the Convention: *Bangladesh* – RCE, 2005, p. 137 (Industrial Relations Ordinance, No. XXIII of 1969, as amended by the Industrial Relations (Amendment Act, 1980), makes strikes illegal in various circumstances, e.g. where the Government has exercised its right to prohibit any strikes lasting more than 30 days or, before the expiry of 30 days, any strike whose continuance is considered prejudicial to the national interest (section 32(2)), or where strikes have not been consented upon by three-quarters of the members of the trade union or federation recognized as a collective bargaining agent (section 28 of the 1969 Ordinance, as amended by section 8 of the 1980 Act, read together with sections 22, 43 and 46(1)(b) of the Ordinance); participation in illegal strikes being punishable with imprisonment (which may involve an obligation to work) (section 57 of the Ordinance)) (see also a direct request of 2004); *Bolivia* – RCE, 2005, p. 139 (General Labour Act of 1942, section 114, and Regulatory Decree No. 224 of 23 August 1943, section 159, which provide for the requirement of a qualified majority of three-quarters of the workers in the enterprise to call a strike, subject to penal sanctions (involving compulsory labour)); *Turkey* – RCE, 2005, p. 192 (Act No. 2822 respecting collective labour agreements, strikes and lockouts, of 5 May 1983, provides in sections 70–73, 75, 77 and 79 for penalties of imprisonment (involving compulsory labour) as a punishment for the participation in unlawful strikes, and inter alia for disregard of restrictions imposed on the number of strike pickets and on the right of peaceful assembly in front of the employer’s establishments).

<sup>477</sup> A country which has ratified the Convention: *Gabon* – RCE, 1980, p. 152 (under the Labour Code (Act No. 5-78 of 1978) a strike declared in violation of the provisions of the Code does not entail a sentence of imprisonment).

(iv) *Prohibition of political strikes*

188. Strikes that are purely political in character do not fall within the scope of freedom of association,<sup>478</sup> and therefore the prohibition of purely political strikes lies outside the scope of Convention No. 105.<sup>479</sup> However, the difficulty arises from the fact that it is often impossible to distinguish in practice between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers. Sometimes, restrictions on the right to strike may be interpreted so widely that any strike might be considered as political. Consequently, the Committee has come to a conclusion that organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living.<sup>480</sup> As regards the impact of prohibitions of political strikes on the observance of the Convention, it would appear to depend on the practical application of the legislation in question. In so far as restrictions on the right to engage in such strikes are enforced by sanctions involving compulsory labour, the Committee has pointed out that such restrictions should not apply either to those matters likely to be resolved through the signing of a collective agreement or to other matters of a broader economic and social nature affecting the occupational interests of workers.<sup>481, 482</sup>

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189. In conclusion, the Committee wishes to recall the importance it attaches to the general principle that, in all cases and regardless of the legality of the strike action in question, any sanctions imposed should not be disproportionate to the seriousness of the violations committed. The Committee strongly believes that such concerns of proportionality must be duly taken into account by governments when applying the permissible exclusions set out above.<sup>483</sup>

<sup>478</sup> *Freedom of association and collective bargaining*, General Survey of 1994, paras 170–172.

<sup>479</sup> *Abolition of forced labour*, General Survey of 1979, para. 128.

<sup>480</sup> *Freedom of association and collective bargaining*, General Survey of 1994, para. 165. The Governing Body Committee on Freedom of Association has considered that, while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies. See *Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, Geneva, International Labour Office, fifth (revised) edition, 2006, para. 529.

<sup>481</sup> *Abolition of forced labour*, General Survey of 1979, para. 128.

<sup>482</sup> Countries which have ratified the Convention: *Bolivia* – RCE, 2005, p. 139 (Legislative Decree No. 2565 of 6 June 1951, sections 1 and 2, which provide for the illegality of general and sympathy strikes, subject to penal sanctions (involving compulsory labour) under section 234 of the Penal Code; the Government has taken measures to amend these provisions with a view to abolishing penal sanctions for the participation in strikes); *Thailand* – RCE, 2005, p. 187 (section 117 of the Criminal Code, under which participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people is punishable with imprisonment (involving compulsory labour); the Government indicated that this section had never been applied in practice; the Committee requested the adoption of measures to amend section 117 so as to remove strikes pursuing economic and social objectives affecting the workers' occupational interests from the scope of sanctions under this section, with a view to bringing this provision into conformity with the Convention and the indicated practice).

<sup>483</sup> As the Governing Body Committee on Freedom of Association has pointed out, all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and *the authorities*

## (e) Abolition of forced or compulsory labour as a means of racial, social, national or religious discrimination (Article 1(e))

190. The Convention prohibits the use of any form of forced or compulsory labour “as a means of racial, social, national or religious discrimination”.<sup>484</sup> This provision requires the abolition of any discriminatory distinctions made on racial, social, national or religious grounds in exacting labour for the purpose of production or service. Even where the exaction of a particular kind of labour is not otherwise covered by the Conventions on forced labour (for example, compulsory military service),<sup>485</sup> any discriminatory distinction made on the above grounds should be abolished under this provision.<sup>486</sup> Similarly, even where the offence giving rise to the punishment is a common offence which does not otherwise come under the protection of Article 1(a), (c) or (d) of the Convention, but the punishment involving compulsory labour is meted out more severely to certain groups defined in racial, social, national or religious terms, this situation falls within the scope of the Convention.<sup>487</sup> It should not be forgotten, however, that the Convention does not deal with discrimination on the above grounds; its purpose is to suppress forced or compulsory labour as a means of discrimination.

191. Instances in which legislation allows the imposition of forced or compulsory labour, including sanctions involving compulsory labour, as a means of racial, social, national or religious discrimination appear to be extremely rare, since there is a comprehensive body of constitutional and legislative guarantees of equality of citizens. Though in some cases there are laws applicable to certain population groups or members of particular religious communities, such laws usually do not contain discriminative provisions, but rather those of a protective nature or intended to take account of the customs of the communities concerned.<sup>488</sup> In its earlier surveys on the subject, the Committee noted a few cases in which certain forms of forced labour affected only particular groups or in which compulsory labour was used to punish the violation of discriminatory legal provisions.<sup>489</sup> Since the last survey, the Committee has noted with satisfaction that some of these provisions have been repealed.<sup>490</sup> In another case, it noted with interest that the

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*should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. See Freedom of association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva, International Labour Office, fifth (revised) edition, 2006, para. 668; see also Freedom of association and collective bargaining, General Survey of 1994, para. 178.*

<sup>484</sup> Art. 1(e) of the Convention.

<sup>485</sup> Although compulsory service of a purely military character is excluded from the scope of Convention No. 29 (Art. 2, para. 2(a)) and does not come as such under any of the prohibitions in Art. 1 of Convention No. 105, if such service is limited to members of certain racial and /or social groups, such practice is contrary to Art. 1(e) of the Convention.

<sup>486</sup> See *Abolition of forced labour*, General Survey of 1979, para. 42.

<sup>487</sup> *ibid.*, para. 141.

<sup>488</sup> It may be recalled that the Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides that, in applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws (Art. 8(1)) and that, to the extent compatible with the national legal system and internationally recognized human rights, the methods customarily practiced by the peoples concerned for dealing with offences committed by their members shall be respected; the customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases (Art. 9(1) and (2)).

<sup>489</sup> See *Forced labour*, General Survey of 1968, paras 129, 130; *Abolition of forced labour*, General Survey of 1979, para. 141.

<sup>490</sup> A country which has ratified the Convention: *Peru* – RCE, 1992, p. 350 (the Penal Code (Legislative Decree No. 635 of 25 April 1991) has repealed section 44 of the former Penal Code under which, where offences were committed by persons of an indigenous civilization, referred to as “savages”, the judge could replace sentences of

provisions in question were no longer applied in practice and were in the process of being repealed.<sup>491</sup> Also, the legislation designed to create and maintain racial discrimination in connection with the policy of apartheid, referred to by the Committee in its earlier surveys,<sup>492</sup> has been repealed and replaced by the new constitutional and legislative provisions, which ensured compliance with the Convention on this point and facilitated its ratification.<sup>493</sup> However, there are still some rare cases of punishment involving an obligation to perform labour for non-observance of laws affecting certain persons defined in terms of their social group in circumstances falling within the scope of the Convention.<sup>494</sup>

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imprisonment by assignment to a penal agricultural colony for an unspecified period of up to 20 years, irrespective of the maximum duration of the sentence that the offence would entail if it had been committed by a “civilized man”).

<sup>491</sup> A country which has ratified the Convention: *Fiji* – the Government repeatedly indicated in its reports that, in practice, no proceedings had been instituted under the Regulations of the Fijian Affairs Criminal Offences Code (under which Fijians, i.e. aborigines of the Fiji Islands, may be ordered to leave an industrial or densely populated zone, under penalty of sanctions involving an obligation to work), and that the revocation of the Code, which had been brought into force in the nine provinces, was to be extended to the entire country.

<sup>492</sup> See *Forced labour*, General Survey of 1968, para. 129; *Abolition of forced labour*, General Survey of 1979, para. 141 and a corresponding footnote, in which the Committee referred to the Special Reports of the Director-General on the Application of the Declaration concerning the Policy of Apartheid of the Republic of South Africa.

<sup>493</sup> A country which has ratified the Convention: *South Africa*.

<sup>494</sup> A country which has ratified the Convention: *Pakistan* – RCE, 2006, pp. 166–167 (Penal Code, sections 298B(1) and (2) and 298C, inserted by the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadi (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is subject to punishment with imprisonment (which may involve compulsory labour) for a term that may extend to three years. The Committee has requested the Government to bring legislation into conformity with the Convention).

## Chapter IV

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### Concluding remarks

192. Freedom from forced or compulsory labour was among the first basic human rights subjects within the Organization's mandate to be dealt with in international labour standards. The principles embodied in the ILO Conventions in this field have since been incorporated in various international instruments, both universal and regional, and have therefore become a peremptory norm of international law.<sup>495</sup>

193. The present General Survey is published 75 years after the Forced Labour Convention, 1930 (No. 29), entered into force and 50 years since the adoption of the Abolition of Forced Labour Convention, 1957 (No. 105). Although the forced labour Conventions have achieved a certain longevity and were adopted at a time when economic and social conditions around the world were very different, they are still as relevant and dynamic today as they were when they first came into being. It has been therefore useful to reflect on some of the changes which have occurred over recent decades in relation to these Conventions.

194. These two fundamental ILO Conventions are the most widely ratified of all ILO instruments. The number of ratifications has increased considerably since the previous General Survey of 1979, with the result that these Conventions have now been ratified by almost all the member States of the ILO: Convention No. 29 by 170 and Convention No. 105 by 166 countries. The Committee considers that it is necessary to ratify both Conventions, since they effectively supplement each other, and their concurrent application contributes to the complete eradication of forced or compulsory labour in all its forms. Even those countries that have not ratified the Conventions appear to accept that the prohibition of forced labour is a fundamental human right. In the few cases in which Convention No. 29 has not been ratified, the reasons seem to be linked to the scope of the exemptions rather than the fundamental right that the Convention seeks to protect.

195. At the time of the adoption of Convention No. 29, there were far more instances of slavery and slave-like practices worldwide than exist today. In this respect, there have been improvements in many countries in relation to the gross and more obvious forms of

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<sup>495</sup> See the conclusions of the Commission of Inquiry on Myanmar where it stated that "there exists now in international law a peremptory norm prohibiting any recourse to forced labour and that the right not to be compelled to perform forced or compulsory labour is one of the basic human rights. A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act for which it bears international responsibility; furthermore, this wrongful act results from a breach of an international responsibility." ILO: *Forced labour in Myanmar (Burma)*, report of the Commission of Inquiry appointed under art. 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), *Official Bulletin* (Geneva), Vol. LXXXI, 1998, Series B, special supplement, para. 203.

forced labour. However, some of these practices regrettably still exist in a number of countries in various forms, including debt bondage. A concerted effort is needed in order to eradicate these practices as soon as possible. The continued existence of forced labour is an attack on human dignity. Special strategies need to be devised, which necessitate efforts not only by the governments concerned, but also by the social partners, and require the active participation of and assistance from other member States. In relation to these gross forms of forced labour which are resistant to eradication, in addition to measures which the ILO may take pursuant to Article 33 of the Constitution, there is now the potential for criminal prosecution by the newly established International Criminal Court.<sup>496</sup>

196. When undertaking this survey, the Committee has also considered ways in which it could contribute to the complete eradication of forced or compulsory labour. In this regard, it notes that it is important to ensure that there is no room for misinterpretation of Articles 3 to 24 of Convention No. 29, which contain provisions that were applicable during a transitional period. The Committee notes that this period expired long ago, and that the provisions in question are therefore no longer applicable. It accordingly recommends that consideration be given to the adoption of a protocol to Convention No. 29 that would have the effect of revoking the Articles in question.

197. In more recent years, other forms of forced labour have come into greater prominence. These are in part a result of certain aspects of globalization, economic and social changes, and a widening gap between the rich and the poor, labour market changes and the increased mobility of populations. In relation to Convention No. 29, these practices include: the trafficking of persons for the purpose of exploitation; the imposition on children of the worst forms of child labour; compulsory labour in privatized prisons and for private enterprises; certain conditions under which sentences of community work are imposed; the imposition of compulsory work as a condition for the receipt of unemployment benefits; the requirement to perform overtime work under the menace of a penalty. In addition, problems still arise in the effective enforcement of the prohibition of forced or compulsory labour.

198. In relation to Convention No. 105, examination of national law and practice has shown that there are cases in which freedom of expression is still subject to restrictions enforced by sanctions involving compulsory labour, or in which similar sanctions exist for various breaches of labour discipline by public servants or seafarers, as well as for participation in strikes. Provisions imposing such sanctions are often too general in scope to be compatible with Convention No. 105, although the governments concerned sometimes express the intention of repealing or amending the provisions in question in order to ensure compliance. There are also cases of the mobilization of labour for purposes of economic development, although progress has been achieved in recent decades in a number of countries in the elimination of the provisions in question.

199. The Committee has noted that the practices in each country in relation to these trends vary by reason of such circumstances as the degree of development of the country and the strength and effectiveness of the law enforcement mechanisms.

200. Examination of national law and practice has shown that the effective application of the forced labour Conventions continues to give rise to problems in certain countries,

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<sup>496</sup> See Art. 7(1)(c) of the Rome Statute referred to by the Governing Body of the International Labour Organization (GB.297/8/2), 297th Session, November 2006.

often due to the trends and phenomena referred to above, which are examined in detail in Chapters II and III of the present survey. The Committee's considerations and conclusions in this regard are summarized below.

#### *Trafficking in persons for the purpose of exploitation*

201. The increasing trend of the trafficking in women and children, as well as men, for the purpose of forced labour stands out as the most urgent problem of the twenty-first century in relation to Convention No. 29. It has reached the level of being one of the major activities of transnational organized crime. The nature of this scourge requires the cooperation of all States, as all the regions of the world are affected. The concerted efforts of States have led to the adoption of new policies in this field, including special anti-trafficking laws. However, the persistence of trafficking in persons tends to show that, in practice, the enforcement of the legislation is often undermined by difficulties that still have to be analysed and resolved if compliance with the requirements of the Convention is to be achieved. A crucial basis of the law enforcement machinery is an effective judicial system, which is a key element in the efficient prosecution of traffickers and the strict application of penal sanctions, as required by the Convention. The Committee also emphasizes the importance of prevention and protection measures and notes, in particular, that the effective protection of the victims of trafficking can contribute to the enforcement of the law and the punishment of perpetrators.

#### *The worst forms of child labour*

202. Although there is a specific Convention dealing with the worst forms of child labour,<sup>497</sup> as some member States have not yet ratified it, forced labour imposed on children continues to be examined within the framework of supervision of the application of Convention No. 29. Forced labour imposed on children who are victims of trafficking constitute one of the most serious forms of infringement of the latter Convention.

#### *Privatization of prisons and prison labour*

203. A significant phenomenon that has developed in more recent times has been the increase in the privatization of prisons and of prison labour. The Committee has devoted particular attention to this topic having regard to the uncertainties expressed by some member States relating to the impact of this phenomenon on the observance of Convention No. 29. The Committee has concluded that the existence of privatized prisons and the privatization of prison labour are not incompatible with the Convention, but that such arrangements need to be designed and implemented on the understanding that additional requirements have to be fulfilled to ensure compliance. Although it is difficult for the privatization of prisons and prison labour to fall within the exclusions contained in Article 2, paragraph 2(c), of the Convention, it may be consistent with Article 2, paragraph 1, provided that such labour is performed voluntarily and not under the menace of any penalty. The Committee has provided guidance on the factors which should be taken into account in order to assess compatibility with the Convention.

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<sup>497</sup> The Worst Forms of Child Labour Convention, 1999 (No. 182).

### *Sentences of community work*

204. Community work is increasingly being used by many countries as an alternative to short-term imprisonment. Instead of the imposition by a court of a sentence of imprisonment, a person is required to perform, over a specified period, useful work in the general interest of the community as a whole. The Committee appreciates the beneficial effects of this alternative to imprisonment, but emphasizes that it should be performed in accordance with the requirements of Convention No. 29. Such community work can only be carried out for the State in the public interest or for non-profit-making entities. Moreover, in the latter case, two conditions should be met: first, that the sentenced person consents to doing such work; and second, that the work is adequately supervised and monitored to ensure that it is beneficial to the community as a whole.

### *Compulsory work as a condition for the receipt of unemployment benefits*

205. Against the background of growing unemployment, including long-term unemployment, the Committee has noted that, in industrialized countries in particular, unemployed people may be required to perform work which may not be considered as “suitable employment”,<sup>498</sup> in order to receive unemployment benefits, even where entitlement to such benefits is based on previous work or contributions. Although the reasoning behind this approach may vary in different countries, the following common elements appear to exist: strategies to assist in regaining employment for those unemployed for longer periods; preventing the misuse of unemployment benefits; and, in the case of youth, involving them in useful activities instead of the passive receipt of benefits. The Committee considers that this practice may not be in contravention of Convention No. 29, on condition that it is not used as a penalty and that certain safeguards are built in on the basis of Convention No. 29 and of the Social Security (Minimum Standards) Convention, 1952 (No. 102), especially as regards the provision related to the “suitability” of the work.

### *Imposition of overtime work under the menace of a penalty*

206. In certain cases, the Committee has considered it appropriate to examine the links between an obligation to perform overtime work and protection against the imposition of forced labour. Exploitation of the vulnerability of workers who are facing a menace of dismissal or forced to work beyond normal working hours to attain productivity targets so that they can earn the minimum wage, limits the workers’ liberty and right to refuse work imposed on them under the menace of a penalty. The Committee has considered that, in certain situations, an obligation to perform overtime work may constitute an infringement of Convention No. 29.

### *Mobilization of labour for purposes of economic development*

207. The relevant provisions of Convention No. 105 cover the various forms of forced or compulsory labour for economic ends. The Committee has noted that substantial progress has been achieved in many countries over recent decades in the elimination of provisions imposing compulsory labour for economic purposes. However, the Committee has had occasion to point out, with regard to countries that have not ratified

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<sup>498</sup> In the sense of Article 20 of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

Convention No. 105 and which had recourse to forced and compulsory labour for development purposes, that the experience of almost all countries in the world shows that forced and compulsory labour is not in practice a productive way of developing the national economy. The Committee therefore emphasizes that no exceptions to universally recognized human rights should be sought in the name of development. The Committee has therefore urged the countries in question to have recourse to international assistance, if necessary, to find alternatives to forced labour for development purposes.

*Sanctions involving compulsory labour as a punishment for participation in strikes*

208. Over recent decades, the Committee has noted with satisfaction in a number of cases the restoration of the right to strike, together with other constitutional guarantees and political liberties, as well as the repeal of provisions prohibiting participation in strikes under the menace of penalties involving compulsory labour. However, in certain countries there still exist provisions under which penalties involving compulsory labour can be imposed on any public employee who participates in a strike. In some cases, a prohibition of the right to strike, enforceable with penalties of imprisonment, still affects not only officials in the administration of the State, but also workers in public services or enterprises irrespective of the nature of their work. In a number of countries, there also exist provisions prohibiting or limiting strikes in essential services, which are sometimes defined in terms that are too general in scope to be compatible with Convention No. 105. The Committee has considered in this regard that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. In examining the compatibility of national legislation respecting strikes with Convention No. 105 – in so far as such legislation is enforceable with sanctions that may involve compulsory labour – the Committee has followed the principles developed in the field of freedom of association, and in particular, the principle of the proportionality of sanctions and that measures of imprisonment should not be imposed for the mere fact of organizing or participating in a peaceful strike.

*Effective enforcement of the prohibition of forced and compulsory labour*

209. In the first place, the eradication of forced labour requires the adoption of legislative provisions suppressing such practices, which, by virtue of Article 25 of Convention No. 29, shall be punishable as a penal offence. When determining the criminal nature of forced labour practices, it should be taken into account that in certain situations a series of violations of labour legislation, taken together, may amount to forced labour and should therefore be considered to constitute a criminal offence. Article 25 also requires that the penalties imposed by law are really adequate and strictly enforced. The Committee has noted that, despite the existence of appropriate legislation, governments are not always in a position to provide information on its application in practice, such as information on judicial proceedings that have been pursued and on any relevant court decisions. Effective application of legislation depends largely on the sound functioning of the authorities responsible for enforcement, such as the police, the labour inspectorate and the judiciary. Bearing in mind the importance of this basic human rights instrument, concerted effort by countries is needed to comply with the requirements of Article 25 of the Convention.

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210. In conclusion, the present General Survey has shown that the full implementation of the forced labour Conventions still requires various complex issues to be resolved. The Committee hopes that the survey will contribute to a better application of the two fundamental Conventions with a view to the complete eradication of forced labour, and that the survey will clarify certain points and further the knowledge and understanding of these Conventions by both governments and the social partners. The Committee calls on those remaining member States which have not yet ratified one or the other or both Conventions to consider the possibility of doing so in the near future, and on those that have accepted the international obligations under these instruments to do everything possible to fully apply their principles, both in letter and in spirit.

# Appendix I

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## Forced Labour Convention, 1930 (No. 29) \*

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and  
Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the session, and  
Having determined that these proposals shall take the form of an international Convention, adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

### *Article 1*

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

*2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.*

3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

### *Article 2*

1. For the purposes of this Convention the term “forced or compulsory labour” shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term “forced or compulsory labour” shall not include –

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

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\* Articles 1(2) and 3–24 (transitional provisions) are no longer applicable and printed in italics (see paras 10 and 196 of the survey).

- (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
- (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

*Article 3*

*For the purposes of this Convention the term “competent authority” shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.*

*Article 4*

*1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.*

*2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member’s ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.*

*Article 5*

*1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.*

*2. Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible, in order to comply with Article 1 of this Convention.*

*Article 6*

*Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.*

*Article 7*

*1. Chiefs who do not exercise administrative functions shall not have recourse to forced or compulsory labour.*

*2. Chiefs who exercise administrative functions may, with the express permission of the competent authority, have recourse to forced or compulsory labour, subject to the provisions of Article 10 of this Convention.*

*3. Chiefs who are duly recognised and who do not receive adequate remuneration in other forms may have the enjoyment of personal services, subject to due regulation and provided that all necessary measures are taken to prevent abuses.*

*Article 8*

*1. The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.*

*2. Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence. That authority may also delegate, for such periods and subject to such conditions as may be laid down in the regulations provided for in Article 23 of this Convention, powers to the highest local authorities to exact forced or compulsory labour which involves the removal of the workers from their place of habitual residence for the purpose of facilitating the movement of officials of the administration, when on duty, and for the transport of government stores.*

*Article 9*

*Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself –*

- (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;*
- (b) that the work or service is of present or imminent necessity;*
- (c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and*
- (d) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.*

*Article 10*

*1. Forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.*

*2. Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself –*

- (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;*
- (b) that the work or the service is of present or imminent necessity;*
- (c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;*
- (d) that the work or service will not entail the removal of the workers from their place of habitual residence;*
- (e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.*

*Article 11*

*1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:*

- (a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;*
- (b) exemption of school teachers and pupils and of officials of the administration in general;*

- (c) *the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;*
- (d) *respect for conjugal and family ties.*

*2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.*

#### Article 12

*1. The maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.*

*2. Every person from whom forced or compulsory labour is exacted shall be furnished with a certificate indicating the periods of such labour which he has completed.*

#### Article 13

*1. The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.*

*2. A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind is exacted and this day shall coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.*

#### Article 14

*1. With the exception of the forced or compulsory labour provided for in Article 10 of this Convention, forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.*

*2. In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.*

*3. The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.*

*4. For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.*

*5. Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.*

#### Article 15

*1. Any laws or regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or shall be in force in the territory concerned shall be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.*

*2. In any case it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself,*

*and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.*

*Article 16*

*1. Except in cases of special necessity, persons from whom forced or compulsory labour is exacted shall not be transferred to districts where the food and climate differ so considerably from those to which they have been accustomed as to endanger their health.*

*2. In no case shall the transfer of such workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.*

*3. When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.*

*4. In cases where such workers are required to perform regular work to which they are not accustomed, measures shall be taken to ensure their habituation to it, especially as regards progressive training, the hours of work and the provision of rest intervals, and any increase or amelioration of diet which may be necessary.*

*Article 17*

*Before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself –*

- (1) that all necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care, and, in particular, (a) that the workers are medically examined before commencing the work and at fixed intervals during the period of service, (b) that there is an adequate medical staff, provided with the dispensaries, infirmaries, hospitals and equipment necessary to meet all requirements, and (c) that the sanitary conditions of the workplaces, the supply of drinking water, food, fuel, and cooking utensils, and, where necessary, of housing and clothing, are satisfactory;*
- (2) that definite arrangements are made to ensure the subsistence of the families of the workers, in particular by facilitating the remittance, by a safe method, of part of the wages to the family, at the request or with the consent of the workers;*
- (3) that the journeys of the workers to and from the workplaces are made at the expense and under the responsibility of the administration, which shall facilitate such journeys by making the fullest use of all available means of transport;*
- (4) that, in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;*
- (5) that any worker who may wish to remain as a voluntary worker at the end of his period of forced or compulsory labour is permitted to do so without, for a period of two years, losing his right to repatriation free of expense to himself.*

*Article 18*

*1. Forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, inter alia, (a) that such labour shall only be employed for the purpose of facilitating the movement of officials of the administration, when on duty, or for the transport of government stores, or, in cases of very urgent necessity, the transport of persons other than officials, (b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit and not suffering from any infectious or contagious disease, (c) the maximum load which these workers may carry, (d) the maximum distance from their homes to which they may be taken, (e) the maximum number of days per month or other period for which they may be taken, including the days spent in returning to their homes, and (f) the persons entitled to demand this form of forced or compulsory labour and the extent to which they are entitled to demand it.*

*2. In fixing the maxima referred to under (c), (d) and (e) in the foregoing paragraph, the competent authority shall have regard to all relevant factors, including the physical development*

*of the population from which the workers are recruited, the nature of the country through which they must travel and the climatic conditions.*

*3. The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered, but also of the nature of the road, the season and all other relevant factors, and that, where hours of journey in excess of the normal daily journey are exacted, they shall be remunerated at rates higher than the normal rates.*

*Article 19*

*1. The competent authority shall only authorise recourse to compulsory cultivation as a method of precaution against famine or a deficiency of food supplies and always under the condition that the food or produce shall remain the property of the individuals or the community producing it.*

*2. Nothing in this Article shall be construed as abrogating the obligation on members of a community, where production is organised on a communal basis by virtue of law or custom and where the produce or any profit accruing from the sale thereof remain the property of the community, to perform the work demanded by the community by virtue of law or custom.*

*Article 20*

*Collective punishment laws under which a community may be punished for crimes committed by any of its members shall not contain provisions for forced or compulsory labour by the community as one of the methods of punishment.*

*Article 21*

*Forced or compulsory labour shall not be used for work underground in mines.*

*Article 22*

*The annual reports that Members which ratify this Convention agree to make to the International Labour Office, pursuant to the provisions of article 22 of the Constitution of the International Labour Organisation, on the measures they have taken to give effect to the provisions of this Convention, shall contain as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information.*

*Article 23*

*1. To give effect to the provisions of this Convention the competent authority shall issue complete and precise regulations governing the use of forced or compulsory labour.*

*2. These regulations shall contain, inter alia, rules permitting any person from whom forced or compulsory labour is exacted to forward all complaints relative to the conditions of labour to the authorities and ensuring that such complaints will be examined and taken into consideration.*

*Article 24*

*Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.*

*Article 25*

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

*Article 26*

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation, it shall append to its ratification a declaration stating –

- (1) the territories to which it intends to apply the provisions of this Convention without modification;
- (2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;
- (3) the territories in respect of which it reserves its decision.

2. The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

*Article 27*

The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

*Article 28*

1. This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which the ratification has been registered.

*Article 29*

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

*Article 30*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

*Article 31*

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 32*

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention shall *ipso jure* involve denunciation of this Convention without any requirement of delay, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force.

2. As from the date of the coming into force of the new revising Convention, the present Convention shall cease to be open to ratification by the Members.

3. Nevertheless, this Convention shall remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 33*

The French and English texts of this Convention shall both be authentic.

## Appendix II

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### **Abolition of Forced Labour Convention, 1957 (No. 105)**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office,  
and having met in its Fortieth Session on 5 June 1957, and

Having considered the question of forced labour, which is the fourth item on the agenda of  
the session, and

Having noted the provisions of the Forced Labour Convention, 1930, and

Having noted that the Slavery Convention, 1926, provides that all necessary measures shall  
be taken to prevent compulsory or forced labour from developing into conditions  
analogous to slavery and that the Supplementary Convention on the Abolition of  
Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956,  
provides for the complete abolition of debt bondage and serfdom, and

Having noted that the Protection of Wages Convention, 1949, provides that wages shall be  
paid regularly and prohibits methods of payment which deprive the worker of a  
genuine possibility of terminating his employment, and

Having decided upon the adoption of further proposals with regard to the abolition of certain  
forms of forced or compulsory labour constituting a violation of the rights of man  
referred to in the Charter of the United Nations and enunciated by the Universal  
Declaration of Human Rights, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-seven the  
following Convention, which may be cited as the Abolition of Forced Labour Convention, 1957:

#### *Article 1*

Each Member of the International Labour Organisation which ratifies this Convention  
undertakes to suppress and not to make use of any form of forced or compulsory labour –

- (a) as a means of political coercion or education or as a punishment for holding or expressing  
political views or views ideologically opposed to the established political, social or  
economic system;
- (b) as a method of mobilising 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.

*Article 2*

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

*Article 3*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 4*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 5*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 6*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 7*

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

*Article 8*

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 9*

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 5 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 10*

The English and French versions of the text of this Convention are equally authoritative.

## Appendix III

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### List of ratifications of Conventions Nos. 29 and 105

#### Forced Labour Convention, 1930 (No. 29)

Date of entry into force: 01.05.1932

#### Abolition of Forced Labour Convention, 1957 (No. 105)

Date of entry into force: 17.01.1959

Country	Date of ratification	
	Convention No. 29	Convention No. 105
Afghanistan	–	16.05.1963
Albania	25.06.1957	27.02.1997
Algeria	19.10.1962	12.06.1969
Angola	04.06.1976	04.06.1976
Antigua and Barbuda	02.02.1983	02.02.1983
Argentina	14.03.1950	18.01.1960
Armenia	17.12.2004	17.12.2004
Australia	02.01.1932	07.06.1960
Austria	07.06.1960	05.03.1958
Azerbaijan	19.05.1992	09.08.2000
Bahamas	25.05.1976	25.05.1976
Bahrain	11.06.1981	14.07.1998
Bangladesh	22.06.1972	22.06.1972
Barbados	08.05.1967	08.05.1967
Belarus	21.08.1956	25.09.1995
Belgium	20.01.1944	23.01.1961
Belize	15.12.1983	15.12.1983
Benin	12.12.1960	22.05.1961
Bolivia	31.05.2005	11.06.1990
Bosnia and Herzegovina	02.06.1993	15.11.2000
Botswana	05.06.1997	05.06.1997
Brazil	25.04.1957	18.06.1965
Bulgaria	22.09.1932	23.03.1999
Burkina Faso	21.11.1960	25.08.1997
Burundi	11.03.1963	11.03.1963
Cambodia	24.02.1969	23.08.1999
Cameroon	07.06.1960	03.09.1962
Canada	–	14.07.1959
Cape Verde	03.04.1979	03.04.1979
Central African Republic	27.10.1960	09.06.1964

Country	Date of ratification	
	Convention No. 29	Convention No. 105
Chad	10.11.1960	08.06.1961
Chile	31.05.1933	01.02.1999
China	–	–
Colombia	04.03.1969	07.06.1963
Comoros	23.10.1978	23.10.1978
Congo	10.11.1960	26.11.1999
Costa Rica	02.06.1960	04.05.1959
Côte d'Ivoire	21.11.1960	05.05.1961
Croatia	08.10.1991	05.03.1997
Cuba	20.07.1953	02.06.1958
Cyprus	23.09.1960	23.09.1960
Czech Republic	01.01.1993	06.08.1996
Democratic Republic of the Congo	20.09.1960	20.06.2001
Denmark	11.02.1932	17.01.1958
Djibouti	03.08.1978	03.08.1978
Dominica	28.02.1983	28.02.1983
Dominican Republic	05.12.1956	23.06.1958
Ecuador	06.07.1954	05.02.1962
Egypt	29.11.1955	23.10.1958
El Salvador	15.06.1995	18.11.1958
Equatorial Guinea	13.08.2001	13.08.2001
Eritrea	22.02.2000	22.02.2000
Estonia	07.02.1996	07.02.1996
Ethiopia	02.09.2003	24.03.1999
Fiji	19.04.1974	19.04.1974
Finland	13.01.1936	27.05.1960
France	24.06.1937	18.12.1969
Gabon	14.10.1960	29.05.1961
Gambia	04.09.2000	04.09.2000
Georgia	22.06.1993	23.09.1996
Germany	13.06.1956	22.06.1959
Ghana	20.05.1957	15.12.1958
Greece	13.06.1952	30.03.1962
Grenada	09.07.1979	09.07.1979
Guatemala	13.06.1989	09.12.1959
Guinea	21.01.1959	11.07.1961
Guinea-Bissau	21.02.1977	21.02.1977
Guyana	08.06.1966	08.06.1966
Haiti	04.03.1958	04.03.1958
Honduras	21.02.1957	04.08.1958
Hungary	08.06.1956	04.01.1994
Iceland	17.02.1958	29.11.1960
India	30.11.1954	18.05.2000
Indonesia	12.06.1950	07.06.1999
Islamic Republic of Iran	10.06.1957	13.04.1959
Iraq	27.11.1962	15.06.1959
Ireland	02.03.1931	11.06.1958

Country	Date of ratification	
	Convention No. 29	Convention No. 105
Israel	07.06.1955	10.04.1958
Italy	18.06.1934	15.03.1968
Jamaica	26.12.1962	26.12.1962
Japan	21.11.1932	–
Jordan	06.06.1966	31.03.1958
Kazakhstan	18.05.2001	18.05.2001
Kenya	13.01.1964	13.01.1964
Kiribati	03.02.2000	03.02.2000
Republic of Korea	–	–
Kuwait	23.09.1968	21.09.1961
Kyrgyzstan	31.03.1992	18.02.1999
Lao People's Democratic Republic	23.01.1964	–
Latvia	02.06.2006	27.01.1992
Lebanon	01.06.1977	01.06.1977
Lesotho	31.10.1966	14.06.2001
Liberia	01.05.1931	25.05.1962
Libyan Arab Jamahiriya	13.06.1961	13.06.1961
Lithuania	26.09.1994	26.09.1994
Luxembourg	24.07.1964	24.07.1964
Madagascar	01.11.1960	–
Malawi	19.11.1999	19.11.1999
Malaysia	11.11.1957	13.10.1958 (Denounced on 10.01.1990)
Mali	22.09.1960	28.05.1962
Malta	04.01.1965	04.01.1965
Mauritania	20.06.1961	03.04.1997
Mauritius	02.12.1969	02.12.1969
Mexico	12.05.1934	01.06.1959
Republic of Moldova	23.03.2000	10.03.1993
Mongolia	15.03.2005	15.03.2005
Montenegro	–	–
Morocco	20.05.1957	01.12.1966
Mozambique	16.06.2003	06.06.1977
Myanmar	04.03.1955	–
Namibia	15.11.2000	15.11.2000
Nepal	03.01.2002	–
Netherlands	31.03.1933	18.02.1959
New Zealand	29.03.1938	14.06.1968
Nicaragua	12.04.1934	31.10.1967
Niger	27.02.1961	23.03.1962
Nigeria	17.10.1960	17.10.1960
Norway	01.07.1932	14.04.1958
Oman	30.10.1998	21.07.2005
Pakistan	23.12.1957	15.02.1960
Panama	16.05.1966	16.05.1966
Papua New Guinea	01.05.1976	01.05.1976
Paraguay	28.08.1967	16.05.1968
Peru	01.02.1960	06.12.1960

Country	Date of ratification	
	Convention No. 29	Convention No. 105
Philippines	15.07.2005	17.11.1960
Poland	30.07.1958	30.07.1958
Portugal	26.06.1956	23.11.1959
Qatar	12.03.1998	–
Romania	28.05.1957	03.08.1998
Russian Federation	23.06.1956	02.07.1998
Rwanda	23.05.2001	18.09.1962
Saint Kitts and Nevis	12.10.2000	12.10.2000
Saint Lucia	14.05.1980	14.05.1980
Saint Vincent and the Grenadines	21.10.1998	21.10.1998
Samoa	–	–
San Marino	01.02.1995	01.02.1995
Sao Tome and Principe	04.05.2005	04.05.2005
Saudi Arabia	15.06.1978	15.06.1978
Senegal	04.11.1960	28.07.1961
Serbia	24.11.2000	10.07.2003
Seychelles	06.02.1978	06.02.1978
Sierra Leone	13.06.1961	13.06.1961
Singapore	25.10.1965	25.10.1965 (Denounced on 19.04.1979)
Slovakia	01.01.1993	29.09.1997
Slovenia	29.05.1992	24.06.1997
Solomon Islands	06.08.1985	–
Somalia	18.11.1960	08.12.1961
South Africa	05.03.1997	05.03.1997
Spain	29.08.1932	06.11.1967
Sri Lanka	05.04.1950	07.01.2003
Sudan	18.06.1957	22.10.1970
Suriname	15.06.1976	15.06.1976
Swaziland	26.04.1978	28.02.1979
Sweden	22.12.1931	02.06.1958
Switzerland	23.05.1940	18.07.1958
Syrian Arab Republic	26.07.1960	23.10.1958
Tajikistan	26.11.1993	23.09.1999
United Republic of Tanzania	30.01.1962	30.01.1962
Thailand	26.02.1969	02.12.1969
The former Yugoslav Republic of Macedonia	17.11.1991	15.07.2003
Timor-Leste	–	–
Togo	07.06.1960	10.07.1999
Trinidad and Tobago	24.05.1963	24.05.1963
Tunisia	17.12.1962	12.01.1959
Turkey	30.10.1998	29.03.1961
Turkmenistan	15.05.1997	15.05.1997
Uganda	04.06.1963	04.06.1963
Ukraine	10.08.1956	14.12.2000
United Arab Emirates	27.05.1982	24.02.1997
United Kingdom	03.06.1931	30.12.1957
United States	–	25.09.1991

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Country	Date of ratification	
	Convention No. 29	Convention No. 105
Uruguay	06.09.1995	22.11.1968
Uzbekistan	13.07.1992	15.12.1997
Vanuatu	28.08.2006	28.08.2006
Bolivarian Republic of Venezuela	20.11.1944	16.11.1964
Viet Nam	–	–
Yemen	14.04.1969	14.04.1969
Zambia	02.12.1964	22.02.1965
Zimbabwe	27.08.1998	27.08.1998
	<b>170 ratifications</b>	<b>166 ratifications</b>

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## Appendix IV

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### List of reports due and received on Conventions Nos. 29 and 105 under article 19 of the ILO Constitution

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Convention No. 29	
Afghanistan	Not received
Canada	Received
China	Received
Korea, Republic of	Not received
Latvia	Not received
Samoa	Not received
Timor-Leste	Not received
United States	Received
Vanuatu	Not received
Viet Nam	Received

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Convention No. 105	
China	Received
Japan	Received
Korea, Republic of	Not received
Lao People's Democratic Republic	Not received
Madagascar	Received
Malaysia	Received
Myanmar	Received
Nepal	Not received
Qatar	Received
Samoa	Not received
Singapore	Not received
Solomon Islands	Not received
Timor-Leste	Not received
Vanuatu	Not received
Viet Nam	Received

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## Appendix V

### List of cases of progress noted in the present survey

Country	Convention No. 29 Year of the CEACR report in which the case of progress was noted	Convention No. 105 Year of the CEACR report in which the case of progress was noted	Paragraph of this Survey in which the case of progress is mentioned
Angola	–	1992; 2003	156; 173; 187
Argentina	–	1984; 1986	158; 164; 183
Australia	–	1982; 1988	180
Belarus	1990; 1993	–	87; 97
Belgium	–	2007	180
Brazil	1985	1991	61; 186
Bulgaria	1990; 1997	–	94; 97
Burundi	1983; 1984	1993	88; 90; 165
Cambodia	2001	–	90
Canada	–	1996	180
Central African Republic	1985	–	95
Chad	2007	–	90
Chile	1999	–	88
Colombia	1995; 2004	1984	51; 61; 183
Cuba	1989; 1994	–	37; 97
Democratic Republic of the Congo	1988; 2005	–	89; 95
Denmark	2002	Faeroe Islands: 1990	88; 180
Djibouti	–	1984	180
Dominica	–	1984	187
Dominican Republic	–	1980	156
Ecuador	1982	–	88
Egypt	–	1987	183
El Salvador	–	1984; 2001	156; 158; 183
Fiji	–	1999	162
Finland	–	1980	180
France	–	1985	156
Gabon	–	1980	150; 187
Greece	–	1980	184
Honduras	1997	–	94

Country	Convention No. 29 Year of the CEACR report in which the case of progress was noted	Convention No. 105 Year of the CEACR report in which the case of progress was noted	Paragraph of this Survey in which the case of progress is mentioned
Hungary	1980; 1990	–	52; 88
Iceland	1986	1992	87; 180
India	1980; 1982	–	89
Ireland	–	2000	180
Italy	–	1991	164
Malta	–	1987	180
Mauritius	1990	1980	88; 158
Morocco	1999	–	94
Mozambique	–	1996	156; 164
Netherlands	1999; 2001	1980; Netherlands Antilles: 1989	94; 97; 178; 180
New Zealand	2005	1999	61; 180
Nicaragua	1994	1993	52; 156
Nigeria	1982	1982	51; 158
Pakistan	–	1980	158; 183
Panama	1982	–	51
Papua New Guinea	1980	–	90
Peru	1987; 1988; 2004	1992	51; 61; 88; 191
Philippines	–	1989; 1996	156
Poland	1990	1992	87; 180
Portugal	–	1985	186
Romania	1990	–	87
Russian Federation	(USSR) 1990; 1994	–	87; 97
Saint Lucia	–	1989	180
Spain	–	2000	156
Suriname	1990	–	61
Sweden	1982	–	87
Thailand	–	2003; 2006	156; 180
Tunisia	1997	–	94
Uganda	–	1997	156
Ukraine	1990; 1994	–	87; 97
United Kingdom	St. Helena: 1984; Gibraltar: 2005	Bermuda: 1988; St. Helena: 1988	61; 180
Uruguay	–	1987; 1990	161; 186; 187
Bolivarian Republic of Venezuela	1998	–	88
Zambia	1994; 1999	1991; 1992; 1997	97; 164; 178; 186